

HOUSE BILL No. 1386

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-3-6; IC 12-7-2; IC 12-8; IC 12-9.1-4; IC 12-10; IC 12-15; IC 31-37-19-29; IC 34-30-2.1-129.4.

Synopsis: Medicaid matters. Sets forth the powers and duties of the office of the secretary of family and social services (office of the secretary) concerning Medicaid home and community based services waivers. Defines "home and community based services waiver". Requires a provider of services under a home and community based services waiver to follow any waiver requirements under federal law and developed by the office of the secretary. Establishes requirements for home and community based services waivers. Relocates provisions requiring reimbursement for assisted living services for individuals who are aged and disabled and receiving services under a Medicaid waiver. Specifies that: (1) these provisions apply to an individual receiving services under a home and community based services waiver; and (2) reimbursement is required for certain services determined to be medically necessary for the individual. Relocates provisions establishing limitations concerning assisted living services provided in a home and community based services program. Relocates a provision requiring the office of the secretary to annually determine any state savings generated by home and community based services. Removes a provision allowing the division of aging to adopt rules concerning an appeals process for a housing with services establishment provider's determination that the provider is unable to meet the health needs of a resident and allows the office of the secretary to adopt rules concerning the appeals process. Requires an individual who provides attendant care services for compensation from Medicaid to register with the office of the secretary. Removes the requirement that the division of aging administer programs established under Medicaid waivers for
(Continued next page)

Effective: July 1, 2024.

Barrett

January 11, 2024, read first time and referred to Committee on Public Health.



Digest Continued

in-home services for treatment of medical conditions. Requires certain facilities to provide notice within a specified time to the division of family resources (division) that a delinquent child will be released from the facility. Requires the division to take action necessary to ensure that the delinquent child, if eligible, participates in the Medicaid program upon the child's release and receives services required by federal law. Specifies that an insurer may not deny a Medicaid claim solely due to a lack of prior authorization in accordance with federal law. Requires an insurer to respond to a state inquiry regarding a Medicaid claim not later than 60 days after receiving the inquiry. Specifies, for purposes of a provision concerning Medicaid third party liability, that the state is considered to have acquired the rights of the person to payment by any other party for accumulated and future health care items or services. (Current law provides that the state is considered to have acquired these rights for the health care items or services.) Repeals a provision providing that licensed home health agencies and licensed personal services agencies are approved to provide certain services under a Medicaid waiver granted to the state under federal law that provides services for treatment of medical conditions. Repeals provisions requiring the division of aging to submit a plan, before October 1, 2017, to the general assembly to expand the scope and availability of home and community based services for individuals who are aged and disabled. Makes conforming amendments.



Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1386



A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.241-2023,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 6. (a) Notice shall be given under this section
4 concerning the following:
5 (1) A safety order under IC 22-8-1.1.
6 (2) Any order that:
7 (A) imposes a sanction on a person or terminates a legal right,
8 duty, privilege, immunity, or other legal interest of a person;
9 (B) is not described in section 4 or 5 of this chapter or
10 IC 4-21.5-4; and
11 (C) by statute becomes effective without a proceeding under
12 this chapter if there is no request for a review of the order
13 within a specified period after the order is issued or served.
14 (3) A notice of program reimbursement or equivalent
15 determination or other notice regarding a hospital's



1 reimbursement issued by the office of Medicaid policy and
 2 planning or by a contractor of the office of Medicaid policy and
 3 planning regarding a hospital's year end cost settlement.

4 (4) A determination of audit findings or an equivalent
 5 determination by the office of Medicaid policy and planning or by
 6 a contractor of the office of Medicaid policy and planning arising
 7 from a Medicaid postpayment or concurrent audit of a hospital's
 8 Medicaid claims.

9 (5) A license suspension or revocation under:

10 (A) IC 24-4.4-2;

11 (B) IC 24-4.5-3;

12 (C) IC 28-1-29;

13 (D) IC 28-7-5;

14 (E) IC 28-8-4.1; or

15 (F) IC 28-8-5.

16 (6) An order issued by the secretary or the secretary's designee
 17 against providers regulated by the **office of the secretary, the**
 18 division of aging, or the bureau of disabilities services and not
 19 licensed by the Indiana department of health under IC 16-27 or
 20 IC 16-28.

21 (b) When an agency issues an order described by subsection (a), the
 22 agency shall give notice to the following persons:

23 (1) Each person to whom the order is specifically directed.

24 (2) Each person to whom a law requires notice to be given.

25 A person who is entitled to notice under this subsection is not a party
 26 to any proceeding resulting from the grant of a petition for review
 27 under section 7 of this chapter unless the person is designated as a
 28 party in the record of the proceeding.

29 (c) The notice must include the following:

30 (1) A brief description of the order.

31 (2) A brief explanation of the available procedures and the time
 32 limit for seeking administrative review of the order under section
 33 7 of this chapter.

34 (3) Any other information required by law.

35 (d) An order described in subsection (a) is effective fifteen (15) days
 36 after the order is served, unless a statute other than this article specifies
 37 a different date or the agency specifies a later date in its order. This
 38 subsection does not preclude an agency from issuing, under
 39 IC 4-21.5-4, an emergency or other temporary order concerning the
 40 subject of an order described in subsection (a).

