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0.Provider Agency

DRAFT

### Waiver/Program Requirements and Eligibility Rule Revisions

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## 8.7100 Waiver/Program Eligibility Requirements

### 8.7101 DEFINITIONS

**8.7101.1 Activities of Daily Living** means basic self-care activities including bathing, bowel and bladder control, dressing, eating, independent ambulation, and needing supervision to support behavior, medical needs, and memory and cognition.

**8.7101.2 Agency** means any public or private entity operating in a for-profit or nonprofit capacity, with a defined administrative and organizational structure. At Health Care Policy and Financing's discretion, any sub-unit of the agency that is not geographically close enough to share administration and supervision on a frequent and adequate basis shall be considered a separate agency for purposes of certification and contracts.

**8.7101.3 Applicant** means an individual or member who is seeking a Long-Term Services and Supports eligibility determination and who has not affirmatively declined to apply for Medicaid or participate in an assessment.

**8.7101.4 Assessment** is as defined at Section 8.7201.1

**8.7101.5 BBA working disabled group** is as defined at 42 U.S.C § 1396a(a)(10)(A)(ii)(XIII).

**8.7101.6 Brain Injury** means an injury to the brain of traumatic or acquired origin that results in residual physical, cognitive, emotional, and behavioral difficulties of a non-progressive nature and is limited to the following broad diagnoses found within the most current version of the International Classification of Diseases (ICD) at the time of assessment:

1. Nonpsychotic mental disorders due to brain damage; or
2. Anoxic brain damage; or
3. Compression of the brain; or
4. Toxic encephalopathy; or
5. Subarachnoid and/or intracerebral hemorrhage; or
6. Occlusion and stenosis of precerebral arteries; or
7. Acute, but ill-defined cerebrovascular disease; or
8. Other and ill-defined cerebrovascular disease; or
9. Late effects of cerebrovascular disease; or

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10. Fracture of the skull or face; or
11. Concussion resulting in an ongoing need for assistance with activities of daily living; or
12. Cerebral laceration and contusion; or
13. Subarachnoid, subdural, and extradural hemorrhage, following injury; or
14. Other unspecified intracranial hemorrhage following injury; or
15. Intracranial injury; or
16. Late effects of musculoskeletal and connective tissue injuries; or
17. Late effects of injuries to the nervous system; or
18. Unspecified injuries to the head resulting in an ongoing need for assistance with activities of daily living.

**8.7101.7 Case Management** is as defined at [Section 25.5-6-1701 C.R.S](#) including the calculation of member payment and the determination of individual cost-effectiveness.

**8.7101.8 Case Management Agency (CMA)** means a public, private, or non-governmental non-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for Home and Community-Based Services (HCBS) waivers.

**8.7101.9 Member**, for purposes of this Section 8.7100, et seq. means an individual who has met Long-Term Services and Supports (LTSS) eligibility requirements and has been offered and agreed to receive HCBS waiver services.

**8.7101.10 Complex Behavior** means behavior that occurs related to a diagnosis by a licensed physician, psychiatrist, or psychologist that includes one or more substantial disorders of the cognitive, volitional, or emotional process that grossly impairs judgment or capacity to recognize reality or to control behavior.

**8.7101.11 Complex Medical Needs** means needs that occur as a result of a chronic medical condition diagnosed by a licensed physician that has lasted or is expected to last at least twelve (12) months, requires skilled care, and that without intervention may result in a severely life-altering condition.

**8.7101.12 Congregate facility** means a residential facility that provides room and board to three or more adults who are not related to the owner and who, because of impaired capacity for independent living, elect protective oversight, personal services, and social care but do not require regular twenty-four hour medical or nursing care.

**8.7101.13 Uncertified Congregate Facility** means a facility as defined at Section 8.7101 that is not certified as an Alternative Care Facility.

**8.7101.14 Continued Stay Review** means a re-assessment conducted by a case management agency as defined in 8.7206.6 .

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**8.7101.15 Comprehensive Review of the Person's Life Situation** means a thorough review of all aspects of the person's current life situation by the program-approved service agency in conjunction with other members of the interdisciplinary team.

**8.7101.16 Corrective Action Plan** is as defined at Section 8.7101.

**8.7101.17 Cost Containment** means limiting the cost of providing care in the community to less than or equal to the cost of providing care in an institutional setting based on the average aggregate cost. The cost of providing care in the community shall include the cost of HCBS services and Medicaid State Plan benefits including long-term home health services and Targeted Case Management.

**8.7101.18 Crisis** means an event, series of events, and/or state of being of greater than normal severity for the member and/or family that is outside the manageable range for the member or their family and poses a danger to self, family, and/or the community. Crisis may be self-identified, family-identified, and/or identified by an outside party.

**8.7101.19 Deinstitutionalized** means transferred from institutional care to community-based care.

**8.7101.20 Diverted** means maintained in institutional care.

**8.7101.21 Developmental Delay** means one or more of the following:

- A. A child less than five years of age who is at risk of having a developmental disability because of the presence of one or more of the following \measurements as determined by a qualified health professional utilizing appropriate diagnostic methods and procedures\:
  1. Chromosomal conditions associated with delays in development,
  2. Congenital syndromes and conditions associated with delays in development,
  3. Sensory impairments associated with delays in development,
  4. Metabolic disorders associated with delays in development,
  5. Prenatal and perinatal infections and significant medical problems associated with delays in development,
  6. Low birth weight infants weighing less than 1200 grams, or
  7. Postnatal acquired problems resulting in delays in development.
- B. A child under five years of age who \has the equivalence of twenty-five percent (25%) or greater delay in one or more of the five domains of development when compared with chronological age; or equivalence of 1.5 standard deviations or more below the mean in one or more of the five domains of development as determined by a qualified health professional utilizing appropriate diagnostic methods and procedures. The five domains are:
  1. \Adaptive development;
  2. Cognitive development;
  3. Communication development;
  4. Physical development, including vision and hearing; and,
  5. Social or emotional development.\

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- C. A child under three years of age who lives with one or both parents who have ~~been determined to have a~~ developmental disability ~~by a CMA~~.

