

TITLE 455 DIVISION OF AGING

Proposed Rule
LSA Document #06-129

DIGEST

Adds 455 IAC concerning the Division of Aging's adult foster care service under the Aged and Disabled Waiver administered by the Family and Social Services Administration. Included are sections regarding provider requirements, including eligibility, enrollment, certification, training, and care and service standards; provisions for consumer eligibility requirements, both medical and financial, as well as provisions regarding an assessment tool and consumer rights; case manager responsibilities; sections for quality assessment, monitoring and provider compliance; and necessary definitions. It will become effective 30 days after filing with the Publisher.

455 IAC 3

SECTION 1. 455 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. ADULT FOSTER CARE SERVICE PROVISION AND CERTIFICATION STANDARDS IN THE AGED AND DISABLED WAIVER

Rule 1. Purpose

455 IAC 3-1-1 General statement of purpose and intention of program

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. Adult foster care (AFC) is a comprehensive service provided under the aged and disabled (A&D) home and community based services Medicaid waiver, as administered through the Family and Social Services Administration's division of aging. This article refers specifically to the service as provided in the A&D waiver.

An AFC consumer resides with a caregiver and up to two other consumers, in a home owned, rented, or managed by the AFC provider, in order to receive personal assistance in a home setting that is safe and secure. The provider may not provide services to more than three (3) individuals within the home including private pay consumers.

The goal of the home and community based service (HCBS) Medicaid waiver service is to provide necessary care while emphasizing the consumer's independence. This goal is reached through a cooperative relationship between the

consumer or the consumer's legal guardian, the consumer's HCBS Medicaid waiver case manager, and the care provider in a setting that protects and encourages consumer dignity, choice, and decision-making. Consumer needs must be addressed in a manner that supports and enables the individual to maximize abilities to function at the highest level of independence possible. The service is designed to provide options for alternative long-term care to persons who meet nursing facility level of care, and whose needs can be met in an AFC setting.

The goal is to preserve the dignity and self-respect by ensuring high quality, professional care in a non-institutional setting. Care is to be furnished in a way that fosters the independence of each consumer to facilitate aging in place in a home environment that will provide the consumer with a range of care options as the needs of the consumer change.

Rule 2. Applicability

455 IAC 3-2-1 General applicability

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. This article applies to the adult foster care program, a comprehensive service provided under the aged and disabled Medicaid waiver, as administered through the Family and Social Services Administration's division of aging.

Rule 3. Definitions

455 IAC 3-3-1 Activities of daily living or ADL

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. "Activities of daily living" or "ADL" means a measurement of an individual's degree of independence when:

- (1) eating;
- (2) bathing;
- (3) dressing;
- (4) moving from one (1) place to another; and
- (5) toileting.

The term also refers to an activity described in the long term care services eligibility screen referred to in IC 12-10-10-6.3.

455 IAC 3-3-2 Adult foster care or AFC

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. "Adult foster care" or "AFC" means a comprehensive service provided under the A & D Medicaid waiver in which a consumer of services resides with an unrelated caregiver and up to two other consumers, in a home owned, rented, or managed by the AFC provider, in order to receive personal assistance

designed to provide options for alternative long-term care to persons who meet nursing facility level of care, and whose needs can be met in an AFC setting.

455 IAC 3-3-3 Adult foster care home

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. “Adult foster care home” means, as provided under the A & D waiver, the family home in which consumer care is provided to three (3) or fewer elderly individuals or adults with either physical or cognitive disabilities, or both, who are not members of the provider’s or primary caregiver’s family, in which care is provided in a home-like environment for compensation. For the purpose of these certification standards, the adult foster care home does not include any house, institution, hotel or other similar living situation that supplies room or board, or both, only, if no consumer thereof requires any element of care.

455 IAC 3-3-4 Adult foster care provider

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. “Adult foster care provider” means a provider of AFC services who is enrolled in the HCBS Medicaid waiver programs for persons who are aged or medically disabled.

455 IAC 3-3-5 Advance directive

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. “Advance directive” means the legal document signed by the consumer giving instructions for health care should he or she no longer be able to give directions regarding his or her wishes. The directive gives the consumer the means to continue to control his or her own health care in any circumstance.

455 IAC 3-3-6 Aging in place

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 6. “Aging in place” means residing in a care environment that will provide the consumer with a range of care options as the needs of the consumer change. Aging in place does not preclude assisting a consumer in relocating to a new care environment, if necessary.

455 IAC 3-3-7 Area agency on aging or AAA

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 7. “Area Agency on Aging” or “AAA” means an established public agency within a planning and service area designated under section 305 of the Older

Americans Act which has responsibility for assisting individuals in the waiver process and which contracts with the state to perform specific activities in relation to administration of the HCBS Medicaid waiver program.

455 IAC 3-3-8 Attendant care

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 8. “Attendant care” has the meaning set forth in 460 IAC 1-8-1(c).

455 IAC 3-3-9 Behavioral interventions

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 9. “Behavioral interventions” means those interventions that are intended to modify the consumer’s behavior or the consumer’s environment.

455 IAC 3-3-10 Caregiver

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 10. “Caregiver” means any person responsible for providing care and services to consumers, including:

- (1) the provider;**
- (2) the primary caregiver; and**
- (3) any substitute or caregiver designated to provide care and services to consumers.**

455 IAC 3-3-11 Care plan or plan of care

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 11. “Care plan” or “plan of care” means a plan that is written by the case manager from the comprehensive adult foster care assessment to establish supports and strategies intended to accomplish the individual’s long term and short term goals by accommodating the financial and human resources offered, as well as behavioral-related assistance to the individual through paid provider services or volunteer services, or both, as designed and agreed upon by the individual.

455 IAC 3-3-12 Case manager

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 12. “Case manager” means an individual that provides case management services to HCBS Medicaid waiver consumers as described under section 13 of this rule.

455 IAC 3-3-13 Case management services

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 13. (a) “Case management services” means a comprehensive service comprised of a variety of specific tasks and activities designed to coordinate and integrate all other services required in the consumer’s care plan. Case management is required in conjunction with the provision of any home and community based service.

(b) Responsibilities that are included within case management services are found in 455 IAC 3-15.

455 IAC 3-3-14 Certification standards

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 14. “Certification standards” means the specific AFC service standards established by this article and HCBS Medicaid waiver certification standards for all consumers and providers who participate in any of the HCBS Medicaid waiver programs for persons who are aged or medically disabled.

455 IAC 3-3-15 Chemical restraint

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 15. “Chemical restraint” means the use of any chemical method used to restrict the consumer's activities and behavior.

455 IAC 3-3-16 Choice

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 16. “Choice” means viable options that enable a consumer to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the home to provide opportunities for consumers to select where and how to spend time and receive personal assistance.

455 IAC 3-3-17 Complaint

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 17. “Complaint” means an allegation that a provider has violated the provisions of this article, dissatisfaction relating to the condition of the AFC home

or the consumer(s) arising out of such an alleged violation, or any situation in which the consumer feels his or her rights have been violated by the provider.

455 IAC 3-3-18 Consumer

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 18. "Consumer" means an individual who is eligible for the HCBS Medicaid waiver program under 460 IAC 1.2, and receives those services in an AFC home; a person living in an AFC setting for whom the service of AFC is paid through the FSSA waiver services HCBS Medicaid waiver program. "Consumer" includes former consumers when examining complaints about admissions, re-admissions, transfers or discharges. For decision-making purposes, the term "consumer" includes the consumer's surrogate decision-maker in accordance with state law or at the consumer's request.