41 (e) If a petition for review of an order described in subsection (a) is
 42 filed within the period set by section 7 of this chapter and a petition for



1 stay of effectiveness of the order is filed by a party or another person
 2 who has a pending petition for intervention in the proceeding, an
 3 administrative law judge shall, as soon as practicable, conduct a
 4 preliminary hearing to determine whether the order should be stayed in
 5 whole or in part. The burden of proof in the preliminary hearing is on
 6 the person seeking the stay. The administrative law judge may stay the
 7 order in whole or in part. The order concerning the stay may be issued
 8 after an order described in subsection (a) becomes effective. The
 9 resulting order concerning the stay shall be served on the parties and
 10 any person who has a pending petition for intervention in the
 11 proceeding. It must include a statement of the facts and law on which
 12 it is based.

13 SECTION 2. IC 12-7-2-18.1, AS ADDED BY P.L.149-2023,
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2024]: Sec. 18.1. "Assisted living services", for purposes of
 16 ~~IC 12-10-11.5~~, **IC 12-8-1.6**, has the meaning set forth in
 17 ~~IC 12-10-11.5-8(a)~~. **IC 12-8-1.6-1.**

18 SECTION 3. IC 12-7-2-107.7 IS ADDED TO THE INDIANA
 19 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2024]: **Sec. 107.7. "Home and community
 21 based services waiver", for purposes of IC 12-8-1.6, has the
 22 meaning set forth in IC 12-8-1.6-2.**

23 SECTION 4. IC 12-7-2-117.1, AS AMENDED BY P.L.141-2006,
 24 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2024]: Sec. 117.1. **(a) "Individual in need of self-directed
 26 in-home care", for purposes of IC 12-8-1.7, has the meaning set
 27 forth in IC 12-8-1.7-2.**

28 **(b) "Individual in need of self-directed in-home care", for purposes
 29 of IC 12-10-17.1, has the meaning set forth in IC 12-10-17.1-6.**

30 SECTION 5. IC 12-7-2-122.6 IS ADDED TO THE INDIANA
 31 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2024]: **Sec. 122.6. "Level of services", for
 33 purposes of IC 12-8-1.6, has the meaning set forth in IC 12-8-1.6-3.**

34 SECTION 6. IC 12-8-1.6 IS ADDED TO THE INDIANA CODE
 35 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2024]:

37 **Chapter 1.6. Medicaid Home and Community Based Services
 38 Waivers**

39 **Sec. 1. As used in this chapter, "assisted living services" refers
 40 to services covered under a home and community based services
 41 waiver and provided in any of the following entities:**

- 42 **(1) A residential care facility licensed under IC 16-28.**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(2) Any other housing with services establishment.

Sec. 2. (a) As used in this chapter, "home and community based services waiver" refers to a federal Medicaid waiver granted to the state under 42 U.S.C. 1396n(c) to provide home and community based long term care services and supports to individuals with disabilities.

(b) The term does not include home and community services offered as part of the approved Medicaid state plan.

Sec. 3. As used in this chapter, "level of services" means a determination of the type of services an individual may receive under a Medicaid waiver based on the individual's impairment and dependence and the corresponding reimbursement rate for the determined level of care.

Sec. 4. (a) The office of the secretary has all powers necessary and convenient to administer a home and community based services waiver.

(b) The office of the secretary shall do the following:

- (1) Administer money appropriated or allocated to the office of the secretary by the state, including money appropriated or allocated for a home and community based services waiver.**
- (2) Take any action necessary to implement a home and community based services waiver, including applying to the United States Department of Health and Human Services for approval to amend or renew the waiver, implement a new Medicaid waiver, or amend the Medicaid state plan.**
- (3) Ensure that a home and community based services waiver is subject to funding available to the office of the secretary.**
- (4) Ensure, in coordination with the budget agency, that the cost of a home and community based services waiver does not exceed the total amount of funding available by the budget agency, including state and federal funds, for the Medicaid programs established to provide services under a home and community based services waiver.**
- (5) Establish and administer a program for a home and community based services waiver to provide an eligible individual with care that does not cost more than services provided to a similarly situated individual residing in an institution.**
- (6) Within the limits of available resources, provide service coordination services to individuals receiving services under a home and community based services waiver, including the development of an individual service plan that:**



