

TITLE 39
HEALTH AND SAFETY

CHAPTER 56
PERSONAL ASSISTANCE SERVICES

39-5601. LEGISLATIVE INTENT. The purpose and intent of this chapter is to authorize personal assistance services for medicaid eligible participants in the participant's home and community. It is further the purpose of this chapter to help maintain these eligible participants in their own homes in order to provide for the greatest degree of independence and self-reliance possible.

Personal assistance services are an integral component of the long-term care service delivery system and they are to be designed to provide a range of services for persons who are elderly, for persons with disabilities and for children who meet medical necessity criteria for personal care services (PCS). These services are to help individuals compensate for functional limitations and are to be delivered over a sustained period of time to persons who lost or never acquired some degree of functional capacity. Services will be viewed as enhancing the quality of life, individual choice, consumer control, independence and community integration.

Personal assistance services related to functional need shall be provided in order to maintain the independence, privacy, and dignity of the individual in the least restrictive, most cost-effective setting.

The participant and, at the option of the participant, the family of the participant, if available, shall be involved in the development of the individual service plan based on the participant's needs identified through an assessment conducted by the department.

[(39-5601) 39-A4701, added 1981, ch. 65, sec. 1, p. 93; am. & redesign. 1990, ch. 326, sec. 1, p. 889; am. 2000, ch. 274, sec. 122, p. 859; am. 2010, ch. 347, sec. 1, p. 905.]

39-5602. DEFINITIONS. As used in this chapter, the following terms shall have the following meanings:

(1) "Department" means the department of health and welfare of the state of Idaho.

(2) "Director" means the director of the department of health and welfare.

(3) "Eligible participant" or "participant" means an individual determined eligible by the department for Idaho medicaid services, as authorized by title XIX, of the social security act, as amended.

(4) "Fiscal intermediary agency" means an entity that provides services that allow the participant receiving personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training and dismissing his personal assistant and over the manner in which services are delivered.

(5) "Individual service plan" means a document which outlines all services including, but not limited to, personal assistance services and IADLs, required to maintain the individual in his or her home and community.

(6) "Instrumental activities of daily living (IADL)" means those activities performed in supporting the activities of daily living for an adult, including, but not limited to: managing money, preparing meals,

shopping, light housekeeping, using the telephone, or getting around in the community.

(7) "PCS family alternate care provider" means an individual licensed by the department to provide personal care services to one (1) or two (2) children who are unable to reside in their own home and require assistance with medically oriented tasks related to the child's physical or functional needs.

(8) "Personal assistance agency" means an entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, is the employer of record and in fact.

(9) "Personal assistance services" includes both attendant care services and personal care services and means services that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care or IADLs. These services may include, but are not limited to, personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services shall be based on the participant's abilities and limitations, medical diagnosis or other category of disability.

(10) "Personal assistant" means an individual who directly provides personal assistance services.

(11) "Personal care services (PCS)" means a range of medically oriented care services related to a participant's physical or functional requirements. These services are provided in the participant's home or personal residence but do not include housekeeping or skilled nursing care.

(12) "Provider" means a personal assistance agency, a fiscal intermediary agency or a PCS family alternate care provider.

(13) "Representative" means an employee of the department of health and welfare.

(14) "Service coordination" means a case management activity that assists individuals eligible for medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of the individual. Service coordination is a brokerage model of case management.

(15) "Voucher service option" means a method of service provision whereby the participant receives vouchers to pay for personal assistance services.

[(39-5602) 39-A4702, added 1981, ch. 65, sec. 1, p. 93; am. & redesign. 1990, ch. 326, sec. 2, p. 889; am. 1997, ch. 316, sec. 1, p. 933; am. 1998, ch. 224, sec. 1, p. 770; am. 2000, ch. 274, sec. 123, p. 859; am. 2007, ch. 222, sec. 2, p. 665; am. 2010, ch. 347, sec. 2, p. 905.]

39-5603. STANDARDS FOR PROVISION OF PERSONAL ASSISTANCE SERVICES. The director shall have the power and it shall be his duty to promulgate and adopt appropriate rules necessary to implement and enforce standards for provision of personal assistance services.

The following standards for provision of personal assistance services and other provisions contained throughout this chapter and rules shall apply to participants and providers receiving or providing personal assistance services either as a medicaid option service or a waived service, unless prohibited by federal law or contents of the federal waiver agreement.

(1) Personal care services shall be included in the medicaid services described in section 56-255(3) and (4), Idaho Code.

(2) Attendant care shall be included as a service under medicaid home and community-based waiver(s).

(3) All attendant care services must be authorized by the department or its designee.

(4) The department will establish by rule maximum hours per month of personal care services available to the individual participant under the state medicaid plan.

(5) The department shall enter into agreements with providers for the provision of personal assistance services. A single provider may operate as both a personal assistance agency and a fiscal intermediary agency. However, the agency must clearly document whether it is operating as a personal assistance agency or as a fiscal intermediary for each participant. The department may deny provider status or revoke that status when a provider is found to endanger the health, person or property of the participant, or is in violation of rules promulgated by the department or the provider agreement.

(6) A personal assistance agency shall have the responsibility for the following:

- (a) Recruitment, hiring, firing, training, supervision, scheduling, payroll, and the assurance of quality of service, of its personal assistants;
- (b) Complying with state and federal labor and tax laws, rules and regulations;
- (c) Maintaining liability insurance coverage;
- (d) Provision of an appropriately qualified nurse when required;
- (e) Assignment of a qualified personal assistant to each authorized participant after consultation with and prior approval of that participant;
- (f) Assuring all personal assistants providing services meet the standards and qualifications of this chapter;
- (g) Billing medicaid for services approved and authorized;
- (h) Collecting any participant contribution due;
- (i) Referring participants to the department for service coordination services based on established criteria;
- (j) Providing for care by a qualified replacement when the regular personal assistant is unable to provide the services, and providing for unanticipated services approved on the individual service plan when requested by the participant; and
- (k) Conducting, at least annually, participant satisfaction/quality control reviews available to the department and general public.