455 IAC 3-3-19 Consumer contract

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 19. "Consumer contract" means an agreement or contract completed by the AFC services provider for each potential consumer that includes the following:

- (1) A description of the services to be provided to the consumer;**
- (2) A description of the contract modification process;**
- (3) A description of the complaint resolution process;**
- (4) Specific house rules; and**
- (5) Other general information.**

455 IAC 3-3-20 Consumer rights or rights

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 20. "Consumer rights" or "rights" means those rights as stated 455 IAC 3-14 and the rights of citizenship that cannot be preempted by this article, certification standards, or any other aspect of services provided in an AFC setting.

455 IAC 3-3-21 Division of aging or division

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 21. "Division of aging" or "division" means the division of aging as created by IC 12-9.1-1-1.

455 IAC 3-3-22 DDRS

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 22. “DDRS” means the division of disability and rehabilitative services as created by IC 12-9-1-1, a division within FSSA in which the bureau of quality improvement services (BQIS) is located.

455 IAC 3-3-23 Dignity

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 23. “Dignity” means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by designing a structure that allows personal assistance to be provided in privacy and delivering services in a manner that shows courtesy and respect.

455 IAC 3-3-24 Elderly or aged

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 24. “Elderly” or “aged” means any person age 65 or older who is in need of care provided under this article.

455 IAC 3-3-25 FSSA waiver services

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 25. “FSSA waiver services” means the unit within the division of aging under which the HCBS Medicaid waiver program is administered. For purposes of this article, it may also include any designee providing oversight or collaboration regarding the provision of AFC service under the A & D waiver. This may include other bureaus under DDRS, the office of Medicaid policy and planning, or the division of aging, or may include contractors or other entities to which FSSA waiver service duties have been formally delegated.

455 IAC 3-3-26 HCBS

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 26. “HCBS” means home and community based services.

455 IAC 3-3-27 HCBS Medicaid waiver program

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 27. “HCBS Medicaid waiver program” means supportive services provided by the HCBS Medicaid waiver program to help functionally impaired older adults or persons with disabilities living in the community to remain independent or self-sufficient. The functional impairment may be temporary, short term, or a permanent or lasting condition.

455 IAC 3-3-28 HCBS Medicaid provider agreement

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 28. “HCBS Medicaid waiver provider agreement” means a provider agreement signed by an AFC provider who is enrolled in the HCBS Medicaid waiver program.

455 IAC 3-3-29 Home

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 29. “Home” means, for the purposes of this article, the physical structure in which up to three (3) consumers and their caregiver live and where AFC services under this article are provided.

455 IAC 3-3-30 Homelike

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 30. “Homelike” means an environment that has the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one's living area to suit one's individual preferences, which promotes the dignity, security and comfort of consumers through the provision of personalized care and services to encourage independence, choice, and decision-making by the consumers, and provides consumers with an opportunity for self-expression and encourages interaction with the community, family and friends.

455 IAC 3-3-31 House rules

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 31. “House rules” means written rules managing or organizing home activities in an AFC home which are developed by the provider or primary caregiver, or both, and approved by the HCBS Medicaid waiver program. House rules may not be so restrictive as to interfere with a consumer's or citizen's rights under state and federal law.

455 IAC 3-3-32 Independence

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 32. “Independence” means free from the control of others and being able to assert one's own will, personality and preferences within the parameters of the house rules or consumer agreement.

455 IAC 3-3-33 Level of service

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 33. “Level of service” means the specific level of service that the provider is authorized to provide in accordance with the consumer’s plan of care and based on the assessed impairment level of the consumer.

455 IAC 3-3-34 Level of service assessment tool

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 34. “Level of service assessment tool” means the assessment instrument provided by the division that is utilized to determine the appropriate level of service to be provided and paid according to three (3) impairment levels, with level 1 being the least impaired and most independent and level 3 being the most impaired and least independent.

455 IAC 3-3-35 Medical emergency

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 35. “Medical emergency” means a change in the consumer’s medical condition that requires immediate care of a level or type that the provider is unable to provide or behavior that poses an imminent danger to the consumer or to other consumers or people living in the home.

455 IAC 3-3-36 Medically disabled or disabled

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 36. “Medically disabled” or “disabled” means a person who is 18 years of age or older with a physical, cognitive, or emotional impairment which, for the individual, constitutes or results in a functional limitation in activities of daily living. The individual must meet nursing facility level of care to obtain AFC services.

455 IAC 3-3-37 Medication management

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 37. “Medication management” means the provision of reminders or cues, the opening of pre-set commercial medication containers, or providing assistance in the handling or ingesting of medication. For purposes of this definition, prescription and over the counter medications are included within the meaning of “medication”.

455 IAC 3-3-38 Occupant

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 38. “Occupant” means anyone residing in or using the facilities of the AFC home including the following:

- (1) Consumer;**
- (2) Provider;**
- (3) Primary caregiver;**
- (4) Substitute caregiver; or**
- (5) Family member.**

455 IAC 3-3-39 OMPP

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-8-6-1; IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 39. “OMPP” means the office of Medicaid policy and planning within FSSA as established in IC 12-8-6-1.

455 IAC 3-3-40 Ombudsman

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 40. “Ombudsman” has the meaning set forth in IC 12-10-13-4.5.

455 IAC 3-3-41 Physical restraint

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 41. “Physical restraint” means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the consumer's body which the consumer cannot easily remove and restricts freedom of movement or normal access to his or her body. Physical restraints may include, but are not limited to, the following:

- (1) Leg restraints;**
- (2) Soft ties or vests;**
- (3) Hand mitts;**
- (4) Wheelchair safety bars;**
- (5) Lap trays;**
- (6) Any chair that prevents rising; and**
- (7) Gerichairs.**

Side rails (bed rails) are considered restraints when they are used to prevent a consumer from getting out of a bed. When a consumer requests a side rail (e.g. for the purpose of assisting with turning), the side rail is not considered a restraint.

455 IAC 3-3-42 Primary caregiver

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 42. “Primary caregiver” means the person with whom the consumer resides and who provides AFC services to the consumer on a regular basis under

the jurisdiction of the FSSA waiver services HCBS Medicaid waiver program. This person may be, but is not required to be, the provider. In homes in which the primary caregiver is not the provider, he or she is a contracted employee of that AFC service provider. The primary caregiver is the resident manager of AFC services for each consumer residing in that AFC home.

455 IAC 3-3-43 Provider

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 43. “Provider” means an individual, partnership, corporation, or other entity, which enters into an agreement with FSSA waiver services HCBS Medicaid waiver program to provide AFC services to HCBS consumers, and which is the person or persons responsible for the provision of room, board, care and services in the daily operation of the home. The provider may be, but is not required to be, the primary caregiver.

455 IAC 3-3-44 Psychoactive medications

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 44. “Psychoactive medications” means various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of this article, they include, but are not limited to, all of the following:

- (1) anti-psychotics;**
- (2) sedatives;**
- (3) hypnotics; and**
- (4) anti-anxiety medications.**

455 IAC 3-3-45 Reside

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 45. “Reside” means to make the AFC home the person’s permanent residence.

455 IAC 3-3-46 Room and board

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 46. “Room and board” means the provision of:

- (1) meals;**
- (2) a place to sleep;**
- (3) laundry;**
- (4) housekeeping;**
- (5) furniture; and**
- (6) linens**

455 IAC 3-3-47 Self-administration of medication

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 47. “Self-administration of medication” means the act of a consumer placing a medication in or on his or her own body. This means the consumer manages and takes his or her own medications, in that the consumer identifies the medication and the times and manners of administration, and places the medication internally or externally on his or her own body without assistance. This may include reminders, cues, and/or opening of medication containers by caregiver when requested by a consumer. This does not include assistance with prescription eye drops, which must be self-administered.