- 1 (A) addresses an individual's needs;
 2 (B) considers the individual's family resources and access
 3 to community and natural support; and
 4 (C) is consistent with the person centered care approach
 5 for receiving services under a waiver.
 6 (7) Monitor services provided by a provider that:
 7 (A) provides services to an individual using funds provided
 8 by the office of the secretary or under the authority of the
 9 office of the secretary; and
 10 (B) entered into one (1) or more provider agreements to
 11 provide services under a home and community based
 12 services waiver.
 13 (8) Establish and administer a complaint process for:
 14 (A) an individual receiving; or
 15 (B) a provider described in subdivision 7(B) providing;
 16 services under a home and community based services waiver.
 17 (c) The office of the secretary may do the following:
 18 (1) At the office's discretion, delegate any of its authority
 19 under this chapter to any division or office within the office of
 20 the secretary of family and social services.
 21 (2) Issue administrative orders under IC 4-21.5-3-6 regarding
 22 the provision of a home and community based services
 23 waiver.
 24 Sec. 5. (a) The office of the secretary shall establish:
 25 (1) eligibility criteria for an individual to receive; and
 26 (2) certification criteria for a provider of;
 27 services under a home and community based services waiver.
 28 (b) The eligibility criteria established under subsection (a) may
 29 vary based on the targeted need of each home and community
 30 based services waiver.
 31 (c) An individual who is determined by the office of the
 32 secretary to be ineligible for services under a home and community
 33 based services waiver may appeal the determination under
 34 IC 4-21.5.
 35 Sec. 6. The office of the secretary shall serve as the placement
 36 authority for individuals receiving services under a home and
 37 community based services waiver and an individual service plan.
 38 Sec. 7. Subject to the availability of applicable waiver slots and
 39 funding, the office of the secretary shall provide access to home
 40 and community based services that are appropriate and necessary
 41 for an individual determined to be eligible by the office of the
 42 secretary for services under a home and community based services



- 1 waiver.
- 2 **Sec. 8. A provider of services under a home and community**
 3 **based services waiver shall follow any waiver requirements under**
 4 **federal law and developed by the office of the secretary, including**
 5 **the planning process, service plan, and home and community based**
 6 **setting requirements set forth in 42 CFR 441.301.**
- 7 **Sec. 9. A home and community based services waiver, including**
 8 **the delivery and receipt of services provided under the home and**
 9 **community based services waiver, must meet the following**
 10 **requirements:**
- 11 **(1) Be provided under public supervision.**
 - 12 **(2) Be individualized and designed to meet the needs of**
 13 **individuals eligible to receive services under the home and**
 14 **community based services waiver.**
 - 15 **(3) Meet applicable state and federal standards.**
 - 16 **(4) Be provided by qualified personnel.**
 - 17 **(5) Be provided, to the extent appropriate, with services**
 18 **provided under the home and community based services**
 19 **waiver that are provided in a home and community based**
 20 **setting where nonwaiver individuals receive services.**
 - 21 **(6) Be provided in accordance with an individual's service**
 22 **plan.**
- 23 **Sec. 10. (a) As used in this section, "office" includes the**
 24 **following:**
- 25 **(1) The office of the secretary of family and social services.**
 - 26 **(2) A managed care organization that has contracted with the**
 27 **office of Medicaid policy and planning under IC 12-15.**
 - 28 **(3) A person that has contracted with a managed care**
 29 **organization described in subdivision (2).**
- 30 **(b) Under a home and community based services waiver that**
 31 **provides services to an individual who is aged or disabled, the**
 32 **office shall reimburse for the following services provided to the**
 33 **individual by a provider of assisted living services, if determined**
 34 **to be medically necessary for the individual:**
- 35 **(1) Assisted living services.**
 - 36 **(2) Integrated health care coordination.**
 - 37 **(3) Transportation.**
- 38 **(c) If the office approves an increase in the level of services for**
 39 **a recipient of assisted living services, the office shall reimburse the**
 40 **provider of assisted living services for the level of services for the**
 41 **increase as of the date that the provider has documentation of**
 42 **providing the increase in the level of services.**



1 (d) The office may reimburse for any home and community
2 based services provided to a Medicaid recipient beginning on the
3 date of the individual's Medicaid application.

4 (e) The office may not do any of the following concerning
5 assisted living services provided in a home and community based
6 services program:

7 (1) Require the installation of a sink in the kitchenette within
8 any living unit of an entity that participated in the Medicaid
9 home and community based services program before July 1,
10 2018.

11 (2) Require all living units within a setting that provides
12 assisted living services to comply with physical plant
13 requirements that are applicable to individual units occupied
14 by a Medicaid recipient.

15 (3) Require a provider to offer only private rooms.

16 (4) Require a housing with services establishment provider to
17 provide housing when:

18 (A) the provider is unable to meet the health needs of a
19 resident without:

20 (i) undue financial or administrative burden; or

21 (ii) fundamentally altering the nature of the provider's
22 operations; and

23 (B) the resident is unable to arrange for services to meet
24 the resident's health needs.

25 (5) Require a housing with services establishment provider to
26 separate an agreement for housing from an agreement for
27 services.

28 (6) Prohibit a housing with services establishment provider
29 from offering studio apartments with only a single sink in the
30 unit.

31 (7) Preclude the use of a shared bathroom between adjoining
32 or shared units if the participants consent to the use of a
33 shared bathroom.

34 (8) Reduce the scope of services that may be provided by a
35 provider of assisted living services under the aged and
36 disabled Medicaid waiver in effect on July 1, 2021.

37 (f) The office of the secretary may adopt rules under IC 4-22-2
38 that establish the right, and an appeals process, for a resident to
39 appeal a provider's determination that the provider is unable to
40 meet the health needs of the resident as described in subsection
41 (e)(4). The process:

42 (1) must require an objective third party to review the



1 provider's determination in a timely manner; and

2 (2) may not be required if the provider is licensed by the
3 Indiana department of health and the licensure requirements
4 include an appellate procedure for such a determination.