**8.7101.22 Developmental Disabilities Professional** means a person who has a bachelor’s degree and a minimum of two years’ experience in the field of developmental disabilities or a person with at least five years of experience in the field of developmental disabilities with competency in the following areas:

- A. Understanding of civil, legal, and human rights;
- B. Understanding of the theory and practice of positive and non-aversive behavioral intervention strategies; and
- C. Understanding of the theory and practice of non-violent crisis and behavioral intervention strategies.

**8.7101.23 Developmental Disability** means a disability that:

- A. Is manifested before the person reaches 22 years of age;
- B. Constitutes a substantial disability to the affected individual, as demonstrated by the criteria below at C, 1 and/or C, 2; and,
- C. Is attributable to an intellectual and developmental disability or related conditions which include Prader-Willi syndrome, cerebral palsy, epilepsy, autism, or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability. Unless otherwise specifically stated, the federal definition of “developmental disability” at 42 U.S.C. § 15002(8) shall not apply.
  1. **Impairment of general intellectual functioning** means that the person has been determined to have a full-scale intellectual quotient equivalent which is two or more standard deviations below the mean (70 or less assuming a scale with a mean of 100 and a standard deviation of 15).
    - a. A secondary score comparable to the General Abilities Index for a Wechsler Intelligence Scale that is two or more standard deviations below the mean may be used only if a full-scale score cannot be appropriately derived.
    - b. Score shall be determined using a norm-referenced, standardized test of general intellectual functioning comparable to a comprehensively administered Wechsler Intelligence Scale or Stanford-Binet Intelligence Scales, as revised or current to the date of administration. The test shall be administered by a licensed psychologist or a school psychologist.
    - c. When determining the intellectual quotient equivalent score, a maximum confidence level of ninety percent (90%) shall be applied to the full-scale score to determine if the interval includes a score of 70 or less and shall be interpreted to the benefit of the applicant being determined to have a developmental disability.

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2. **Adaptive behavior similar to that of a person with intellectual disability** means an overall adaptive behavior composite or equivalent score that is two or more standard deviations below the mean.
- a. Measurements shall be determined using a norm-referenced, standardized assessment of adaptive behaviors that is appropriate to the person's living environment and comparable to a comprehensively administered Vineland Scale of Adaptive Behavior, as revised or current to the date of administration. The assessment shall be administered and determined by a professional qualified to administer the assessment used.
  - b. When determining the overall adaptive behavior score, a maximum confidence level of ninety percent (90%) shall be applied to the overall adaptive behavior score to determine if the interval includes a score of 70 or less and shall be interpreted to the benefit of the applicant being determined to have a developmental disability.

D. A person shall not be determined to have a developmental disability if it can be demonstrated such conditions are attributable to only a physical or sensory impairment or a mental illness.

**8.7101.24 Early and Periodic Screening Diagnosis and (EPSDT)** is as defined in Section 8.280.1.

**8.7101.25 Extraordinary Needs** means Complex Behavior and/or Medical Support Needs that, without care provided in a residential child care facility, would place a child at risk of unwarranted child welfare involvement or other system involvement.

**8.7101.26 Extreme Safety Risk to Self** means a member:

- A. Displays self-destructiveness related to self-injury, suicide attempts, or other similar behaviors that seriously threaten the member's safety; and,
- B. Has a rights modification in accordance with Sections 8.7001 or 8.7003 or has a court order that imposes line of sight supervision unless the member is in a controlled environment that limits the ability of the member himself or herself.

**8.7101.27 Family** as used in rules pertaining to support services and the Family Support Services Program means a group of interdependent persons residing in the same household that consists of a family member with a developmental disability or a child under the age of five years with a developmental delay, and one or more of the following:

- A. A mother, father, brother(s), sister(s) or any combination; or,
- B. Extended blood relatives such as grandparent(s), aunt(s) or uncle(s); or,
- C. An adoptive parent(s); or,
- D. One or more persons to whom legal custody of a person with a developmental disability has been given by a court; or
- E. A spouse and/or their children.

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**8.7101.28 Financial Eligibility** means eligibility based on the individual's financial circumstances, including income and resources.

**8.7101.29 Functional Eligibility** means eligibility based on the criteria for Long-Term Services and Supports as determined by the Department's prescribed assessment instrument, the Long Term Services and Supports Level of Care Eligibility Determination Screen.

**8.7101.30 Functional Needs Assessment** means a comprehensive, {in-person} evaluation using the LTSS Level of Care Eligibility Determination Screen and medical verification provided using the Professional Medical Information Page to determine if the individual meets the institutional Level of Care (LOC).

**8.7101.31 Group Residential Services and Supports (GRSS)** means residential habilitation provided in group living environments of four to eight members receiving services who live in a single residential setting, which is licensed by the Colorado Department of Public Health and Environment as a residential care facility or residential community home for persons with developmental disabilities.

**8.7101.32 Grievance** means the formal expression of a complaint.

**8.7101.33 Guardian** means an individual at least 21 years of age, resident, or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian as set forth in Section 15-14-102 (4), C.R.S, but not a guardian ad litem.

**8.7101.34 Guardian Ad Litem** means a person appointed by a court to act in the best interests of a child involved in a proceeding pursuant to Title 19, Article 3, C.R.S., or the "School Attendance Law of 1963," set forth in Title 22, Article 33, C.R.S.

**8.7101.35 Home and Community-Based Services (HCBS) waiver** means services and supports authorized by a waiver granted pursuant to 42 U.S.C. 1396n(c) of 1935 (the Act) and provided in community settings to a member who requires a level of institutional care that would otherwise be provided in a hospital, nursing facility, or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID).

**8.7101.36 Hospital Level of Care** is as defined at 42 CFR §440.10.

**8.7101.37 {Inability for independent ambulation}** means (1) the individual does not walk, and requires the use of a wheelchair or scooter in all settings, whether or not they can operate the wheelchair or scooter safely, on their own, or (2) the individual does walk, but requires the use of a walker or cane in all settings, whether or not they can use the walker or cane safely, on their own, or (3) the individual does walk but requires "touch" or "stand-by" assistance to ambulate safely in all settings.}

**8.7101.38 Increased Risk Factors** means situations or events that occur at a certain frequency or pattern historically that have led to Crisis.