455 IAC 3-3-48 Self-preservation

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 48. “Self-preservation”, in relation to private residence fire and life safety, means the ability of a consumer to respond to an alarm without additional cues and to be able to reach a point of safety on their own.

455 IAC 3-3-49 Substitute caregiver

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 49. “Substitute caregiver” means any person who provides AFC services in an AFC home under the jurisdiction of the FSSA waiver services HCBS Medicaid waiver program, other than the provider or primary caregiver. This person may be subcontracted or employed by the provider to provide this service.

Rule 4. Provider Requirements

455 IAC 3-4-1 Provider eligibility

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) The AFC service provider must follow the current provisions of the provider application, provider agreement, and this article, and eligibility determination as prescribed by the division or its designee. All steps must be followed and documented, and all standards required for Medicaid waiver provider status must be met in order to obtain certification. The burden of proof must be upon the provider to establish compliance with the requirements of this section.

(b) AFC providers are individuals who are willing to share their home and family life with up to three (3) eligible disabled or elderly persons.

(c) The provider cannot be the parent of:

(1) a minor child of;

(2) the spouse of; or
(3) other relative related by blood or marriage to;
the consumer.

(d) The provider must be at least 21 years of age, and must live in a setting that is suitable for the provider and the consumer or consumers.

(e) An AFC home provider must live in the home that is to be enrolled, unless another provider-contracted primary caregiver lives in the provider's home. If the primary caregiver is not the provider, the same qualifications are required for that caregiver as those required for the provider, and the provider remains responsible for liability insurance pursuant to 455 IAC 3-6-4 and safety provisions found in 455 IAC 3-5.

(f) Caregivers other than the provider must be subcontractors or employees of the provider, and it will be the responsibility of the provider to ensure the state that these caregivers meet the same eligibility requirements. Documentation that subcontractors or employees meet the minimum provider requirements must be kept in a provider's file, and must be available to FSSA waiver services at any point in the certification and ongoing monitoring process of that home.

(g) An AFC home provider must have a statement from a physician or other qualified practitioner indicating the provider and any caregivers, if applicable, are free from tuberculosis and other communicable diseases. There must be documentation of annual physicals for all caregivers.

(h) Provider and other caregivers, if applicable must be physically, cognitively, and emotionally capable of providing care to each consumer.

(i) The provider and other caregivers, if applicable, are required to pass a state criminal background check obtained from the Indiana state police central repository meeting the requirements of 455 IAC 3-4-3(9) prior to opening the home to consumers or working in the home, and must notify the division if they are convicted of a crime after they are certified.

(j) The AFC provider must have the ability to provide services for consumers in a manner and in an environment that encourages maintenance or enhancement of each consumer's quality of life, and promotes the consumer's:

- (1) privacy;
- (2) dignity;
- (3) choice;
- (4) independence;
- (5) individuality; and
- (6) decision-making ability.

(k) If the provider or other caregivers, if applicable, have a documented history or substantial evidence of substance abuse or mental illness, they must

provide evidence satisfactory to FSSA waiver services of successful treatment and rehabilitation.

(l) An AFC provider must:

(1) Be literate; and

(2) Demonstrate:

(A) The understanding of written and oral orders; and

(B) The ability to communicate with:

(i) Consumers;

(ii) Physician;

(iii) Case manager; and

(iv) Appropriate others; and

(3) Be able to respond appropriately to emergency situations at all times.

(m) An AFC provider must:

(1) Have a clear understanding of job responsibilities;

(2) Have knowledge of consumer's care plans; and

(3) Be able to provide or obtain the care specified for each consumer's needs.

(n) The provider must provide assurances to FSSA waiver services of reliable back up for those times when the primary caregiver must be absent from the home or otherwise cannot provide the necessary level of care. The provider must designate specific substitute caregivers who meet caregiver qualifications and will be available for any such absences. The enrollment application must include a written plan on coverage during absence of the primary caregiver. The use of substitute caregivers must include assurances that the substitutes meet eligibility requirements of a provider in this rule.

(o) FSSA waiver services may deny an application for noncompliance with any requirements in this rule.

455 IAC 3-4-2 Enrollment forms

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. Enrollment application forms will be available from the division.

455 IAC 3-4-3 Provider enrollment; application requirements

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. The enrollment application for providers of AFC services must include the following information to be submitted by the provider applicant:

(1) The maximum consumer capacity requested and the number of any other occupants, which is not to exceed three (3) consumers;

(2) The service level classification being requested with information and supporting documentation regarding the following:

(A) Qualifications;

- (B) Relevant work experience; and
- (C) Training all caregivers as required by FSSA waiver services;
- (3) A floor plan of the house showing the following:
 - (A) Location and size of rooms;
 - (B) Exits and directions for vacating the premises;
 - (C) Wheelchair ramps, if applicable;
 - (D) Smoke detectors; and
 - (E) Fire extinguishers;
- (4) A list of three (3) reliable references, all of whom must be unrelated to the provider, that have current knowledge of the provider-applicant's character and capabilities for providing care services;
- (5) A written plan describing the planned operation of the AFC home, including the use of primary caregivers other than the provider and substitute caregivers;
- (6) Proof of liability insurance required under 455 IAC 3-6-4;
- (7) CPR and first aid certificates;
- (8) TB test and evidence of an annual physical by a physician or designee;
- (9) A criminal background check that does not have any evidence of the following:
 - (A) A sex crime(IC35-42-4).
 - (B) Neglect, battery or, exploitation of an endangered adult (IC 35-46-1-12).
 - (C) Abuse or neglect of a child (IC 35-42-2-1).
 - (D) Failure to report battery, neglect, or exploitation of an endangered adult or dependent (IC 35-46-1-13).
 - (E) Theft (IC 35-43-4), except as provided in IC 16-27-2-5(a)(5).
 - (F) Murder (IC 35-42-1-1).
 - (G) Voluntary manslaughter (IC 35-42-1-3).
 - (H) Involuntary manslaughter (IC 35-42-1-4)
 - (I) Battery (IC 35-42-2).

Rule 5. Certification of AFC provider home

455 IAC 3-5-1 On site review

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) An on site review of the home will be completed in order to assess the provider's ability to safely and successfully provide AFC care of the consumer. FSSA waiver services will certify that the criteria set forth in this chapter are met during this initial certification inspection.

455 IAC 3-5-2 Home certification requirements; general requirements

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. (a) On-site provider files that document that all provider requirements set forth in this article are met must be present and made available for review by an inspector designated by FSSA waiver services.

(b) The division of aging or a designee will conduct a home inspection to assure that all required standards as provided in this chapter are met in the physical home. Provider must provide documentary evidence to verify standards are met for criteria not visible to the inspector.

(c) Each AFC home must meet all applicable local zoning, building, and housing codes and state and local fire and safety regulations for a single family residence. The building and furnishings must be clean and in good repair. Grounds must be well maintained. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. There must be no accumulation of garbage, debris, rubbish or offensive odors.

(d) AFC homes must meet all applicable state and local building, mechanical, and housing codes for private residence fire and life safety. At least one working fire extinguisher must be in a visible and readily accessible location on each floor, including basements, and must be inspected at least once a year. Fire extinguishers must be tagged, with a signature and date of inspection.

(e) All consumers must have unobstructed passageways throughout the house.

(f) Interior and exterior stairways must be provided with handrails. Adequate lighting, based on the needs of the individual, must be provided in each room, stairway, and exit-way. Light bulbs must be protected with appropriate covers. Yard approved exits and exterior steps must be accessible and appropriate to the condition and needs of the consumers.

(g) All exit doors and interior doors must have simple hardware that cannot be locked against exit without an obvious method of operation.