5 Sec. 11. (a) The office of the secretary shall annually determine
6 any state savings generated by home and community based services
7 under this chapter by reducing the use of institutional care.

8 (b) The office of the secretary shall annually report to the
9 governor, the budget agency, the budget committee, the interim
10 study committee on public health, behavioral health, and human
11 services established by IC 2-5-1.3-4, and the executive director of
12 the legislative services agency the savings determined under
13 subsection (a). A report under this subsection to the executive
14 director of the legislative services agency must be in an electronic
15 format under IC 5-14-6.

16 (c) Savings determined under subsection (a) may be used to fund
17 the state's share of additional home and community based
18 Medicaid waiver slots.

19 Sec. 12. The office of the secretary may adopt rules under
20 IC 4-22-2 to implement this chapter.

21 SECTION 7. IC 12-8-1.7 IS ADDED TO THE INDIANA CODE
22 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2024]:

24 **Chapter 1.7. Individuals in Need of Self-Directed In-Home Care**

25 Sec. 1. As used in this chapter, "attendant care services" means
26 the basic and ancillary services that the individual chooses to direct
27 and supervise a personal services attendant to perform and that
28 enable an individual in need of self-directed in-home care to live in
29 the individual's home and community rather than in an institution
30 and to carry out functions of daily living, self-care, and mobility.

31 Sec. 2. As used in this chapter, "individual in need of
32 self-directed in-home care" means an individual with a disability,
33 or person responsible for making health related decisions for the
34 individual with a disability, who:

35 (1) is approved to receive Medicaid waiver services under 42
36 U.S.C. 1396n(c);

37 (2) is in need of attendant care services because of
38 impairment;

39 (3) requires assistance to complete functions of daily living,
40 self-care, and mobility, including those functions included in
41 attendant care services;

42 (4) chooses to self-direct a paid personal services attendant to



1 perform attendant care services; and
 2 (5) assumes the responsibility to initiate self-directed in-home
 3 care and exercise judgment regarding the manner in which
 4 those services are delivered, including the decision to employ,
 5 train, and dismiss a personal services attendant.

6 Sec. 3. As used in this chapter, "personal services attendant"
 7 means an individual who is registered to provide attendant care
 8 services under this chapter and who has entered into a contract
 9 with an individual and acts under the individual's direction to
 10 provide attendant care services that could be performed by the
 11 individual if the individual were physically capable.

12 Sec. 4. The office of the secretary shall have self-directed care
 13 options and services available for an eligible individual who:

- 14 (1) receives services under a home and community based
 15 services waiver (as defined in IC 12-8-1.6-2); and
- 16 (2) chooses self-directed care services.

17 Sec. 5. (a) An individual may not provide attendant care services
 18 for compensation from Medicaid for an individual in need of
 19 self-directed in-home care services unless the individual is
 20 registered under this chapter.

21 (b) Except in instances of extraordinary care, an individual who
 22 is a legally responsible relative of an individual in need of
 23 self-directed in-home care, including a parent of a minor individual
 24 and a spouse, is precluded from providing attendant care services
 25 for compensation under this chapter.

26 Sec. 6. (a) The office of the secretary shall register an individual
 27 to provide services under this chapter who provides the following:

- 28 (1) A personal resume containing information concerning the
 29 individual's qualifications, work experience, and any
 30 credentials the individual may hold. The individual must
 31 certify that the information contained in the resume is true
 32 and accurate.
- 33 (2) The individual's:
 - 34 (A) limited criminal history check from the Indiana central
 35 repository for criminal history information under
 36 IC 10-13-3;
 - 37 (B) expanded criminal history check (as defined in
 38 IC 20-26-2-1.5); or
 - 39 (C) criminal history check from another source allowed by
 40 law.
- 41 (3) If applicable, the individual's state nurse aide registry
 42 report from the Indiana department of health. This



- 1 subdivision does not require an individual to be a nurse aide.
 2 (4) Three (3) letters of reference.
 3 (5) A registration fee. The office of the secretary shall
 4 establish the amount of the registration fee.
 5 (6) Proof that the individual is at least eighteen (18) years of
 6 age.
 7 (7) Any other information required by the office of the
 8 secretary.
- 9 (b) A registration is valid for two (2) years. A personal services
 10 attendant may renew the personal services attendant's registration
 11 by updating any information in the file that has changed and by
 12 paying the fee required under subsection (a)(5). The limited
 13 criminal history check and state nurse aid registry report required
 14 under subsection (a)(2) and (a)(3) must be updated every two (2)
 15 years.
- 16 (c) The office of the secretary shall maintain a file for each
 17 personal services attendant that contains:
 18 (1) comments related to the provision of attendant care
 19 services submitted by an individual in need of self-directed
 20 in-home care who has employed the personal services
 21 attendant; and
 22 (2) the items described in subsection (a)(1) through (a)(4).
- 23 (d) Upon request, the office of the secretary shall provide to an
 24 individual in need of self-directed in-home care the following:
 25 (1) Without charge, a list of personal services attendants who
 26 are registered with the office of the secretary and available
 27 within the requested geographic area.
 28 (2) A copy of the information of a specified personal services
 29 attendant who is on file with the office of the secretary under
 30 subsection (c). The office of the secretary may charge a fee for
 31 shipping, handling, and copying expenses.
- 32 (e) The limited criminal history check requirement described in
 33 subsection (a)(2) may be satisfied by fulfilling the components of an
 34 expanded criminal history check under IC 20-26-2-1.5 and is
 35 subject to the conditions described in IC 16-27-2-4(c).
- 36 Sec. 7. The case manager of an individual in need of
 37 self-directed in-home care shall maintain an attending physician's
 38 written opinion in a case file that is maintained for the individual
 39 by the case manager.
- 40 Sec. 8. (a) A personal services attendant who is hired by the
 41 individual in need of self-directed in-home care is an employee of
 42 the individual in need of self-directed in-home care.