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**8.7101.39 Individual Cost Containment Amount** means the average cost of services for a comparable population institutionalized at the appropriate level of care, as determined annually by the Department.

**8.7101.40 Institution** means a hospital, nursing facility, or ICF/IID for which the Department makes Medicaid payment under the Medicaid State Plan.

**8.7101.41 Intellectual and Developmental Disability** means a disability that manifests before the person reaches 22 years of age, that constitutes a substantial disability to the affected person, and that is attributable to an intellectual and developmental disability or related conditions, including Prader-Willi syndrome, cerebral palsy, epilepsy, autism, or other neurological conditions when the condition or conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability. Unless otherwise specifically stated, the federal definition of “developmental disability” found in 42 U.S.C. sec. 15001 et seq., does not apply.

1. **Impairment of general intellectual functioning** means the person has been determined to have an intellectual quotient equivalent which is two or more standard deviations below the mean (70 or less assuming a scale with a mean of 100 and a standard deviation of 15), as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. the standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent. When an individual's general intellectual functioning cannot be measured by a standardized instrument, then the assessment of a qualified professional shall be used.
2. **Adaptive behavior** similar to that of a person with intellectual and developmental disabilities means the person has overall adaptive behavior which is two or more standard deviations below the mean in two or more skill areas (communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work), as measured by an instrument which is standardized, appropriate to the person's living environment, and administered and clinically determined by a qualified professional. These adaptive behavior limitations are a direct result of, or are significantly influenced by, the person's substantial intellectual deficits and may not be attributable to only a physical or sensory impairment or mental illness.
3. **Substantial intellectual deficit(s)** means an intellectual quotient that is between 71 and 75 assuming a scale with a mean of 100 and a standard deviation of 15, as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. the standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent.

**8.7101.42 Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)** means a publicly or privately operated facility that provides health and habilitation services to a member with an intellectual or developmental disability or related conditions.

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**8.7101.43 Level of Care (LOC)** means the specified minimum amount of assistance a member must require to receive services in an institutional setting under the Medicaid State Plan.

**8.7101.44 Level of Care Evaluation** means a comprehensive evaluation with the Individual seeking services and others chosen by the Individual to participate, conducted by the case manager utilizing the Department's prescribed assessment instrument, LTSS Level of Care Eligibility Determination Screen, with supporting diagnostic information from the Individual's medical providers, to determine the Individual's level of functioning for admission or continued stay in LTSS programs.

**8.7101.45 Level of Care Screen** means an assessment conducted in accordance with Section 8.401.

**8.7101.46 Life-Limiting Illness** means a medical condition \or set of medical conditions\ that, in the opinion of the medical specialist involved, has a prognosis of death that is highly probable before the child reaches adulthood at age 19. {A life-limiting illness means a medical condition \or set of conditions\ that, in the opinion of the medical specialist involved, has a prognosis of death that is highly probable before the child reaches adulthood. Conditions that are incurable, irreversible, and that usually result in death are considered as one criterion for eligibility for the HCBS-CLLI waiver.}

**8.7101.47 Long-Term Services and Supports (LTSS)** means the services and supports used by individuals of all ages with functional limitations and chronic illnesses who need assistance to perform routine daily activities.

**8.7101.48 Medicaid Eligible** means an individual meets the criteria for Medicaid benefits based on the individual's financial determination and disability determination when applicable.

**8.7101.49 Nursing Facility Level of Care** is as defined at 42 CFR §440.40.

**8.7101.50 Parent** means the biological or adoptive parent.

**8.7101.51 Professional Medical Information Page (PMIP)** means the medical information form signed by a licensed medical professional used to certify Level of Care.

**8.7101.52 Provider Agency** means an agency certified by the Department and which has a contract with the Department to provide one or more of the services listed at Section 8.7500. ~~A Single Entry Point Agency is not a provider agency, as case management is an administrative activity, not a service. Single Entry Point Agencies may become service providers if the criteria in Sections 8.390–8.393 are met.~~

**8.7101.53 Public Safety Risk-Convicted** means a factor in addition to specific SIS scores that is considered in the calculation of a member's support level. This factor shall be identified when a member has:

- A. Been found guilty through the criminal justice system for a criminal action involving harm to another person or arson and who continues to pose a current risk of repeating a similar serious action; and,

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- B. A rights modification in accordance with Section 8.7001 or through parole or probation, or a court order that imposes line of sight supervision unless the member is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

**8.7101.54 Public Safety Risk-Not Convicted** means a factor in addition to specific SIS scores that is considered in the calculation of a member's support level. This factor shall be identified when a member has:

- A. Not been found guilty through the criminal justice system, but does pose a current and serious risk of committing actions involving harm to another person or arson; and,
- B. A rights modification in accordance with Section 8.7001 or through parole or probation, or a court order that imposes line of sight supervision unless the member is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

**8.7101.55 Reassessment** means a periodic reevaluation according to the requirements at Section 8.7201.28.

**8.7101.56 Referral** means any notice or information (written, verbal, or otherwise) presented to a CMA that indicates that a person may be appropriate for services or supports provided through the disabilities system and for which the CMA determines that some type of follow-up activity for eligibility is warranted.

**8.7101.57 Respondent** means a person participating in the SIS assessment who has known the member for at least three months and has knowledge of the member and their abilities. The respondent must have recently observed the member in one or more places such as home, work, or in the community.

**8.7101.58 Request for Developmental Disability Determination** means written document, either handwritten or a signed standardized form, which is submitted to a CMA requesting that a determination of developmental disability be completed.

- A. **Screening for Early Intervention Services** means a preliminary review of how a child is developing and learning in comparison to other similarly situated children for the purpose of determining if early intervention services are medically necessary.

**8.7101.59 Seclusion** means the placement of a member alone in a closed room for the purpose of punishment. Seclusion for any purpose is prohibited.

