

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
601 East 12<sup>th</sup> Street, Suite 235  
Kansas City, Missouri 64106



**Division of Medicaid and Children's Health**

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April 17, 2007

Refer to:  
PSB:DT  
NE 4154.90.R3

Scot Adams, Director  
Nebraska Dept of Health & Human Services  
Finance & Support  
301 Centennial Mall S., 5<sup>th</sup> Floor  
PO Box 95026  
Lincoln, Nebraska 68509

Dear Mr. Adams:

The Centers for Medicare & Medicaid Services Kansas City Regional Office has reviewed the renewal request to the Nebraska Medicaid Home and Community-Based Service (HCBS) waiver for children with developmental disabilities and their families, control number 4154.90.R3.

Based on the review of the material submitted and telephone calls with members of your staff, CMS has determined that this waiver renewal has the following issues that must be resolved prior to the renewal approval.

Although the State provided additional information on emergencies and Medicaid oversight activities for Safeguards Concerning Restraints and Restrictive Interventions under Appendix G-2, CMS is concerned that the State policies do not comport with criteria and guidance contained on pages 214-218 of the Version 3.4 HCBS Instructions.

The State indicates that each provider agency develops their own policies and procedures for restraints and restrictive interventions. Please provide additional information about the State's centralized approach regarding State-wide policies, procedures, and training or timelines for strategies that would enable the State to meet these criteria.

### **Appendix C-3 – Service Specification**

- 1) Under Respite, under agency provider qualifications, under other standard, when respite is provided outside the family home, it cannot be a “requirement” that the family visit the facility or home where the service is provided. Although the State revised the language under the individual provider qualifications, they also need to revise the same language under the “agency” provider qualifications.

### **Appendix G-2 – Participant Safeguards**

Please include the State’s response to these questions in the appropriate sections of this appendix addressing the State’s centralized approach to each type of restraint and restrictive intervention used:

- 2) Please describe what State-wide methods are used for detecting unauthorized use, over use or inappropriate/ineffective use of restraints, restrictive interventions and emergency procedures and ensuring that all applicable State requirements are followed?
- 3) What are the State-wide requirements concerning the use of alternative strategies to avoid the use of restraints and restrictive interventions?
- 4) What are the State-wide protocols that must be followed when restraints and/or restrictive interventions are employed (including the circumstances when their use is permitted, treatment planning requirements) and how their use is authorized?
- 5) Please describe the State-wide practices that must be employed to ensure the health and safety of individuals receiving restraints and restrictive interventions.
- 6) What is the State-wide documentation required concerning the use of restraints and restrictive interventions?
- 7) Please provide the State-wide education and training requirements that personnel who are involved in the administration of restraints and/or restrictive interventions must meet.
- 8) How is the data gathered (i.e., reportable incidents) and analyzed with State-wide consistency to identify State-wide trends and patterns and support improvement strategies for restraints and restrictive interventions?

- 9) What are the State-wide methods for overseeing the operation of the incident management system including how data are collected, compiled, and used to prevent re-occurrence?
- 10) What are the State-wide protocols for authorizing the use of restrictive interventions, and review/reauthorization procedures?
- 11) For restraints and restrictive interventions, the State indicates that at least one person included in the sample for monitoring through on-site certification review activities must be taking behavior-modifying medication. Is this a sufficient sample of the persons taking behavior-modifying medications (i.e., how many individuals are actually taking behavior-modifying medications)?

**G-3-b-i – Medication Management and Follow-Up - Responsibility**

- 12) The State indicated that each DD provider must have policies and procedures that identify the frequency of monitoring. Is there a range of frequency for monitoring?

**I-2-a – Financial Accountability – Rates, Billing and Claims**

Regarding the rate for the Team Behavioral Consultation:

- 13) What is the percentage attributable to the overhead costs?
- 14) The State has indicated that the rate for this service is based on 7 FTEs. Is the team consultation always comprised of 7 team members? If so, is the composition of the team always consistent?

**Appendix H – Administrative Authority and Health and Welfare**

- 15) Within the Administrative Authority and Health and Welfare sections, please describe how the Medicaid agency maintains administrative authority State-wide over the use of restraints and restrictive interventions as well as assures with State-wide consistency the health and welfare of individuals receiving these restraints and restrictive interventions.

CMS is requesting this additional/clarifying information under provisions of section 1915(f) of the Social Security Act (added by Public Law 97-35). This has the effect of stopping the 90-day clock for CMS to take action on the material. A new 90-day clock will not begin until CMS receives the State's response to this request. Please note that this waiver will expire on May 31, 2007.

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If you have any questions regarding this letter, please contact Diana Townsend, at (816) 426-5925.

Sincerely,

/s/

James G. Scott  
Associate Regional Administrator  
for Medicaid and Children's Health

Enclosure

cc: Pam Hovis  
Mary Steiner

bcc: Diana Townsend  
Claire Hardwick, CO  
Mary Sowers, CO  
Barb Cotterman

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