1 **(b) The office of the secretary is not liable for any actions of a**
 2 **personal services attendant or an individual in need of self-directed**
 3 **in-home care.**

4 **(c) A personal services attendant and an individual in need of**
 5 **self-directed in-home care are each liable for any negligent or**
 6 **wrongful act or omission in which the person personally**
 7 **participates.**

8 **Sec. 9. (a) Except as provided in subsection (b), an individual in**
 9 **need of self-directed in-home care is responsible for recruiting,**
 10 **hiring, training, paying, certifying any employment related**
 11 **documents, dismissing, and supervising in the individual's home**
 12 **during service hours a personal services attendant who provides**
 13 **attendant care services for the individual.**

14 **(b) If an individual in need of self-directed in-home care is:**

15 **(1) less than twenty-one (21) years of age; or**

16 **(2) unable to direct in-home care because of a brain injury or**
 17 **mental deficiency;**

18 **the individual's parent, spouse, legal guardian, or a person**
 19 **possessing a valid power of attorney for the individual may make**
 20 **employment, care, and training decisions and certify any**
 21 **employment related documents on behalf of the individual.**

22 **(c) An individual in need of self-directed in-home care or an**
 23 **individual under subsection (b) and the individual's case manager**
 24 **shall develop an authorized care plan. The authorized care plan**
 25 **must include a list of weekly services or tasks that must be**
 26 **performed to comply with the authorized care plan.**

27 **Sec. 10. The individual in need of self-directed in-home care and**
 28 **the personal services attendant must each sign a contract, in a form**
 29 **approved by the office of the secretary, that includes, at a**
 30 **minimum, the following provisions:**

31 **(1) The responsibilities of the personal services attendant.**

32 **(2) The frequency the personal services attendant will provide**
 33 **attendant care services.**

34 **(3) The duration of the contract.**

35 **(4) The hourly wage of the personal services attendant. The**
 36 **wage may not be less than the federal minimum wage or more**
 37 **than the rate that the recipient is eligible to receive under a**
 38 **Medicaid home and community based services waiver.**

39 **(5) Reasons and notice agreements for early termination of**
 40 **the contract.**

41 **Sec. 11. (a) The office of the secretary shall amend the home and**
 42 **community based services waiver program under the Medicaid**



1 state plan to provide for the payment for attendant care services
 2 provided by a personal services attendant for an individual in need
 3 of self-directed in-home care under this chapter, including any
 4 related record keeping and employment expenses.

5 (b) The office of the secretary shall not, to the extent permitted
 6 by federal law, consider as income money paid under this chapter
 7 to or on behalf of an individual in need of self-directed in-home
 8 care to enable the individual to employ registered personal services
 9 attendants for purposes of determining the individual's income
 10 eligibility for services under this chapter or IC 12-8-1.6.

11 **Sec. 12.** The office of the secretary shall adopt rules under
 12 IC 4-22-2 concerning the following:

13 (1) The method of payment to a personal services attendant
 14 who provides authorized services under this chapter.

15 (2) Record keeping requirements for personal attendant
 16 services.

17 (3) The receipt, review, and investigation of complaints
 18 concerning the:

19 (A) neglect;

20 (B) abuse;

21 (C) mistreatment; or

22 (D) misappropriation of property;

23 of an individual in need of self-directed in-home care by a
 24 personal services attendant.

25 (4) Establishing notice and administrative hearing procedures
 26 in accordance with IC 4-21.5.

27 (5) Appeal procedures, including judicial review of
 28 administrative hearings.

29 (6) Procedures to place a personal services attendant who has
 30 been determined to have been guilty of:

31 (A) neglect;

32 (B) abuse;

33 (C) mistreatment; or

34 (D) misappropriation of property;

35 of an individual in need of self-directed in-home care on the
 36 state nurse aide registry.

37 (7) Any rules necessary to implement this chapter.