**8.7101.60 SIS Interviewer** means an individual formally trained in the administration and implementation of the Supports Intensity Scale by a Department-approved trainer using the Department-approved curriculum. SIS Interviewers must maintain a standard for conducting SIS assessments as measured through periodic interviewer reliability reviews.

**8.7101.61 Support** means any task performed for the member where learning is secondary or incidental to the task itself or an adaptation is provided.

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**8.7101.62 Support Coordinating Agency** means a CMA which has been designated as the agency responsible for the coordination of support services (Supported Living Services program for adults and the Children's Extensive Support program) within its service area.

**8.7101.63 Supports Intensity Scale (SIS)** means the standardized assessment tool that gathers information from a semi-structured interview of respondents who know the member well. It is designed to identify and measure the practical support requirements of adults with developmental disabilities.

**8.7101.64 Support Level** means a numeric value determined using an algorithm that places members into groups with other members who have similar overall support needs.

**8.7101.65 TWWIIA Basic Coverage Group** comprise working individuals who are at least 16 but less than 65 years of age who, except for their income and resource levels, are eligible to receive Supplemental Security Income (SSI).

**8.7101.66 Three Hundred Percent (300%) Eligible** persons mean those:

- A. Whose income does not exceed 300% of the SSI benefit level,
- B. Who, except for the level of their income, would be eligible for an SSI payment, and
- C. Who are not eligible for medical assistance (Medicaid) unless they are recipients in an HCBS program or are in a nursing facility or hospitalized for {one month}.

**8.7101.67 Utilization Review Contractor (URC)** means the agency contracted with the Department to review the HCBS waiver applications for determination of eligibility based on the additional targeting criteria.

**8.7101.68 Utilization Review** means a review conducting for the purpose of approving or denying admission or continued stay in the waiver based on level of care needs, clinical necessity, amount and scope, appropriateness, efficacy or efficiency of health care services, procedures, or settings.

**8.7101.69 Waiver Services** means optional services defined in the current federally-approved HCBS waiver documents and does not include Medicaid State Plan benefits.

**~~8.7102 KEYS AMENDMENT COMPLIANCE~~**

- ~~A. All congregate facilities where any HCBS member resides must be in compliance with the "Keys Amendment" as required under Section 1616(e) of the Social Security Act of 1935 and 45 C.F.R. Part 1397 (October 1, 1991), by possession of a valid Assisted Living Residence license issued under C.R.S. section 25-27-105, and regulations of CDPHE at 6 CCR 1011-1, Chapters 2 and 7. C.R.S. section 25-27-105 and 6 CCR 1011-1 are hereby incorporated by reference.
 
  - ~~1. The incorporation of C.R.S. section 25-27-105 and 6 CCR 1011-1 excludes later amendments to, or editions of, the referenced material.~~~~
- ~~B. The Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver Colorado 80203~~
- ~~C. Certified copies of incorporated materials are provided at cost upon request. {~~

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## 8.7102 ELIGIBLE PERSONS

HCBS waiver services shall be offered to persons who meet all the eligibility requirements below provided the individual can be served within the capacity limits in the federal waiver. The HCBS waivers:

1. Shall not constitute an entitlement to services from the Department,
2. Shall be subject to annual appropriations by the Colorado General Assembly,
3. Shall ensure enrollments do not to exceed the federally-approved capacity, and
4. May limit the {individual waiver program's} enrollment when utilization of the HCBS waiver program is projected to exceed legislative spending authority.

The section hereby incorporates terms and provisions of the federally-approved HCBS waivers. To the extent that the terms of the federally-approved waiver are inconsistent with the provisions of this section, the waiver(s) shall control.

### 8.7102.1 FINANCIAL ELIGIBILITY

- A. Members shall meet the Medicaid Assistance eligibility criteria for Long Term Care as stated at Section 8.100.
- B. The applicant's income must be less than 300% of the current Supplemental Security Income Federal Benefit Rate and countable resources less than \$2,000 for a single person or \$3,000 for a couple.
- C. Spousal impoverishment rules set forth at § 1924 of the Act are used to determine the eligibility of individuals with a community spouse for the special HCBS waiver group. In the case of a participant with a community spouse, the state shall use spousal post-eligibility rules as set forth at §1924 of the Act. Spousal impoverishment rules do not apply to people in the Medicaid Buy-In program.
- D. The HCBS waiver programs provide services both for individuals eligible only for Medicaid and for individuals who are dually eligible for both Medicare and Medicaid.
  1. Individuals may be eligible to participate in the adult HCBS waiver programs through the Medicaid Buy-in Program for Working Adults with Disabilities if all listed eligibility criteria listed at 8.100.6.P are met.

### 8.7102.2 LEVEL OF CARE AND TARGET GROUP

- A. Individuals shall be referred to the CMA for an initial HCBS eligibility determination. The LTSS LOC eligibility determination screen is used to determine an individual's need for institutional level of care.
- B. The state-prescribed assessment instrument shall measure six defined Activities of Daily Living (ADLs) and the need for supervision for behavioral or cognitive dysfunction. ADLs include bathing, dressing, toileting, mobility, transferring, and eating.
- C. Level of care evaluations and reevaluations shall be performed by case management agencies and utilize the same instrument in determining the level of care for the waiver as for State Plan institutional care.

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- D. The individual also must be at risk of placement in an Institution within one month, but for the availability of waiver services. See individual waiver program for specific level of care requirements.
- E. For initial LOC eligibility determinations, the Professional Medical Information Page (PMIP) shall be completed by a treating medical professional who verifies the individual's need for institutional level of care.
- F. The individual must require LTSS to remain in their own home, in the family residence, or in the community.
- G. To utilize HCBS waiver benefits, the individual must choose to receive services in their home or community.
- H. The cost of HCBS waiver services shall not be greater than the cost of placement in an Institution and the individual's safety and health can be assured in the community within the federally-approved capacity and the cost containments of the enrolled waiver program.
- I. The CMA shall certify HCBS waiver eligibility only for those individuals:
  - 1. Determined by the CMA to meet the target group designation for one or more waiver programs detailed in the Target Group Criteria section of each HCBS waiver program at Section 8.7103.
  - 2. Determined by an LOC assessment to require the level of care available in an Institution according to Section 8.401; or
  - 3. A length of stay shall be assigned by the CMA for approved admissions according to guidelines at Section 8.402.

