**R539. Health and Human Services, Services for People with Disabilities.**

**R539-1. Eligibility.**

**R539-1-1. Authority and Purpose.**

(1) Sections 26B-6-402 and 26B-6-403 authorize this rule and give the division responsibility for the administration of its services.

(2) This rule provides:

(a) definitions applicable to eligibility;

(b) general requirements for determining eligibility for division services;

(c) waiver specific requirements for determining eligibility for division services; and

(d) policy and procedures to reduce non-Medicaid eligible individuals' budgets to the state funded portion.

**R539-1-2. Definitions.**

Terms used in this rule are the same as defined in Rule R539-13. Additionally:

(1)(a) "Cash assets" includes any:

(i) bond;

(ii) certified deposit;

(iii) checking account;

(iv) savings account;

(v) stock; and

(vi) trust account.

(b) A cash asset does not include an exempt discretionary trust account as described in Subsection 26B-6-412(6).

(2) "ICF" means an intermediate care facility for people with intellectual disabilities.

(3) "Qualifying acquired neurological brain injury" means an eligible diagnosis from the International Classification of Diseases. Tenth Revision, Clinical Modification (ICD-10-CM), incorporated by reference in this rule.

(4) "Related Conditions" means the same as defined in 42 CFR 435.1010 (2024).

**R539-1-3. Intake and Division Eligibility.**

(1) An applicant shall submit to the division the supporting documentation needed to determine eligibility specific to the applicant's disability type as required in Sections R539-1-4 through R539-1-6.

(a)(i) If any required supporting documentation is not submitted within 90 days of initial contact, the division shall change the intake case status to inactive.

(ii) The division shall send the applicant written notification of an intake status change to inactive.

(b) An applicant may reactivate the intake case by submitting supporting documentation specific to their disability type as required in Sections R539-1-4 through R539-1-6.

(c) An applicant shall update supporting documentation specific to their disability type as required in Sections R539-1-4 through R539-1-6.

(2) The division shall notify an applicant of the eligibility determination by mailing a Notice of Agency Action Form 522-I and a Hearing Request Form 490S.

(a) The Notice of Agency Action Form 522-I indicates:

(i) the eligibility determination; and

(ii) placement on the waiting list, when applicable.

(b) An applicant or the applicant's guardian may challenge the eligibility determination by following the procedures outlined in Section R539-3-8.

(3) The division shall annually redetermine eligibility for each person receiving services. If a person receiving services is determined to be ineligible, the division shall develop a service discontinuation plan to ensure each health and safety need is met during the transition period.

**R539-1-4. Services for People with Intellectual Disabilities or Related Conditions.**

(1) An eligible applicant shall meet the following requirements:

(a) have a diagnosed intellectual disability or related condition as defined in Subsection 26B-6-401(9) and Section R414-502-8;

(b) have three or more substantial functional limitations; and

(c) be a state resident.

(2) The division determines eligibility within 90 days of receiving supporting documentation.

(a) To determine substantial functional limitations for an applicant aged seven years or older, the division shall consider age-appropriate ability.

(b) The division shall keep supporting documentation in the applicant's electronic record.

(3) The division shall use the following supporting documentation to determine eligibility:

(a) eligibility for Services Form 19 or Eligibility for Services Form 19C for a child younger than seven years of age;

(b) an assessment of substantial functional limitations and needs;

(c) a social history of the applicant completed within one year of the date of application;

(d) a psychological evaluation for people of any age or a developmental assessment for a child younger than seven years of age; and

(e) supporting documentation for each eligibility requirement. Supporting documentation includes:

(i) a medical healthcare visit summary;

(ii) a mental health assessment;

(iii) a neuropsychological evaluation; and

(iv) an educational record.

(4) This section does not apply to an applicant who meets the eligibility criteria for a physical disability or brain injury as described in Sections R539-1-5 and R539-1-6.

**R539-1-5. Services for People with Physical Disabilities.**

(1) The division shall only offer services for a physical disability to an eligible applicant with a disability as defined in Subsection 26B-6-401(9).

(2) An eligible applicant shall meet the following requirements:

(a) have a qualifying physical disability expected to last for a continuous period of 12 months or longer;

(b) have the functional loss of two or more limbs;

(c) have a need for a personal assistance service to accomplish an activity of daily living or an instrumental activity of daily living;

(d) be 18 years of age or older;

(e) be medically stable;

(f) be capable of selecting, training, and supervising a personal attendant;

(g) have at least one available personal attendant trained or willing to be trained;

(h) live in a safe residence that can accommodate the personnel and equipment needed to adequately and safely care for the applicant;

(i) be capable of managing personal financial and legal matters;

(j) have three or more substantial functional limitations; and

(k) be a state resident.

(3) The division shall:

(a) determine if an applicant is eligible for physical disability services within 90 days of receiving needed documentation; and

(b) keep supporting documentation in the applicant's electronic record.

(4) The division shall use the following supporting documentation to determine eligibility:

(a) Physical Disabilities Services Application Form 3-1 Part B signed by a licensed physician or licensed nurse practitioner attesting to each eligibility requirement; and

(b) the Minimum Data Set-Home and Community-based (MDS-HC).

(5) This section does not apply to an applicant who meets the eligibility criteria for an intellectual disability and related conditions or brain injury as described in Sections R539-1-4 and R539-1-6.

**R539-1-6. Services for People with Brain Injury.**

(1) The division shall only offer services for a brain injury to an eligible applicant with a disability as defined in Subsections 26B-6-401(3) and 26B-6-401(9).