(7) A fiscal intermediary agency shall have the responsibility for the following:

- (a) To assure compliance with legal requirements related to the employment of participant/family directed personal assistants;
- (b) To offer services to enable participants or families to perform required employer tasks themselves;
- (c) To bill the medicaid program for services approved and authorized by the department;
- (d) To collect any participant contribution due;
- (e) To pay personal assistants for services;
- (f) To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations;

(g) To assure that all personal assistants providing services meet the standards and qualifications of this chapter;

(h) To refer participants to service coordination services based on established criteria;

(i) To maintain liability insurance coverage;

(j) To conduct, at least annually, participant satisfaction and quality control reviews which shall be available to the department and to the general public; and

(k) To maintain documentation that the participant or his legal representative agrees in writing that he takes responsibility for and accepts potential risks, and any resulting consequences, for his choice to manage his own personal assistance services.

(8) Personal assistants are not employees of the state.

(9) Service coordination shall be made available to personal assistance participants where and when appropriate. In order to avoid a conflict of interest, service coordination shall not be provided by the same agency that provides personal assistance services to the participant.

(10) The department's regional medicaid staff shall review and approve the individual service plan, authorize personal assistance services, the hours of service, and make appropriate referrals for service coordination for eligible individuals.

(11) The department shall establish and maintain a community awareness program that will educate Idaho citizens regarding the purpose and function of all long-term care alternatives including, but not limited to, personal assistance services and individual participant rights. This program will be developed in cooperation with other state agencies including, but not limited to, the commission on aging and the state independent living council.

(12) It shall be the responsibility of the participant or his designee or legal representative, when appropriate, to select the provider of personal assistance services.

(13) The department shall provide the participant, his designee or legal representative, with a list of available providers of personal assistance services; however, this does not relieve the participant or his designee or legal representative of the responsibility of provider selection.

(14) In those cases where the participant or his designee or legal representative cannot arrange for personal assistance services or asks for help in making arrangements, a representative of the department may arrange for or help arrange for personal assistance services on behalf of the participant.

[(39-5603) 39-A4703, added 1981, ch. 65, sec. 1, p. 93; am. & redesign. 1990, ch. 326, sec. 3, p. 890; am. 1997, ch. 316, sec. 2, p. 934; am. 1998, ch. 224, sec. 2, p. 771; am. 2000, ch. 274, sec. 124, p. 861; am. 2006, ch. 283, sec. 1, p. 869; am. 2007, ch. 222, sec. 3, p. 666; am. 2010, ch. 347, sec. 3, p. 906.]

39-5604. HEALTH AND BACKGROUND CHECKS. The director shall require providers to obtain health tests or screens, criminal background and nurse's aide registry checks, and licenses and/or certifications necessary to protect the health, person and property of the participant for any personal assistant acting as an employee, agent, or contractor of a provider. He may deny provider status or revoke that status when a provider or an employee, agent, or contractor of a provider, is found to endanger the health, person or property of the participant.

[(39-5604) I.C., sec. 39-A4704, as added by 1981, ch. 65, sec. 1, p. 93; am. and redesignated 1990, ch. 326, sec. 4, p. 892; am. 2000, ch. 274, sec. 125, p. 863.]

39-5605. TRAINING OF PERSONAL ASSISTANTS. The director may require a personal assistant to successfully complete a training program established by the rules before beginning to provide personal assistance services. Those providing personal assistance services when the rule is established will be given a reasonable period of time to obtain the required training. The director may establish different training requirements for different services provided and for personal assistants serving participants with intensive needs. The department shall conduct training to include, but not be limited to, administrative rules, billing procedures and service requirements.

[(39-5605) I.C., sec. 39-A4705, as added by 1981, ch. 65, sec. 1, p. 93; am. and redesignated 1990, ch. 326, sec. 5, p. 892; am. 1997, ch. 316, sec. 3, p. 936; am. 2000, ch. 274, sec. 126, p. 864.]

39-5608. LIABILITY OF ACTIONS UNDER THIS CHAPTER. (1) The participant, his designee or legal representative, if such is responsible, shall be liable for any acts of the participant performed or committed while receiving care or services under the provisions of this chapter.

(2) The department shall not be held liable for any actions under this chapter, except pursuant to section 39-5603(13), Idaho Code, when the representative of the department is acting on behalf of the participant, his designee or legal representative; however, the provisions of section 39-5603(11), Idaho Code, shall remain in force.

(3) Nothing in this chapter shall exempt the provider of services from any liability caused by such provider's negligence, abuse, or other improper action of the provider.

[(39-5608) 39-A4707, as added by 1981, ch. 65, sec. 1, p. 93; am. and redesignated 1990, ch. 326, sec. 7, p. 893; am. and redesi. 1997, ch. 316, sec. 6, p. 937; am. 2000, ch. 274, sec. 129, p. 865; am. 2006, ch. 283, sec. 2, p. 871.]

39-5609. PERSONAL ASSISTANCE OVERSIGHT COMMITTEE. The department shall establish, as part of the medical care advisory committee (MCAC), an oversight subcommittee consisting of providers of personal assistance services and participants of such services and advocacy organizations representing such participants, and other interested parties, for the purpose of planning, monitoring, and recommending changes to the medicaid waiver and personal assistance programs to the MCAC. At least fifty-one percent (51%) of the committee membership shall be participants or their representatives.

[39-5609, added 2000, ch. 274, sec. 130, p. 865; am. 2007, ch. 222, sec. 5, p. 668.]