(h) The heating and cooling systems must be in working order. Areas of the home used by consumers must be properly ventilated and maintained at a safe and comfortable temperature. Heating and electrical equipment, including wood and alternative fuel stoves, must be installed in accordance with all manufacturer's specifications and applicable private residence fire and life safety codes. Such equipment must be used and maintained properly and be in good repair.

(i) All common use areas of the house and exits must be barrier free and corridors and hallways must be wide enough to accommodate a walker or wheelchair. Any bedroom window identified as an exit must be free of any obstacles at least the width of the window which would interfere with it being an exit. There must be a wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps must meet the standards of the Americans with Disabilities Act. Providers must bring existing ramps into revised

compliance if necessary to meet the needs of new consumers or current consumers with increased care needs. Throw and scatter rugs are prohibited to avoid falls. There must be grab bars in bathtub or shower. Each consumer must have their own bedroom with linens, a closet, and drawer space.

(j) There must be current readily available basic first-aid supplies and a first-aid manual.

(k) A public water supply must be utilized if available. If a non-municipal water source is used, minimum water quality standards must be met.

(l) Septic tanks or other non-municipal sewage disposal system must be in good working order. Commodes must be emptied frequently and incontinence garments will be disposed of in closed containers.

(m) Garbage and refuse must be suitably stored in clean, rodent-proof, covered containers, pending weekly removal.

(n) Prior to laundering, soiled linens and clothing must be stored in closed containers in an area separate from resident bedrooms, food storage, kitchen and dining areas. Special pre-wash attention must be given to soiled and wet bed linens.

(o) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies and other vaccinations required by a certified veterinarian must be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to consumers or guests.

(p) There must be adequate control of insects and rodents including screens on doors and windows that are used for ventilation.

(q) Universal precautions for infection control should be followed in consumer care. Hands and other skin surfaces must be washed immediately and thoroughly prior to and following provision of assistance for a consumer.

(r) The AFC services provider must have readily available a copy of the address and telephone number of the local or state long term care ombudsman program and of the local AAA.

(s) The following must be posted or made readily available to consumer and others:

- (1) FSSA provider agreement, with attached conditions to the agreement if applicable;**
- (2) A statement of consumer rights as stated in 455 IAC 3-14;**
- (3) The floor plan that indicates the fire evacuation route of the home;**
- (4) The house rules;**
- (5) The FSSA waiver services inspection form;**

- (6) Ombudsman poster; and
- (7) The division's designated procedures for making complaints.

455 IAC 3-5-3 Home certification requirements; bathroom specifications

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. (a) Consumer's may share a bathroom however, the bathroom must provide individual privacy and have the following:

- (1) A finished interior with a mirror;**
- (2) A functioning window or other means of ventilation;**
- (3) A window covering;**
- (4) Tubs or showers; and**
- (5) Toilets and sinks in good repair.**

The rooms must be clean and free of objectionable odors.

(b) Bathrooms must have hot and cold water at each tub, shower, and sink in sufficient supply to meet the needs of the consumers. Hot water temperature in bathing areas must be supervised for persons unable to regulate water temperature. Shower curtains and doors must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers.

(c) There must be safe and secure grab bars for toilets, tubs, and/or showers for consumer's safety. Bathrooms must have adequate supplies of toilet paper and soap. Consumers will be provided with individual towels and washcloths, which are laundered in hot water at least weekly or more often if necessary. There will be appropriate racks or hooks for drying bath linens.

455 IAC 3-5-4 Home certification requirements; bedroom specifications

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. (a) Providers, caregivers, or their family members must not share bedrooms with consumers. All consumers will have a private room unless the consumer insists on another arrangement. Each will be provided an individual bed that consists of a mattress and springs, or equivalent, in good condition. Cots, rollaway mattresses, bunks, trundle, daybeds with restricted access, couches, and folding beds may not be used for consumers. Daybeds with good access may be used if this is the consumer's choice.

(b) Each consumer's bed must have clean bedding in good condition consisting of:

- (1) a bedspread;**
- (2) mattress pad;**
- (3) two sheets;**
- (4) a pillow with a pillowcase; and**
- (5) blankets adequate for the weather.**

(c) Sheets and pillowcases must be laundered at least weekly, and more often if soiled. Waterproof mattress covers must be used for incontinent consumers.

(d) Each bedroom must have sufficient space for each consumer's clothing and personal effects including hygiene and grooming supplies, and consumers will be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space.

(e) Drapes or shades for windows must be in good condition and allow privacy for consumers.

(f) Bedrooms must be on ground level for consumers who:

- (1) are non-ambulatory;**
- (2) have impaired mobility; or**
- (3) are cognitively impaired.**

Consumers on the second floor or in the basement must demonstrate their self-preservation capability to self-exit or barricade, i.e., close the door or stop smoke from coming under the door.

(g) Bedrooms will have at least one window or exterior door that can be readily opened from the inside without special tools and which provides a clear opening.

455 IAC 3-5-5 Home certification requirements; meal specifications

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. (a) Three regularly scheduled nutritious meals must be offered daily. Nutritious snacks and liquids should be available and offered to fulfill each consumer's nutritional requirements. Special consideration must be given to consumers with chewing difficulties and other eating limitations.

(b) Food must not be used as an inducement to control the behavior of a consumer.

(c) Special diets are to be provided as prescribed in writing by the consumer's physician or nurse practitioner.

(d) Food should be stored and maintained at the correct temperature.

(e) Utensils, dishes and glassware must be washed by dishwasher or by hand in hot soapy water, rinsed, and stored to prevent contamination.

455 IAC 3-5-6 Home certification requirements; communication

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 6. (a) A telephone should be provided in the home and made available and accessible for consumers' use in a location that allows for privacy for incoming and outgoing calls.

(b) Consumers with hearing impairments (to the extent that they cannot hear over a normal phone) will be provided with a telephone that is amplified with a volume control or is hearing aid compatible.

(c) The telephone number for phones provided must be a listed number.

(d) Emergency telephone numbers must be posted by the telephone including an emergency number to reach a provider who does not live in the home. Telephone numbers for the state and local long term care ombudsman must also be posted.

455 IAC 3-5-8 Home certification requirements; smoke detectors

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 8. (a) Smoke detectors must be installed in accordance with the manufacturer's listing and be installed in the following areas:

- (1) Each bedroom;**
- (2) In hallways or access areas that adjoin bedrooms;**
- (3) Family room or main living area where consumers congregate;**
- (4) the kitchen;**
- (4) Any interior designated smoking area; and**
- (5) Basements.**

In addition, in two-story houses, smoke detectors must be installed at the top of the stairway to the second floor. Ceiling placement of smoke detectors is recommended.

(b) Detectors must be equipped with a device that warns of low battery when battery operated or with a battery backup if hard wired. All smoke detectors are to be maintained in functional condition. Battery-operated smoke detectors must be tested monthly and batteries changed as appropriate, but at a minimum of at least once per year.

(c) Bedrooms used by hearing-impaired occupants who cannot hear a regular smoke alarm must be equipped with a visual/audio or vibration alerting smoke alarm as appropriate.

(d) All smoke detectors must contain a sounding device or be interconnected to other detectors to provide, when actuated, an alarm that is audible in all sleeping rooms.

455 IAC 3-5-9 Home certification requirements; hazardous materials

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 9. (a) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers or safety containers and secured in areas to prevent tampering by consumers or vandals.

(b) Cleaning supplies, medical sharps containers, poisons and insecticides must be properly stored in original, properly labeled containers in a safe area away from food preparation and storage areas, dining areas, and medications.