#### 8.7102.3 RECEIVING HCBS WAIVER SERVICES

- A. Only members who receive HCBS waiver services as defined at Section 8.5000, or who have agreed to accept HCBS services when eligibility criteria have been met are eligible for an HCBS waiver program.
  - 1. Case management is not a waiver service and shall not be used to satisfy this requirement.
  - 2. Desire or need for home health services or other Medicaid State Plan services that are not identified as HCBS waiver services shall not satisfy this eligibility requirement.
- B. HCBS waiver program members who have received no HCBS waiver services for one calendar month shall be discontinued from the program.
- C. Members may not be simultaneously enrolled in more than one HCBS waiver.

#### 8.7102.4 INSTITUTIONAL STATUS

- A. Members who are residents of Institutions are not eligible for HCBS {waiver services} while residing in such Institutions.
- B. A member enrolled in an {HCBS waiver} and who is admitted to a hospital may not receive HCBS waiver services while residing in the hospital. If the member resides in the

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hospital for a continuous period of one month or more, the case manager shall terminate the member from the HCBS waiver program.

- C. A member enrolled in an {HCBS waiver} and who is admitted to a nursing facility {or ICF-IID} may not receive HCBS waiver services while in the nursing facility or ICF/IID, except as provided below:
1. If Medicaid pays for all or part of the nursing facility care or ICF/IID, or if the case manager verifies that a LTSS Level of Care Eligibility Determination Screen has been completed for the nursing facility or ICF/IID placement, the case manager must terminate the member from the HCBS waiver program.
  2. A member enrolled in an HCBS waiver who enters a nursing facility for HCBS respite care shall not be required to obtain a LTSS Level of Care Eligibility Determination Screen and shall not be terminated from the HCBS waiver program.
  3. Nothing in this section is intended to create a right to receive respite care services pursuant to the waiver benefit if respite care services are not included in the waiver.

#### 8.7102.5 COST-EFFECTIVENESS

- A. Only members who can be safely served within the capacity and expenditure limits imposed pursuant to cost containment restrictions, as defined at 8.7101.17 are eligible for the HCBS waiver programs.

#### 8.7102.6 MAINTENANCE OF HCBS WAIVER ELIGIBILITY

The Member shall maintain eligibility by meeting General Eligibility and waiver program-specific requirements set forth herein subject to the following:

- A. Reevaluation of the member to verify Medicaid, financial, and program eligibility is required within twelve months following any previous assessment. The Continued Stay Review will follow the same procedures set forth at Section 8.401.11-.17(H).
- B. The member must receive at least one HCBS waiver service each calendar month.
- C. The member must not be simultaneously enrolled in any other HCBS waiver program.
- D. {The member must not be residing in an Institution, correctional facility, or other institution.}

#### 8.7102.7 WAITING LIST

Individuals who are determined eligible for HCBS waiver services, who cannot be served within the capacity limits of the federally-approved waiver, shall be eligible for placement on the waiting list for the HCPF waiver for which they applied. A separate waiting list shall be maintained for each waiver.

- A. The Department shall maintain the waiting list.
- B. The date of initial determination of eligibility for an HCBS waiver shall determine the individual's position on the waiting list.

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- C. As openings become available within the capacity limits of the federal waiver, individuals shall be considered for services based on the criteria in order of priority as follows:
1. Individuals being deinstitutionalized from nursing facilities {or ICF/IIDs}.
  2. Individuals being discharged from a hospital who, without waiver services, would be discharged to an Institution at a greater cost to Medicaid.
  3. Individuals, {currently receiving} long-term home health benefits, whose services could be delivered at a lower cost through a waiver benefit.
  4. Members with high LTSS Level of Care Eligibility Determination Screen scores who are at imminent risk of Institutional placement.

Individuals denied program enrollment shall be informed of their appeal rights in accordance with Section 8.057.

#### 8.7102.7 TERMINATION

The Department shall discontinue a member's enrollment in an HCBS waiver when one of the following occurs:

- A. The member no longer meets the HCBS waiver benefit criteria,
- B. The cost of services and supports provided in the community exceeds the cost of services and supports provided in an Institution,
- C. The member enrolls in another HCBS waiver program or is admitted for a long-term stay beyond {one month} in an Institution, or
- D. The member does not receive an HCBS waiver service during a full one-month period, or
- E. The member voluntarily withdraws from the HCBS waiver program.

#### 8.7103 {HCBS WAIVER PROGRAM-SPECIFIC MEMBER ELIGIBILITY}

##### 8.7103.1 CHILDREN'S HCBS WAIVER (CHCBS)

###### A. Target Group Criteria

To be eligible for the HCBS-CHCBS waiver, a child shall meet the following target group criteria:

1. Is under 18 years of age.
2. Lives at home with parent(s) or guardian.
3. Meets Hospital Level of Care {(the state additionally limits the waiver to the subcategory of acute hospital level of care)} or Nursing Facility Level of Care {(the State additionally limits the waiver to the subcategory of skilled nursing facilities level of care).}
4. Meets federal SSI disability definition.
5. The child's parent(s) or guardian chooses to receive services in the home or community instead of an Institution.
6. The child is not otherwise eligible for Medicaid benefits or enrolled in other Medicaid waiver programs due to parental income and/or resources.