38 SECTION 8. IC 12-9.1-4-1, AS ADDED BY P.L.141-2006,
 39 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2024]: Sec. 1. The division shall administer money
 41 appropriated or allocated to the division by the state, including money
 42 appropriated or allocated from the following:



- 1 (1) The federal Older Americans Act (42 U.S.C. 3001 et seq.).
- 2 (2) The United States Department of Agriculture (7 U.S.C. 612C
- 3 et seq.).
- 4 ~~(3) Medicaid waiver in-home services for the elderly and disabled~~
- 5 ~~(42 U.S.C. 1396 et seq.) for treatment of medical conditions.~~
- 6 ~~(4) (3) Money appropriated or allocated to the division to~~
- 7 ~~administer a program under this title.~~
- 8 ~~(5) (4) Other funding sources that are designated by the general~~
- 9 ~~assembly or available from the federal government under grants~~
- 10 ~~that are consistent with the duties of the division.~~

11 SECTION 9. IC 12-9.1-4-2, AS ADDED BY P.L.141-2006,
 12 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2024]: Sec. 2. The division shall administer the following
 14 programs:

- 15 (1) Programs established under any of the following statutes:
- 16 (A) This article.
- 17 (B) IC 12-10.
- 18 (2) Programs under IC 12-30, to the extent the division has
- 19 responsibilities for programs under IC 12-30.
- 20 ~~(3) Medicaid waivers for in-home services for treatment of~~
- 21 ~~medical conditions.~~

22 SECTION 10. IC 12-9.1-4-3 IS REPEALED [EFFECTIVE JULY
 23 1, 2024]. Sec. 3. Notwithstanding any other law:

- 24 ~~(1) home health agencies licensed under IC 16-27-1 are approved~~
- 25 ~~to provide home health services; and~~
- 26 ~~(2) personal services agencies licensed under IC 16-27-4 are~~
- 27 ~~approved to provide personal services;~~

28 under any federal waiver granted to the state under 42 U.S.C. 1315 or
 29 42 U.S.C. 1396n that provides services for treatment of medical
 30 conditions:

31 SECTION 11. IC 12-10-11.5-6 IS REPEALED [EFFECTIVE JULY
 32 1, 2024]. Sec. 6. (a) The office of the secretary of family and social
 33 services shall annually determine any state savings generated by home
 34 and community based services under this chapter by reducing the use
 35 of institutional care:

- 36 (b) The secretary shall annually report to the governor, the budget
- 37 agency, the budget committee, the interim study committee on public
- 38 health, behavioral health, and human services established by
- 39 IC 2-5-1.3-4, and the executive director of the legislative services
- 40 agency the savings determined under subsection (a). A report under
- 41 this subsection to the executive director of the legislative services
- 42 agency must be in an electronic format under IC 5-14-6.



1 (c) Savings determined under subsection (a) may be used to fund the
 2 state's share of additional home and community based Medicaid waiver
 3 slots.

4 SECTION 12. IC 12-10-11.5-8 IS REPEALED [EFFECTIVE JULY
 5 1, 2024]. Sec. 8: (a) As used in this chapter, "assisted living services"
 6 refers to services covered under a waiver and provided in any of the
 7 following entities:

8 (1) A residential care facility licensed under IC 16-28.

9 (2) Any other housing with services establishment.

10 (b) As used in this section, "level of services" means a
 11 determination of the type of services an individual may receive under
 12 a Medicaid waiver based on the individual's impairment and
 13 dependence and the corresponding reimbursement rate for the
 14 determined level of care.

15 (c) As used in this section, "office" includes the following:

16 (1) The office of the secretary of family and social services.

17 (2) A managed care organization that has contracted with the
 18 office of Medicaid policy and planning under IC 12-15.

19 (3) A person that has contracted with a managed care organization
 20 described in subdivision (2).

21 (d) Under a Medicaid waiver that provides services to an individual
 22 who is aged or disabled, the office shall reimburse for the following
 23 services provided to the individual by a provider of assisted living
 24 services:

25 (1) Assisted living services.

26 (2) Integrated health care coordination.

27 (3) Transportation.

28 (e) If the office approves an increase in the level of services for a
 29 recipient of assisted living services, the office shall reimburse the
 30 provider of assisted living services for the level of services for the
 31 increase as of the date that the provider has documentation of providing
 32 the increase in the level of services.

33 (f) The office may reimburse for any home and community based
 34 services provided to a Medicaid recipient beginning on the date of the
 35 individual's Medicaid application.

36 (g) The office may not do any of the following concerning assisted
 37 living services provided in a home and community based services
 38 program:

39 (1) Require the installation of a sink in the kitchenette within any
 40 living unit of an entity that participated in the Medicaid home and
 41 community based service program before July 1, 2018.

42 (2) Require all living units within a setting that provides assisted



1 living services to comply with physical plant requirements that
 2 are applicable to individual units occupied by a Medicaid
 3 recipient.

4 (3) Require a provider to offer only private rooms.

5 (4) Require a housing with services establishment provider to
 6 provide housing when:

7 (A) the provider is unable to meet the health needs of a
 8 resident without:

9 (i) undue financial or administrative burden; or

10 (ii) fundamentally altering the nature of the provider's
 11 operations; and

12 (B) the resident is unable to arrange for services to meet the
 13 resident's health needs.

14 (5) Require a housing with services establishment provider to
 15 separate an agreement for housing from an agreement for
 16 services.

17 (6) Prohibit a housing with services establishment provider from
 18 offering studio apartments with only a single sink in the unit.

19 (7) Preclude the use of a shared bathroom between adjoining or
 20 shared units if the participants consent to the use of a shared
 21 bathroom.