(c) Any firearms owned by the primary caregiver must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to consumers. Consumers are not allowed to bring firearms into the home. When firearms are present, this fact should always be addressed in the consumer risk contract for the benefit of consumer awareness. Any firearm accidents that would occur would be the responsibility of the provider.

455 IAC 3-5-10 Home certification requirements; fire evacuation

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 10. (a) An emergency evacuation plan must be developed, posted and rehearsed with occupants at least quarterly.

(b) All caregivers must be required to demonstrate the ability to quickly evacuate all consumers from the home to the closest point of safety which is exterior to and away from the structure. If there are problems in demonstrating this evacuation time, conditions may be applied to the HCBS Medicaid waiver provider agreement that include, but are not limited to, reduction of consumers under care or increased fire protection.

(c) Within 24 hours of arrival, any new consumer or caregiver will:

- (1) Be shown how to respond to a fire alarm;**
- (2) Be shown how to evacuate from the home in an emergency; and**
- (3) Receive an orientation to basic fire safety.**

(d) The provider will provide, keep updated and post a floor plan containing the following:

- (1) Room sizes;**
- (2) Location of each consumer bedroom;**
- (3) Fire exits;**
- (4) Caregiver's sleeping room;**
- (5) Smoke detectors; and**
- (6) Fire extinguishers.**

A copy of this drawing will be submitted with the application and updated to reflect any change.

(e) There must be a second safe means of egress. Providers whose sleeping rooms are above the first floor may be required to demonstrate a fire exit drill from

that room, using the secondary egress, at the time of enrollment, renewal, or inspection.

(f) There will be at least one plug-in rechargeable flashlight available on each floor for emergency lighting that is checked on a monthly basis.

(g) Smoking regulations will be adopted to allow smoking only in designated areas. Smoking will be prohibited in sleeping rooms, homes where oxygen is used, or in garages where flammable materials are stored. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

Rule 6. Record keeping and documentation

455 IAC 3-6-1 Provider enrollment and certification documentation

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) The provider must maintain a file that includes copies of all the documentation required for the provider enrollment and certification process, as well as the documentation to substantiate that these requirements are maintained. These will include, but are not limited to, the following:

- (1) Emergency plans and contact numbers;**
- (2) Training certifications for all caregivers;**
- (3) The provider's Medicaid provider agreement;**
- (4) Insurance documentation; and**
- (5) Required health and safety records.**

(b) In addition, the provider will maintain current and comprehensive consumer files.

455 IAC 3-6-2 Consumer personal files

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5; IC 12-10-13

Sec. 2. (a) The provider must create and maintain a personal file for each consumer. This file must include all prudent, personal information about the consumer, including but not limited to the following:

- (1) Name;**
- (2) Date of birth**
- (3) Social security number;**
- (4) Family contact;**
- (5) Medical information;**
- (6) Current plan of care; and**
- (7) Documentation of all reported incidents involving the health and safety of the consumer.**

(b) The provider is to be aware of and understand all privacy and Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations concerning consumer's records and information.

(c) This file must also contain documentation which indicates whether or not a consumer has the following:

- (1) Advance directives;**
- (2) Living will;**
- (3) Power of attorney;**
- (4) Health care representative;**
- (5) Do not resuscitate (DNR) order; or**
- (6) Letter of guardianship.**

If these documents exist, copies must be present in the file.

(d) The provider is required to document a consumer progress or status note at least once every seven (7) days.

(e) The provider must place a copy of the individual plan of care in the consumer's file.

(f) Consumer files for HCBS Medicaid waiver program consumers maintained by the provider must be readily available at the AFC home for all caregivers and to representatives of FSSA waiver services conducting inspections or investigations, as well as to consumers, their authorized representative or other legally authorized persons. The ombudsman has access to all consumer and home files with consumer oral or written consent, and within the guidelines federal and state laws.

(g) Information related to a consumer must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these standards.

455 IAC 3-6-3 Consumer financial records

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. (a) If the provider manages or handles a consumer's money, a separate account record must be maintained in the consumer's name. The provider must not under any circumstances commingle, borrow from, or pledge any funds of a consumer.

(b) The personal needs allowance for an HCBS Medicaid waiver consumer is to be used at the discretion of the consumer.

(c) Providers or caregivers must not influence, solicit from, or suggest to any consumer that they or their family give the caregiver or the caregiver's family money or property for any purpose. The provider or caregiver or the caregiver's family must not accept gifts or loans from the consumer or the consumer's family.

(d) Providers must maintain the following financial records on the premises with the consumer records:

(1) Agreements with:

- (A) FSSA waiver services;**
- (B) the consumer;**
- (C) the consumer's relatives; or**
- (D) the person or persons paying for care;**

along with any financial planning sheets if pertinent; and

(2) Consumer account record of expenditures if the provider manages or handles a consumer's money. This record must show amounts and sources of funds received and issued to, or on behalf of, the consumer. Any purchases made on behalf of a consumer, must be documented by receipts.

455 IAC 3-6-4 Liability insurance

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. The provider must maintain liability insurance of at least one hundred thousand dollars (\$100,000), as described in 460 IAC 1.2-12-1(4), to cover damage or loss of the consumer's property due to negligence of the insured or injury or harm to the consumer resulting from the provision of services or failure to provide needed services and incidents occurring in the AFC home or on the home's premises.

455 IAC 3-6-5 Consumer contract

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. (a) Prior to admission, the AFC services provider must complete a consumer contract with each potential consumer or his or her designated representative. The contract must cover the following:

- (1) Name of the provider;**
- (2) Street address;**
- (3) Mailing address of the AFC home;**
- (4) The term of the contract;**
- (5) A description of the services to be provided to the consumer;**
- (6) A description of additional services provided outside of the waiver program, but for which provider may assist by arrangement of appointments or provision of transportation;**
- (7) A description of the process through which the contract may be modified, amended, or terminated;**
- (8) A description of the complaint resolution process available to the consumers;**
- (9) The name of the consumer's designated representative, if applicable; and**

(10) Any specific information related to any house rules, which must not be in conflict with the consumer rights as defined in this article or the family atmosphere of the home. House rules are subject to review and approval by FSSA waiver services prior to HCBS Medicaid waiver program enrollment.

(b) The consumer contract is to be reviewed annually by the case manager, provider, caregiver, and consumer and/or the consumer's family members.

(c) Consumers must not be liable for damages considered normal wear and tear. The AFC provider will not include any provision in a consumer agreement or disclosure statement that is in conflict with this article or other applicable law, and must not ask or require a consumer to waive any of the consumer rights or the facility's liability for negligence. The provider must retain a copy of the signed and dated consumer agreement and provide copies to the consumer or to his or her designated representative and to FSSA waiver services upon request.

(d) The consumer contract will include a statement of the consumer rights listed in 455 IAC 3-14, to be signed by the provider and consumer. The AFC service provider must provide a copy of consumer rights prior to execution of the consumer contract and provide a copy of the consumer rights to anyone requesting a copy.

Rule 7. Primary and substitute caregiver requirements

455 IAC 3-7-1 AFC provider's responsibility

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) It is the AFC provider's responsibility to provide assurances to the state that any subcontractors or employees that are employed in order to provide AFC services meet all caregiver requirements.

(b) When the primary caregiver is not the actual provider with whom the waiver provider agreement is signed, the provider must maintain in the provider file all necessary documentation in accordance with this article.

(c) The requirements of all caregivers, including primary and substitute caregivers will be the same as those for the provider, other than the necessity to provide proof of financial stability, homeownership and liability insurance, and complying with home inspection requirements.

(d) The requirements for the safety of the physical dwelling that is the AFC home falls under the responsibilities of the homeowner, who must be the provider.