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#### B. Medicaid Eligibility Groups Served in the Waiver

{CHCBS waiver services are available to eligible individuals who meet the criteria set forth at 42 CFR §435.217.}

#### C. Other

1. To be eligible for the CHCBS waiver, the income and resources of the child shall not exceed 300% of the current maximum Social Security Insurance (SSI) standard maintenance allowance.
2. Individuals who meet eligibility criteria for the CHCBS waiver and cannot be served within the federally-approved waiver capacity limits shall be eligible for placement on a waiting list maintained by the URC.
3. A child on the waiting list shall be prioritized for enrollment in the waiver if they meet any of the following criteria:
  - a. Have been in a hospital for {one month or longer} and require waiver services in order to be discharged from the hospital.
  - b. Are on the waiting list for an organ transplant.
  - c. Are dependent upon mechanical ventilation or prolonged intravenous administration of nutritional substances.
  - d. Have received a terminally ill prognosis from their physician.

### 8.7103.2 CHILDREN'S EXTENSIVE SUPPORT WAIVER (HCBS-CES)

#### A. Target Group Criteria

To be eligible for the HCBS-CES waiver, an individual shall meet the target group criteria as follows:

1. Is unmarried and under 18 years of age.
2. Has a developmental disability (which includes a developmental delay if under five years of age) and requires long term services and supports to remain in the family home.
3. Meets ICF/IID level of care as determined by the Level of Care Screen.
4. Resides in an eligible HCBS-CES waiver setting, defined as:
  - a. Residing with biological or adoptive parent(s), or Legal Guardian, or
  - b. Residing in an out-of-home placement and can return home with the provision of HCBS-CES waiver services with the following requirements:
    - i. The case manager shall work with the residential caregiver to develop a transition plan that includes timelines and identified services or supports requested during the time the member is not residing in the family home. The case manager shall submit the transition plan to the Department for approval prior to the start of services.
5. Meets the definition of disability set forth at 42 U.S.C. § 423(d).
6. Meets the HCBS-CES waiver member eligibility criteria:

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- a. The individual demonstrates a behavior or has a medical condition that requires direct human intervention, more intense than a verbal reminder, redirection, or brief observation of status, at least once every two hours during the day and on a weekly average of once every three hours during the night. The behavior or medical condition must be considered beyond what is typically age appropriate and due to one or more of the following conditions:
- i. A significant pattern of self-endangering behavior or medical condition which, without intervention will result in a life-threatening condition or situation,
  - ii. A significant pattern of serious aggressive behavior toward self, others, or property, or
  - iii. Constant vocalizations such as screaming, crying, laughing, or verbal threats which cause emotional distress to caregivers. The term constant is defined as on the average of 15 minutes each waking hour.

For purposes of this subsection 6, Significant Pattern is defined as a behavior or medical condition that is harmful to self or others as evidenced by actual events occurring within the past six (6) months.

- b. To remain eligible for waiver services, the annual reassessment must demonstrate that in the absence of the existing interventions or preventions provided as waiver services, the intensity and frequency of the behavior or medical condition would return to a level that would meet the criteria listed above.

B. {Medicaid Eligibility Groups Served in the Waiver

HCBS-CES Waiver Services are available to eligible Individuals in the following State Plan eligibility groups:

1. SSI recipients
2. Optional state plan recipients

C. Other

1. Cost Limit Lower Than Institutional Costs. The state may refuse entrance to the waiver to any otherwise qualified individual when the state reasonably expects that the cost of HCBS furnished to that individual would exceed the state spending limits.}
2. Individuals who are determined eligible for HCBS-CES waiver benefits who cannot be served within the capacity limits of the federally-approved waiver, shall be eligible for placement on a waiting list maintained by the Department.

**8.7103.3 CHILDREN'S HABILITATION RESIDENTIAL PROGRAM WAIVER (HCBS-CHRP)**

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#### A. Target Group Criteria

To be eligible for the HCBS-CHRP waiver, an individual shall meet the target group criteria as follows:

1. Is under 21 years of age.
2. Has a developmental disability (which includes developmental delay if under five years of age).
3. Has extraordinary needs that put the individual at risk or in need of out-of-home placement.
4. Meets ICF/IID level of care as determined by the level of care evaluation.

#### B. Medicaid Eligibility Groups Served in the Waiver

HCBS-CHRP waiver services are available to eligible members in the following State Plan eligibility groups:

1. Children for whom foster care maintenance payments are being made by the County Departments of Human/Social Services and who otherwise meet eligibility criteria.
2. Individuals who meet the criteria set forth at 42 CFR §435.217.

#### C. {Other}

1. An assessment of the level of support needed shall be completed upon determination of eligibility and shall determine the level of reimbursement for Habilitation and per diem Respite services.
2. Individuals determined eligible for benefits under the HCBS-CHRP waiver, who cannot be served within the capacity limits of the federally-approved waiver, shall be eligible for placement on a waiting list maintained by the Department.

### 8.7103.4 CHILDREN with LIFE-LIMITING ILLNESS WAIVER (HCBS-CLLI)

#### A. Target Group Criteria

To be eligible for the HCBS-CLLI waiver, an individual shall meet the target group criteria as follows:

1. Is under 19 years of age,
2. Has been diagnosed with a life-limiting illness (i.e., a life-limiting medical condition or set of life-limiting medical conditions) as certified by a physician on the Department- prescribed form, the PMIP,
3. Meets Hospital Level of Care as determined by the Case Manager using the LTSS Level of Care Eligibility Determination Screen, and
4. Lives in their family home.

#### B. {Medicaid Eligibility Groups Served in the Waiver}

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Areas requiring further review	

HCBS-CLLI waiver services are available to eligible individuals in the following State Plan eligibility groups:

1. SSI recipients
2. Optional state plan recipients

#### C. Other

Individuals who are determined eligible for benefits under the HCBS-CLLI waiver, and who cannot be served within the capacity limits of the federally-approved waiver, shall be eligible for placement on a waiting list maintained by the Department.