22 (8) Reduce the scope of services that may be provided by a
 23 provider of assisted living services under the aged and disabled
 24 Medicaid waiver in effect on July 1, 2021.

25 (h) The division may adopt rules under IC 4-22-2 that establish the
 26 right; and an appeals process; for a resident to appeal a provider's
 27 determination that the provider is unable to meet the health needs of
 28 the resident as described in subsection (g)(4). The process:

29 (1) must require an objective third party to review the provider's
 30 determination in a timely manner; and

31 (2) may not be required if the provider is licensed by the Indiana
 32 department of health and the licensure requirements include an
 33 appellate procedure for such a determination.

34 SECTION 13. IC 12-10-17.1-6, AS AMENDED BY P.L.99-2007,
 35 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2024]: Sec. 6. As used in this chapter, "individual in need of
 37 self-directed in-home care" means an individual with a disability, or
 38 person responsible for making health related decisions for the
 39 individual with a disability, who:

40 (1) is approved to receive Medicaid waiver services under 42
 41 U.S.C. 1396n(c); or is a participant in the community and home
 42 options to institutional care for the elderly and disabled program



- 1 under IC 12-10-10;
- 2 (2) is in need of attendant care services because of impairment;
- 3 (3) requires assistance to complete functions of daily living,
- 4 self-care, and mobility, including those functions included in
- 5 attendant care services;
- 6 (4) chooses to self-direct a paid personal services attendant to
- 7 perform attendant care services; and
- 8 (5) assumes the responsibility to initiate self-directed in-home
- 9 care and exercise judgment regarding the manner in which those
- 10 services are delivered, including the decision to employ, train, and
- 11 dismiss a personal services attendant.

12 SECTION 14. IC 12-10-17.1-10, AS ADDED BY P.L.141-2006,
 13 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2024]: Sec. 10. (a) An individual may not provide attendant
 15 care services for compensation from ~~Medicaid~~ or the community and
 16 home options to institutional care for the elderly and disabled program
 17 for an individual in need of self-directed in-home care services unless
 18 the individual is registered under section 12 of this chapter.

19 (b) An individual who is a legally responsible relative of an
 20 individual in need of self-directed in-home care, including a parent of
 21 a minor individual and a spouse, is precluded from providing attendant
 22 care services for compensation under this chapter.

23 SECTION 15. IC 12-10-17.1-17, AS ADDED BY P.L.141-2006,
 24 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2024]: Sec. 17. The individual in need of self-directed
 26 in-home care and the personal services attendant must each sign a
 27 contract, in a form approved by the division, that includes, at a
 28 minimum, the following provisions:

- 29 (1) The responsibilities of the personal services attendant.
- 30 (2) The frequency the personal services attendant will provide
- 31 attendant care services.
- 32 (3) The duration of the contract.
- 33 (4) The hourly wage of the personal services attendant. The wage
- 34 may not be less than the federal minimum wage or more than the
- 35 rate that the recipient is eligible to receive under a ~~Medicaid~~
- 36 ~~home and community based services waiver~~ or the community
- 37 and home options to institutional care for the elderly and disabled
- 38 program for attendant care services.
- 39 (5) Reasons and notice agreements for early termination of the
- 40 contract.

41 SECTION 16. IC 12-10-17.1-18, AS ADDED BY P.L.141-2006,
 42 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2024]: Sec. 18. (a) The office shall amend the home and
 2 community based services waiver program under the state Medicaid
 3 plan to provide for the payment for attendant care services provided by
 4 a personal services attendant for an individual in need of self-directed
 5 in-home care under this chapter, including any related record keeping
 6 and employment expenses.

7 ~~(b)~~ The office shall not, to the extent permitted by federal law,
 8 consider as income money paid under this chapter to or on behalf of an
 9 individual in need of self-directed in-home care to enable the
 10 individual to employ registered personal services attendants, for
 11 purposes of determining the individual's income eligibility for services
 12 under this chapter.

13 SECTION 17. IC 12-10-17.1-20, AS ADDED BY P.L.141-2006,
 14 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2024]: Sec. 20. (a) The division and office may adopt rules
 16 under IC 4-22-2 that are necessary to implement this chapter.

17 ~~(b) The office shall apply for any federal waivers necessary to~~
 18 ~~implement this chapter.~~

19 SECTION 18. IC 12-10-19 IS REPEALED [EFFECTIVE JULY 1,
 20 2024]. (Home and Community Based Services).

21 SECTION 19. IC 12-15-1-20.4, AS AMENDED BY P.L.57-2021,
 22 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2024]: Sec. 20.4. (a) If a Medicaid recipient is:

24 (1) adjudicated to be a delinquent child and placed in:

25 (A) a community based correctional facility for children;

26 (B) a juvenile detention facility; or

27 (C) a secure facility, not including a facility licensed as a child
 28 caring institution under IC 31-27; or

29 (2) incarcerated in a prison or jail; and

30 ineligible to participate in the Medicaid program during the placement
 31 described in subdivision (1) or (2) because of federal Medicaid law, the
 32 division of family resources, upon notice that a child has been
 33 adjudicated to be a delinquent child and placed in a facility described
 34 in subdivision (1) or upon notice that a person is incarcerated in a
 35 prison or jail and placed in a facility described in subdivision (2), shall
 36 suspend the person's participation in the Medicaid program.