455 IAC 3-7-2 Primary and substitute caregiver requirements

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. (a) The primary caregiver will reside in the home owned by the provider or in any home in which the provider does not reside. The caregiver's family unit may reside in the home along with the caregiver and the consumers. Just as with the provider, all caregivers must be twenty-one (21) years of age or older and meet all applicable provider requirements. The provider must ensure that a qualified caregiver is present and available at the home at all times when consumers are in the home. A consumer must not be left in charge in lieu of a caregiver.

(b) Substitute caregivers, persons other than the provider or primary caregiver, must meet all applicable standards and requirements of this article.

(c) Substitute caregivers must:

- (1) Have a clear understanding of job responsibilities;**
- (2) Have knowledge of consumer's care plans; and**
- (3) Be able to provide the care specified for each consumer's needs.**

Rule 8. Training requirements for all caregivers

455 IAC 3-8-1 Training requirements

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) The provider will keep documentation of the training and orientation of primary and substitute caregivers. A provider is responsible for the supervision, training, and overall conduct of caregivers when acting within the scope of their role in AFC service provision, or when present in the home.

(b) Prior to admission of the first HCBS Medicaid waiver consumer to the AFC home, and annually thereafter, the provider, primary caregiver, and any substitute caregivers must complete both a basic first aid course and cardiopulmonary resuscitation (CPR) course. Documentation of training must be kept in the facility's records including the date of training, subject matter, name of agency or organization providing training and number of classroom hours.

(c) FSSA waiver services may grant an exception to the training requirements established in this article for a substitute caregiver who holds a current Indiana license as a health care professional such as a physician, registered nurse, or licensed practical nurse. The requirement for an annual CPR course training must not be waived.

(d) The provider must orient any substitute caregiver to the home and to the consumers, to include at least the following:

- (1) Location of fire extinguisher;**
- (2) Demonstration of evacuation procedures;**
- (3) Location of consumer's records;**
- (4) Location of telephone numbers for the consumer's physicians, the provider and other emergency contacts;**

- (5) Location of medications and key for medication cabinet;**
- (6) Introduction to consumers; and**
- (7) Instructions for caring for each consumer, including health care and consumer preferences in food, daily routine, and other issues that are important to that individual's quality of life.**

Rule 9. Level of service and payment

455 IAC 3-9-1 Levels of service

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) AFC service will be provided and paid according to three (3) levels of service, with level 1 being the least impaired and level 3 the most impaired or dependent.

(b) The level of service assessment tool for AFC service will be based on and utilize the point system definitions as defined in section 3 of this rule.

455 IAC 3-9-2 Initial enrollment levels of care; provision of higher level services

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. (a) AFC providers will provide in home services to those consumers who are determined to meet any of the three care levels, and whose needs can be met in an AFC setting. They can choose to serve one level or any combination of levels as long as the provider can meet the individual's needs.

(b) Safeguards must be in place to ensure that the provider can handle the increased medical issues. The provider must have the ability to provide the higher level of care that the individual consumer requires through, professional licensure, previous experience working with individuals with a similar level of care or other means appropriate to the consumer.

(c) Providers may admit or continue to care only for consumers whose impairment levels are within the classification level of the home.

(d) A provider may request a change in service level at any time during the year. The request must specify the requested change, and the reason it is desired, in writing. An assessment will be completed when there have been significant changes in condition.

455 IAC 3-9-3 AFC level of service assessment tool

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. (a) The AFC level of service assessment tool is used to determine level of service eligibility. Some items may become disqualifiers for admission, including the following:

- (1) If a physician determines that it is unsafe for the consumer; or**
- (2) If the provider determines that the consumer will not be a good match for the home.**

(b) The AFC assessment tool will assess consumer's level of service needs based on a point system as follows:

Level 1-Total points 36 or fewer

Level 2-Total points 37-60

Level 3-Total points 61-75.

(c) Following approval of AFC services and admission to an AFC home, the case manager must conduct and document a review of the consumer's status on-site at least once every ninety (90) days. Reassessment may occur more frequently if needed as determined by the case manager, caregiver or provider. The level of service assessment will be completed and documented as often as necessary, and at minimum, as part of the annual level of care eligibility re-determination process. Providers are encouraged to support a consumer's choice to remain in his or her living environment as long as possible.

455 IAC 3-9-4 Base rate; payments based on level of service

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. (a) An all-inclusive daily base rate for each of the three (3) service levels will be established by OMPP and will be paid to the provider for each approved HCBS Medicaid waiver consumer. Provider payment rates will be based on the level of service a consumer requires. The service payments are for the consumer's care by the provider only and exclude room and board.

(b) This AFC service rate will include the following:

- (1) Personal care and services;**
- (2) Homemaker, chore, attendant care and companion services;**
- (3) Medication oversight, to the extent permitted under state law; and**
- (4) Transportation.**

(c) The rate will be considered payment in full for all services provided, except room and board. Separate payment will not be made for homemaker or chore services furnished to an individual receiving AFC services, or for transportation services, since these services are integral to and inherent in the provision of AFC services. For those consumers receiving AFC as a waiver service, the only other waiver service allowed is case management. Consumers will still be eligible to use non-waiver Medicaid prior authorization services while receiving the AFC service.

455 IAC 3-9-5 Consumer's contribution

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. The consumer is responsible for his or her room and board. These amounts are defined and updated according to the room and board definition and amounts prescribed by the Social Security Administration. This payment is to be paid directly to the provider by the consumer or his or her guardian. AFC providers must be willing to accept the current SSI rate (minus the consumer's personal needs allowance) or a section 8 housing voucher as payment for the consumer's monthly room and board.

Rule 10. Care and service standards

455 IAC 3-10-1 Compliance with other law

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5; IC 25-22.5-1

Sec. 1. Any services performed under the HCBS Medicaid waiver programs for persons who are aged or medically disabled must comply with the prohibitions regarding the practice of medicine under IC 25-22.5-1.

455 IAC 3-10-2 Scheduling availability

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. Providers, with the assistance of the case manager and consumer, must create and make readily accessible to the consumer and caregiver a calendar for the consumer which will include scheduled activities, all medical appointments and other services, and medication chart, if indicated.

455 IAC 3-10-3 Services that must be provided

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. The AFC service will include the provision of the following:

- (1) Personal care and services;**
- (2) Homemaker, chore, attendant care and companion services; and**
- (3) Medication oversight, to the extent permitted under state law.**

455 IAC 3-10-4 Services allowed to be provided

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. (a) The following and similar activities are allowed to be provided:

- 1) Homemaker activities essential to the consumer's health care needs to prevent or postpone institutionalization when provided during the provision of other attendant care services.**

2) Assistance, as defined in the plan of care, which may include the following:

- (A) Personal care (bathing; partial bathing; oral hygiene; hair care; shaving; hand and foot care; dressing; clipping hair; and application of cosmetics);**
- (B) Mobility (proper body mechanics; transfer between bed and chair; and ambulation that does not include assistive devices);**
- (C) Elimination (assists with bedpan, bedside commode, toilet; incontinent or involuntary care; and emptying urine collection and colostomy bags);**
- (D) Nutrition (meal planning in accordance with special diets, preparation, clean-up);**
- (E) Safety (use of principles of health and safety in relation to self and consumer; identify and eliminates safety hazards; practice health protection and cleanliness by appropriate techniques of hand washing; and waste disposal and household tasks);**
- (F) Assistance with correspondence and bill paying;**
- (G) Escorting individuals to doctor appointments and community activities that are therapeutic in nature or that assist with developing or maintaining natural supports.**

(b) Attendant care services must follow a written plan of care addressing specific needs determined by the consumer's assessment. Attendant care services will not be provided to medically unstable consumers as a substitute for care provided by a registered nurse, licensed practical nurse, licensed physician or other health professional.