### 8.7103.5 PERSONS with BRAIN INJURY WAIVER (HCBS-BI)

#### A. Target Group Criteria

To be eligible for the HCBS-BI waiver, an individual shall meet the target group criteria as follows:

1. Is determined to have a brain injury that occurred prior to the individual's 65<sup>th</sup> birthday.
  - a. Brain injury is defined as an injury to the brain of traumatic or acquired origin which results in residual physical, cognitive, emotional, and\or\ behavioral difficulties of a non-progressive nature and is {limited to the to the broad diagnoses found within the most current version of the ICD.}
2. Is 16 years of age or older.
3. Meets Hospital Level of Care and as evidenced by:
  - a. The individual shall have been:
    - i. Referred to the CMA while receiving inpatient care in an acute care or rehabilitation hospital for the treatment of the individual's brain injury; or
    - ii. A comprehensive functional assessment using the LTSS Level of Care Eligibility Determination Screen results in at least the minimum scores required by Section 8.7206.5, demonstrating a functional need for nursing facility level of care;
  - b. The individual shall require goal-oriented therapy with medical management by a physician.
  - c. The individual shall not be therapeutically managed in a community-based setting without significant supervision and structure, specialized therapy, and support services; {or}
4. {Meets Nursing Facility Level of Care.}

#### B. Medicaid Eligibility Groups Served in the Waiver

{ HCBS-BI waiver services are available to eligible members in the following State Plan eligibility groups:

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1. SSI recipients
  2. Optional state plan recipients
  3. Working individuals with disabilities who buy into Medicaid (BBA working disabled group as described in 42 U.S.C §1902 1396a(a)(10)(A)(ii)(XIII))
  4. Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in 42 U.S.C. § 1396a(a)(10)(A)(ii)(XV of the Act)}
- C. {Other}
1. Persons determined eligible for HCBS-BI services that cannot be served within the capacity limits of the HCBS-BI waiver shall be eligible for placement on a waiting list maintained by the Department.

#### 8.7103.6 COMMUNITY MENTAL HEALTH SUPPORTS WAIVER (HCBS-CMHS)

##### A. Target Group Criteria

To be eligible for the HCBS-CMHS waiver, an individual shall meet the target group criteria as follows:

1. Is experiencing a severe and persistent mental health need that requires assistance with one or more ADLs. For purposes of this subsection A, a person experiencing a severe and persistent mental health need is defined as one who:
  - a. Is 18 years of age or older with a severe and persistent mental health need,
  - b. Currently has or at any time during the one-year period prior to assessment had a diagnosed mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the Diagnostic and Statistical Manual of Mental Disorders (DSM -5):
    - i. Has a disorder that is episodic, recurrent, or has persistent features, but may vary in terms of severity and disabling effects; and
    - ii. Has resulted in functional impairment which substantially interferes with or limits one or more major life activities, and
  - c. A severe and persistent mental health need does not include:
    - i. Intellectual or developmental disorders; or
    - ii. Substance use disorder without a co-occurring diagnosis of a severe and persistent mental health need.
2. {Meets Nursing Facility Level of Care.}
3. A length of stay shall be assigned by the URC for approved admissions, according to guidelines at Section 8.402.30.

##### B. Medicaid Eligibility Groups Served in the Waiver

HCBS-CMHS waiver services are available to eligible members in the following State Plan eligibility groups:

1. SSI recipients

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2. Optional state plan recipients
3. Working individuals with disabilities who buy into Medicaid (BBA working disabled group as described in described in 42 U.S.C § 1396a(a)(10)(A)(ii)(XIII))
4. Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in §1396a(a)(10)(A)(ii)(XV) of the Act}

### 8.7103.7 ELDERLY, BLIND, AND DISABLED WAIVER (HCBS-EBD)

#### A. Target Group Criteria

To be eligible for the HCBS-EBD waiver, an individual shall meet the target group criteria as follows:

1. Is determined by the CMA to meet the target group definition for functionally impaired elderly, or the target group definition for physically disabled or blind adult.
2. {Meets the minimum and/or if applicable maximum age for individuals served in each subgroup
  - a. Aged: Be 65 years of age or older
  - b. Physically Disabled or Blind: Be 18-64 years of age (Those participants who are physically disabled who reach the age of 65 shall automatically get classified as Aged with no break in services), and/or
  - c. HIV/AIDS: Be 18 years of age or older.
3. Meets Nursing Facility Level of Care.}

#### B. Medicaid Eligibility Groups Served in the Waiver

HCBS-EBD waiver services are available to eligible members in the following State Plan eligibility groups:

1. SSI recipients
2. Optional state plan recipients
3. Working individuals with disabilities who buy into Medicaid (BBA working disabled group as described in §1396a (a)(10)(A)(ii)(XIII))
4. Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in §1396a (a)(10)(A)(ii)(XV) of the Act}

#### C. Other

1. {HCBS-EBD members that enter a nursing facility or hospital may not receive HCBS-EBD waiver services while residing in the nursing facility or hospital unless prior authorization has been received from the Department.
  - a. HCBS-EBD members admitted to a nursing facility or hospital for one month or longer shall be discontinued from the HCBS-EBD program.
  - b. HCBS-EBD members entering a nursing facility for Respite Care as an HCBS-EBD service shall not be discontinued from the HCBS-EBD program.}

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2. Individuals determined eligible for HCBS-EBD services that cannot be served within the capacity limits of the HCBS-EBD waiver shall be eligible for placement on a waiting list.

#### 8.7103.8 COMPLEMENTARY AND INTEGRATIVE HEALTH WAIVER (HCBS-CIH)

##### A. Target Group Criteria

To be eligible for the HCBS-CIH waiver, an individual shall meet the target group criteria as follows:

1. Is 18 years of age or older.
2. Has a qualifying condition of a spinal cord injury (traumatic or nontraumatic), multiple sclerosis, a brain injury, spina bifida, muscular dystrophy, or cerebral palsy with the inability for independent ambulation directly resulting from one of these conditions as defined by broad diagnoses related to each condition within the most current version of the ICD at the time of assessment.
3. Be unable to ambulate independently as a result of the qualifying condition as identified by the case manager through the assessment process. A person is considered unable to ambulate independently if:
  - a. The individual does not walk, and requires use of a wheelchair or scooter in all settings, whether or not they can operate the wheelchair or scooter safely, on their own; or
  - b. The individual does walk, but requires the use of a walker or cane in all settings, whether they can use the walker or cane safely, on their own; or
  - c. The individual does walk but requires “touch” or “stand-by” assistance to ambulate safely in all settings.
4. Meets Hospital Level of Care or Nursing Facility Level of Care.