37 (b) If the division of family resources receives:

38 (1) a dispositional decree under IC 31-37-19-28; or

39 (2) a modified disposition order under IC 31-37-22-9;

40 and the department of correction gives the division at least forty (40)
 41 days notice that a person will be released from a facility described in
 42 subsection ~~(a)(1)(C)~~ or (a)(2), the division of family resources shall



1 take action necessary to ensure that a person described in subsection
 2 (a) is eligible to participate in the Medicaid program upon the person's
 3 release, if the person is eligible to participate.

4 **(c) A facility described in subsection (a)(1) shall provide the**
 5 **division of family resources:**

6 **(1) at least forty-five (45) days notice; or**

7 **(2) under extenuating circumstances approved by the division,**
 8 **notice as soon as possible;**

9 **that a delinquent child will be released from the facility. The**
 10 **division of family services shall take action necessary to ensure that**
 11 **the delinquent child, if eligible, participates in the Medicaid**
 12 **program upon the child's release and receives services required**
 13 **under federal law thirty (30) days before the child's release and**
 14 **thirty (30) days after the child's release.**

15 SECTION 20. IC 12-15-29-4.5, AS AMENDED BY P.L.265-2019,
 16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2024]: Sec. 4.5. (a) An insurer shall accept a Medicaid claim
 18 for a Medicaid recipient for three (3) years from the date the service
 19 was provided.

20 (b) An insurer may not deny a Medicaid claim submitted by the
 21 office solely on the basis of:

22 (1) the date of submission of the claim;

23 (2) the type or format of the claim form;

24 (3) the method of submission of the claim; or

25 (4) a failure to provide proper documentation at the point of sale
 26 that is the basis of the claim;

27 if the claim is submitted by the office within three (3) years from the
 28 date the service was provided as required in subsection (a) and the
 29 office commences action to enforce the office's rights regarding the
 30 claim within six (6) years of the office's submission of the claim.

31 **(c) This subsection does not apply to coverage under the**
 32 **Medicare program, Medicare Advantage, or Medicare Part D.** An
 33 insurer may not deny a Medicaid claim submitted by the office solely
 34 due to a lack of prior authorization **in accordance with 42 U.S.C.**
 35 **1396a(a)(25).** An insurer shall:

36 (1) after December 31, 2020, meet the requirements set forth in
 37 IC 27-1-37.5;

38 (2) conduct the prior authorization on a retrospective basis for
 39 claims where prior authorization is necessary; ~~and~~

40 (3) adjudicate any claim authorized in this manner as if the claim
 41 received prior authorization; **and**

42 **(4) respond to a state inquiry regarding a claim under**



1 **subsection (a) not later than sixty (60) days after receiving the**
2 **inquiry.**

3 SECTION 21. IC 12-15-29-9, AS AMENDED BY P.L.187-2007,
4 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2024]: Sec. 9. (a) IC 27-8-23 applies to this section.

6 (b) To the extent that payment for covered medical expenses has
7 been made under the state Medicaid program for health care items or
8 services furnished to a person, in a case where a third party has a legal
9 liability to make payments, the state is considered to have acquired the
10 rights of the person to payment by any other party for ~~the~~ **accumulated**
11 **and future** health care items or services.

12 (c) As required under 42 U.S.C. 1396a(a)(25), an insurer shall
13 accept the state's right of recovery and the assignment to the state of
14 any right of the individual or entity to payment for a health care item
15 or service for which payment has been made under the state Medicaid
16 plan.

17 SECTION 22. IC 31-37-19-29 IS ADDED TO THE INDIANA
18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2024]: **Sec. 29. (a) As used in this section,**
20 **"facility" means the following:**

- 21 **(1) A community based correctional facility for children.**
- 22 **(2) A juvenile detention facility.**
- 23 **(3) A secure facility, not including a facility licensed as a child**
- 24 **caring institution under IC 31-27.**

- 25 **(b) A facility shall provide the division of family resources:**
- 26 **(1) at least forty-five (45) days notice; or**
- 27 **(2) under extenuating circumstances approved by the division,**
- 28 **notice as soon as possible;**

29 **that a delinquent child will be released from the facility. The**
30 **division of family services shall take action necessary to ensure that**
31 **the delinquent child, if eligible, participates in the Medicaid**
32 **program upon the child's release and receives services required**
33 **under federal law thirty (30) days before the child's release and**
34 **thirty (30) days after the child's release.**

35 SECTION 23. IC 34-30-2.1-129.4 IS ADDED TO THE INDIANA
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2024]: **Sec. 129.4. IC 12-8-1.7-8(b)**
38 **(Concerning actions of a personal services attendant).**

39 SECTION 24. [EFFECTIVE JULY 1, 2024] **(a) An individual**
40 **who:**

- 41 **(1) is registered under IC 12-10-17.1, as amended by this act,**
- 42 **before July 1, 2024; and**



1 **(2) provides services under a home and community based**
2 **services waiver;**
3 **is deemed registered under IC 12-8-1.7, as added by this act.**
4 **(b) This SECTION expires July 1, 2026.**