455 IAC 3-10-5 Additional services that may be provided

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. (a) In addition to the services in sections 3 and 4 of this rule, and to the extent not already covered under those sections, the consumer may require assistance in the following areas:

- (1) Social and recreational programming;**
- (2) Eating;**
- (3) Dressing;**
- (4) Grooming and personal hygiene;**
- (5) Bowel and bladder care (incontinence);**
- (6) Walking;**
- (7) Getting in and out of bed;**
- (8) Getting in and out of seating;**
- (9) Medical appointments; and**
- (10) Transportation.**

455 IAC 3-10-6 Transportation service provision

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 6. Providers must be able to provide or arrange for appropriate, safe and reasonable consumer transportation requests for community and social activities that are therapeutic in nature or that assist in maintaining or developing natural supports. Providers will see that consumers have appropriate, safe and reasonable transportation for all medical appointments. There is no reimbursement for travel, as this is a part of AFC service provision. If transportation requests from the consumer or consumer's family exceed what the caregiver or provider deems appropriate, this issue may be discussed with the waiver service case manager, and this issue may need to be addressed in the consumer agreement.

455 IAC 3-10-7 Medications, treatments and therapies

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 7. (a) Provision of medication management services must be at the direction of a consumer who is competent, but otherwise unable to accomplish the task him/herself due to an impairment or physical infirmity. In the event a consumer is not competent, or in instances where competence is in question, a competent individual who is responsible for the health and care of the consumer may direct the appropriate assistance for the consumer.

(b) The provider and caregivers must demonstrate an understanding of each consumer's medication regimen, including the following:

- (1) The reason for which the medication is used;**
- (2) Medication actions;**
- (3) Specific instructions; and**
- (4) Common side effects.**

(c) The provider must obtain and place a written, signed order in the consumer's record for any medications that have been prescribed by the physician or nurse practitioner. Orders must be carried out as prescribed unless the consumer or the consumer's legal representative refuses to consent. The physician or nurse practitioner must be notified if a consumer refuses to consent to an order.

(d) Changes to an order may not be made without a physician or nurse practitioner's order. Order changes obtained by telephone must be documented by filing the pharmacy receipt detailing specifics regarding the prescription.

(e) Over-the-counter medication requested by the consumer must be addressed in the plan of care and must be reviewed by the consumer's physician, nurse practitioner, or pharmacist as part of developing the care plan and at time of care plan review.

(f) Prescription medications ordered to be given "as needed" or "p.r.n." must have additional directions which show what the medication is for and

specifically when, how much, and how often it may be administered. These written directions may be given by any of the following:

- (1) A physician;
- (2) Nurse practitioner;
- (3) Registered nurse; or
- (4) Pharmacist.

(g) Consumers must have a physician's or nurse practitioner's written order of approval to self-medicate. Persons able to handle their own medical regimen will keep medications in their own room in a small storage area that can be locked. The provider will notify the physician or nurse practitioner should the consumer show signs of no longer being able to self-medicate safely. Each consumer's medication container will be clearly labeled with the pharmacist's label or be in the original labeled container or bubble pack and must be kept by the consumer or by primary caregiver, depending on the individual's need and abilities. If consumers manage their own medicine regimen, caregivers must be well informed of medication management to assure that assistance, when needed, is provided.

(h) Both caregiver and consumer must have ready access to the consumer's medications, but consumers must not have access to medications of the provider or other household members. Individuals, other than the caregiver, may not have access to each consumer's locked medication. Over-the-counter medications in stock bottles, with original labels, may be used in the home. Unused, outdated, or discontinued medications must not be kept in the home and must be disposed of according to the pharmacist's recommendations. Disposal of medications will be documented on the medication administration record or in the consumer's record.

(i) For some consumers, it may be necessary that the provider oversees the consumer's medicine intake. The provider may set up each consumer's medications for up to seven days in advance (excluding p.r.n. medications) by using a closed container manufactured for that purpose. If such a container is used, each consumer will have her or his own container with compartments for the days and times of the day the medications are to be given. The container must be clearly labeled with the following:

- (1) Consumer's name;
- (2) Name of each medication;
- (3) Time to be given;
- (4) Dosage or amount;
- (5) Route (if other than oral); and
- (6) Description of each medication.

(j) With consumers who require the level of assistance with their medication noted in subsection (i), a current, written medication administration record must be kept for each consumer and must identify all of the medications consumed by the consumer, including over-the-counter medications and prescribed dietary supplements. The document record will indicate the following:

- (1) Medication name;
- (2) Dosage;

- (3) Route (if other than oral);
- (4) Date and time to be given; and
- (5) Signature of caregiver providing assistance.

FSSA waiver services provides a suggested format for this record.

(k) A discontinued or changed medication order will be marked and dated on the medication administration record as discontinued. The new order will be written on a new line showing the date of order. If a consumer misses or refuses a medication, treatment, or therapy, the initials must be circled and a brief but complete explanation must be recorded on the back of the medication record. As needed (p.r.n.) medication must be documented with the following:

- (1) The time;
- (2) Dose;
- (3) Reason the medication was given; and
- (4) The outcome.

455 IAC 3-10-8 Standards for psychoactive medications

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 8. (a) Providers will not request a psychoactive medication to treat a consumer's behavioral symptoms without a consultation from the physician, nurse practitioner, registered nurse or mental health professional. The consultation will include a discussion of alternative measures to medication use including behavioral interventions.

(b) These medications may be used only after documenting all other alternative considerations and only when required to treat a consumer's medical symptoms or to maximize a consumer's physical functioning.

(c) Psychoactive medications must never be given to discipline a consumer or for the convenience of the AFC home. Psychoactive medications as defined in this article may be used only pursuant to a prescription that specifies the circumstances, dosage, and duration of use.

(d) The provider and all caregivers must know the following for each psychoactive medication used:

- (1) Specific reasons for the use of the psychoactive medication for an individual consumer;**
- (2) The common side effects; and**
- (3) When to contact the physician, nurse practitioner, or mental health professional regarding those side effects.**

(e) All caregivers must also know the behavioral interventions to be used along with the medication.

(f) The individual completing the initial assessment must determine the frequency of the reassessment of the psychoactive medication use. The medication

usage is included as part of that consumer's individual plan of care, and includes other environmental and behavioral strategies or modifications to address any behavioral symptoms for which the psychopharmacological medication has been prescribed.

(g) Prior to making a request to prescribe or increase psychoactive drugs, other accepted interventions must be attempted, if possible, and documented. Information regarding resources is available from the ombudsman. Any change in medication will only occur when the prescribing physician determines it is medically warranted for the consumer.

455 IAC 3-10-9 Restraint prohibition

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 9. (a) The consumer must be free from chemical restraint at all times.

(b) Involuntary seclusion can only be used to prevent the spread of infection as ordered by a physician for a medical diagnosis.

(c) Physical restraint is not allowed in an AFC home. If consumer loss of control warrants this level of restraint, the caregiver should call for emergency assistance.

455 IAC 3-10-10 Provision of care

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 10. Care and supervision of consumer will be in a home-like atmosphere and will be appropriate to the:

- (1) needs;**
- (2) preferences;**
- (3) age; and**
- (4) condition**

of the individual consumer.

455 IAC 3-10-11 Appropriate training

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 11. The training of the provider and staff will be appropriate to the:

- (1) age;**
- (2) care needs; and**
- (3) condition**

of the consumers. If a consumer has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure that it is implemented as instructed.