##### B. Medicaid Eligibility Groups Served in the Waiver

1. { HCBS-CIH waiver services are available to eligible individuals in the following State Plan eligibility groups:
  - a. SSI recipients
  - b. Optional state plan recipients
  - c. Working individuals with disabilities who buy into Medicaid (BBA working disabled group as described in 42 U.S.C § 1396a(a)(10)(A)(ii)(XIII)).
  - d. Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in §1396a(a)(10)(A)(ii)(XV) of the Act}

##### C. Other

1. Persons determined eligible for HCBS-CIH services that cannot be served within the capacity limits of the HCBS-CIH waiver shall be eligible for placement on a waiting list.

#### 8.7103.9 SUPPORTED LIVING SERVICES WAIVER (HCBS-SLS)

##### D. Target Group Criteria

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To be eligible for the HCBS-SLS waiver, an individual shall meet the target group criteria as follows:

1. Has an intellectual or developmental disability.
2. Is 18 years of age or older.
3. Meets the ICF/IID level of care.
4. Does not require 24-hour supervision on a continuous basis which is reimbursed as an HCBS-SLS service.
5. Resides in an eligible HCBS-SLS setting. An SLS setting is the individual's residence, which is defined as the following:
  - a. A living arrangement, which the individual owns, rents, or leases in their own name,
  - b. The home where the individual lives with the member's family or legal guardian, or
  - c. A living arrangement of no more than three persons receiving HCBS ~~waiver services residing~~ in one household, unless they are all members of the same family.

**E. Medicaid Eligibility Groups Served in the Waiver**

{ HCBS-SLS waiver services are available to eligible members in the following State Plan eligibility groups:

1. SSI recipients
2. Optional state plan recipients
3. Working individuals with disabilities who buy into Medicaid (BBA working disabled group as described in 42 U.S.C § 1396a(a)(10)(A)(ii)(XIII)).
4. Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in §1396a(a)(10)(A)(ii)(XV) of the Act)

**F. Other**

1. Enrollment in the HCBS-SLS waiver may be limited when utilization of the HCBS-SLS waiver program is projected to exceed legislative pending authority.
2. When the HCBS-SLS waiver reaches capacity for enrollment, an individual determined eligible for a waiver shall be placed on a waiting list.
3. As openings become available in the HCBS-SLS waiver program in a designated service area, individuals shall be considered for services in order of placement on the local CMA's waiting list regarding an appropriate match to services and supports. Exceptions to this requirement shall be limited to situations in which:
  - a. **An emergency** greatly endangers the health, safety, and welfare of the individual or others and the emergency cannot be resolved in another way. For the purposes of this subsection C, emergencies are defined as follows:
    - i. **Homelessness:** the individual does not have a place to live or is in imminent danger of losing their place of abode.
    - ii. **Abusive or Neglectful Situation:** the individual is experiencing ongoing physical, sexual, or emotional abuse or

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neglect in their present living situation and their health, safety or well-being are in serious jeopardy.

- iii. **Danger to Others:** the individual's behavior or psychiatric is such that others in the home are at risk of being hurt by them. Sufficient supervision cannot be provided by the current caretaker to ensure the safety of persons in the community.
- iv. **Danger to Self:** an individual's medical, psychiatric, or behavioral challenges are such that they are seriously injuring/harming themselves or are in imminent danger of doing so.

4. The Legislature has appropriated funds specific to individuals or to a specific class of persons.

If an eligible individual is placed on a waiting list for SLS waiver services, a written notice, including information regarding the member appeals process, shall be sent to the individual and/or his/her legal guardian in accordance with the provisions of section 8.057, et seq.

### 8.7103. 10 DEVELOPMENTAL DISABILITIES WAIVER (HCBS-DD)

#### A. Target Group Criteria

To be eligible for the HCBS-DD waiver, an individual shall meet the target group criteria as follows:

1. Has an intellectual or developmental disability.
  2. Requires access to 24-hour services and supports to meet daily living needs that allow them to live safely and participate in the community.
  3. Is 18 years of age or older.
  4. Meets ICF/IID level of care.
- B. The State may limit the number of members enrolled in the HCBS-DD waiver at any point in time during a waiver year. When the HCBS-DD waiver reaches capacity for enrollment, an individual determined eligible for the waiver shall be eligible for placement on a waiting list.
1. The state reserves capacity for the following purposes:
    - a. **Emergency** in which positions are reserved for individuals whose names are on the waiting list, who are experiencing a Crisis, and require immediate assistance to ensure their health and safety,
    - b. **18-21 Transition** in which positions made available for children who are adopted through the Colorado Child Welfare system, reach an age at which they are no longer eligible for foster care, the HCBS-Children's Extensive Supports waiver, or the HCBS-Children's Habilitation Residential Program waiver in order to continue access to

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services that will allow them to continue living safely in the community without interruption, and

- c. **Deinstitutionalization** for Nursing Facility, ICF/IID, and State Mental Health Institutes in which positions are made available for individuals who have requested to transition from one of these settings to a community setting, and
2. Waitlists. As vacancies occur in waiver enrollments, the state shall enroll the next individual on the waiting list based on the \statewide\ order of the selection date.

#### C. **Medicaid Eligibility Groups Served in the Waiver**

{ HCBS-DD waiver services are available to eligible members in the following State Plan eligibility groups:

1. SSI recipients
2. Optional state plan recipients
3. Working individuals with disabilities who buy into Medicaid (BBA working disabled group as Medicaid as described in 42 U.S.C § 1396a(a)(10)(A)(ii)(XIII))
4. Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as described in 42 U.S.C. § 1396a(a)(10)(A)(ii)(XV)of the Act}

#### D. **Other**

1. The member shall maintain eligibility by meeting the General Eligibility and waiver program-specific requirements set forth herein and maintaining residence in a GRSS or IRSS setting.
2. When the HCBS-DD waiver reaches enrollment capacity, an individual determined eligible for the waiver shall be eligible for placement on a waiting list.