(2) An eligible applicant shall meet the following requirements:

(a) have a documented diagnosis of a qualifying acquired neurological brain injury from a licensed physician or licensed nurse practitioner;

(b) be 18 years of age or older;

(c) have three or more functional limitations;

(d) score between 36 and 136 on the Comprehensive Brain Injury Assessment Form 4-1; and

(e) be a state resident.

(3) For the exclusive purposes of this type of disability, functional limitations are defined as:

(a) "Memory" or "cognition" means an applicant's brain injury resulted in a substantial problem with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) "Activities of daily life" means an applicant's brain injury resulted in substantial dependence on another individual to move, eat, bathe, toilet, shop, prepare a meal, or pay a bill.

(c) "Judgment" and "Self-protection" means the applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide a necessity including food, shelter, clothing, mental health care, or any other health care;

(iii) obtain a service necessary for health, safety, or welfare; or

(iv) comprehend the nature and consequence of remaining in a situation of abuse, neglect, or exploitation.

(d) "Control of emotion" means the applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) "Communication" means the applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) "Physical health" means the applicant's brain injury resulted in substantial limitation of the normal process and working of the human body.

(g) "Employment" means the applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing support.

(4) The division determines eligibility.

(a) The division shall determine if an applicant is eligible for acquired brain injury services within 90 days of receiving eligibility documentation.

(b) The division shall keep supporting documentation in the applicant's electronic record.

(5) The division shall use the following supporting documentation to determine eligibility:

(a) documentation of a diagnosis of a qualifying acquired brain injury diagnosis signed by a medical professional whose scope of licensure includes the ability to render diagnoses; and

(b) Comprehensive Brain Injury Assessment Form 4-1, parts A through L.

(6) This section does not apply to an applicant who meets the eligibility criteria for an intellectual disability and related conditions or physical disability as described in Sections R539-1-4 and R539-1-5.

**R539-1-7. Eligibility and Enrollment.**

(1) Matching federal funds may be available through an HCBS waiver.

(a) A person shall meet financial eligibility for Medicaid benefits as determined by the Department of Workforce Services.

(b) A person shall meet a waiver level of care as determined by the division.

(i) Pursuant to Rule R414-502, the department may find a person meeting nursing facility level of care eligible for funding through the:

(A) Acquired Brain Injury Waiver;

(B) Limited Supports Waiver; or

(C) Physical Disabilities Waiver.

(ii) The department may find a person meeting intermediate care facility level of care eligible for funding through the:

(A) Community Supports Waiver;

(B) Community Transitions Waiver; or

(C) Limited Supports Waiver.

(c) After ensuring the person meets the waiver level of care, the division shall submit a Form 927 to the Department of Workforce Services requesting a determination of financial eligibility.

(d) Noncompliance with Department of Workforce Services eligibility determination process requirements shall result in a funding reduction as described in Subsection R539-1-8(3)

(2)(a) The division shall use a need assessment tool to determine a person's need score.

(b) The adjusted critical need score equals the person's total critical need score minus the time spent waiting component.

(3) Ordering of each person's need score identifies the most critical need ranking.

(4) Except as described in Subsections (5) through (8), the division determines waiver enrollment by the most critical need ranking.

(5) Pursuant to Section 26B-6-402, the division determines waiver enrollment in the Limited Supports Waiver by:

(a) offering enrollment in order of time spent waiting; and

(b) identifying a person through:

(i) an adjusted critical needs score at or below the person's age group threshold; and

(ii) no immediate need for out-of-home residential support services.

(6) A person shall be enrolled in the limited supports waiver only if the person's assessed needs can be safely met within the individual budget limit.

(7) When authorized, pursuant to Section R414-510-3, a person shall be enrolled in the Community Transitions Waiver.

(8) The Emergency Services Management Committee may approve enrollment in the:

(a) Acquired Brain Injury Waiver;

(b) Community Supports Waiver; or

(c) Physical Disabilities Waiver.

(9) If the department determines that sufficient funding is available, a person may receive a waiver service by diverting a person from an ICF into the Community Supports Waiver.

(10)(a) Any person offered enrollment in an HCBS waiver may choose not to participate.

(b) If an eligible person chooses not to participate in a waiver, the person shall receive only the state funded portion of their assessed needs.

**R539-1-8. State Funded Budget Portion for Non-Waiver Services.**

(1) The state funded portion shall be calculated based on the Centers for Medicare and Medicaid Services Federal Medical Assistance Percentage.

(2) The division shall use the federal matching shares for Medicaid as updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 1396b (2024).

(3) The division shall reduce a person's overall funding to include only the state match rate for any of the following reasons:

(a) a person declines waiver enrollment but is determined eligible for an HCBS waiver by the Department of Workforce Services;

(b) a person is determined ineligible for a HCBS waiver by the Department of Workforce Services; or

(c) a person meets the programmatic eligibility for an HCBS waiver but fails to apply for a determination of Medicaid financial eligibility within 30 days of an offer for waiver enrollment.

(4) A person who receives a non-waiver service may have their non-waiver service package reduced or terminated because of:

(a) a division budget shortfall;

(b) a reduced legislative allocation; or

(c) a reevaluation of eligibility.

**R539-1-9. Social Security Numbers.**

Pursuant to 42 CFR 435.910 (2019) and Rule R414-302, an applicant shall provide a valid Social Security Number.

**KEY: human services, disabilities, social security numbers**

**Date of Last Change: July 22, 2025**

**Notice of Continuation: October 13, 2022**

**Authorizing, and Implemented or Interpreted Law: 26B-6-403; 26B-6-405**