455 IAC 3-10-12 Notice of health status changes

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 12. The provider is responsible for promptly informing the consumer's:

- (1) physician or nurse practitioner;**
- (2) family;**
- (3) legal representative; and**
- (4) case manager**

of changes in the health status of the individual. Changes in the consumer's condition must be documented and appropriate medical assistance obtained.

455 IAC 3-10-13 Serious medical emergency requirements

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 13. (a) In the event of a serious medical emergency, the caregiver will call 911 or the appropriate emergency number for their community. The physician or nurse practitioner, family or consumer representative, and the case manager (when applicable) must also be called. The provider will have copies of any advance directives, do not resuscitate (DNR) orders, and pertinent medical information available when emergency personnel arrive.

455 IAC 3-10-14 Consumer activities

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 14. Providers must make available activities each week that are of interest to the consumers. Activities must be oriented to individual preferences as indicated in the consumer's care plan. Documentation of consumer activity participation should be recorded in the weekly status update in the consumer's file. Consumer expectations may need to be addressed in the consumer contract on a case by case basis.

455 IAC 3-10-15 Consumer moves, transfers, and discharges; notice; exceptions

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 15. (a) A consumer may not be involuntarily moved from the AFC home, to another room within the home, or transferred to another AFC home for a temporary stay without 30 days' written notice to the consumer regarding the consumer move, transfer or discharge.

(b) The notification must state the reasons for the move or transfer and the consumer's right to object to the move or transfer. The notification is to be provided to the following:

- (1) HCBS Medicaid waiver case manager;**
- (2) The consumer's legal representative, if any;**

- (3) The consumer's guardian, if any;
- (4) The ombudsman; and
- (5) The division.

(c) Exceptions to the requirements in subsections (a) and (b) include situations in which undue delay might jeopardize the health, safety, or well-being of the consumer or others, and are outlined in 460 IAC 1.2 and the FSSA DA provider agreement.

(d) Consumers may be moved or transferred involuntarily without the 30 day notice from the provider for only the following reasons:

- (1) Medical emergencies;
- (2) Behavior which poses an imminent danger or harm to self, others or caregivers;
- (3) Loss of eligibility for the HCBS Medicaid waiver program;
- (4) The consumer's care needs exceed the ability (taking into account the provider's own health) or classification of the provider;
- (5) The provider has had its HCBS Medicaid waiver provider agreement revoked or not renewed.

(e) If the consumer has a medical emergency or needs to be admitted to a hospital, the provider must notify the consumer's physician and case manager as soon as reasonable in order to make the necessary arrangements for the provision of on-going care.

(f) A consumer that is to be involuntarily transferred or refused the right of return or readmission may appeal the determination under 405 IAC 1.1.

Rule 11. Admission requirements

455 IAC 3-11-1 Pre-placement meeting

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. Prior to placement, the provider, with the assistance of the case manager, will meet with potential consumers who are interested in residing in this AFC home. The provider or primary caregiver makes the final decision on who may live in their home.

455 IAC 3-11-2 Obtaining consumer information

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. (a) The provider must obtain and document general information regarding the consumer after they have chosen to live there. The information must include the following:

- (1) Names, addresses, and telephone numbers of relatives;

- (2) Case managers;
- (3) Medical and mental health care providers;
- (4) Date of admission; and
- (5) The consumer's:
 - (A) Social Security number;
 - (B) medical insurance number;
 - (C) birth date;
 - (D) most recent prior residence;
 - (E) hospital preference (if known); and
 - (F) mortuary (if known).

(b) The provider must also obtain and place in the record any medical information available including a history of the following that may be pertinent to the consumer's care:

- (1) Accidents;
- (2) Illnesses;
- (3) Impairments; or
- (4) Mental status.

455 IAC 3-11-3 Consumer documents

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. (a) The provider must ask for copies of the following documents and the provider must document whether or not the consumer has them:

- (1) Advance directive;
- (2) Living will;
- (3) Power of attorney;
- (4) Health care representative;
- (5) Do not resuscitate (DNR) order; or
- (6) Letters of guardianship.

(b) Any copies collected must be placed in a prominent place in the consumer file and sent with the consumer when transferred for medical care.

455 IAC 3-11-4 House rules and consumer rights

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. The provider must discuss with the consumer and his or her representative, if any, the consumer rights set forth in 455 IAC 3-14 and written house rules. The discussion must be documented by having the consumer sign and date or acknowledge in writing the house rules and the consumer rights on a provider created form and this form will be filed in the consumer's file.

455 IAC 3-11-5 Initial assessment process

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. (a) During the initial phase following the consumer's admission to the home, the provider must continue the assessment process, which includes documenting the consumer's expressed preferences and care needs. This information should be presented to the case manager at the 90-day review.

(b) The assessment must include observations of the consumer and the review of information obtained from the screening assessment process.

(c) The provider must promptly report significant changes in the consumer's condition to the following:

- (1) The HCBS Medicaid waiver case manager;**
- (2) Physician; and**
- (3) The consumer or family member, or both, as appropriate.**

455 IAC 3-11-6 Prohibition of certain restrictions

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 6. (a) The provider must not restrict the ability of a consumer to engage in activities away from the AFC services provider. Ability to handle independent activities such as going for walks, etc., may vary from one consumer to another and should be addressed in the consumer contract.

(b) Except to protect the rights and activities of other consumers and residents, the AFC services provider may not restrict the ability of the consumer to have visitors and to receive family members and guests.

(c) The AFC service provider may not:

- (1) Restrict the ability of a consumer to use a:**
 - (A) home health agency;**
 - (B) home health provider; or**
 - (C) case management service of the consumer's choice; or**
- (2) Require a consumer to use home health services.**

455 IAC 3-11-7 Notification of caregiver changes

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 7. The provider must notify FSSA waiver services immediately of any primary caregiver changes or issues and work with the case manager and FSSA waiver services to assure that the consumer will continue to receive the necessary care.

455 IAC 3-11-8 Adaptation to meet consumer's needs

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 8. The provider must provide the range of services required to meet the increasing or changing needs of consumers as they age in place to the maximum extent permitted by these standards.

Rule 12. Provider capacity

455 IAC 3-12-1 Provider capacity

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) The individuals residing in an AFC Home may include the following:

- (1) AFC consumers;**
- (2) The primary caregiver; and**
- (3) Those individuals who are related to and considered to be the family unit of the primary caregiver.**

(b) The number of consumers permitted to reside in a home will be determined by the ability of the caregivers to meet the care needs of the consumers living in that home. Determination of capacity must include consideration of total household composition including children and relatives requiring care and supervision. The number of caregiver family members will be reviewed by FSSA waiver services for the appropriateness of match with the individual consumer's needs. These determinations will be made on a case by case basis.

(c) There must be no more than four (4) AFC consumers placed in an AFC home including private pay consumers and Medicaid waiver consumers.

Rule 13. Consumer Eligibility Requirements

455 IAC 3-13-1 Medical and financial eligibility

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) For purposes of this rule, “nursing facility level of care” means care for patients with long term illnesses or disabilities which are relatively stable, or care for patients nearing recovery and discharge who continue to require some professional medical or nursing supervision and attention.

(b) The FSSA waiver services will determine consumer eligibility based on the determination that the consumer meets nursing facility level of care and Medicaid requirements. Consumers who are eighteen (18) years of age or older and are eligible and approved for the A&D waiver may be eligible for this service.

455 IAC 3-13-2 Assessment tool for consumer screening

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. (a) Consumers who seek AFC as a service through the FSSA waiver services Medicaid waiver program must contact the local AAA to complete the waiver application. A case manager will be assigned and will complete an eligibility assessment, which will determine if the consumer requires a level of care provided by a nursing facility as described in 405 IAC 1-3-1 and 1-3-2. The nursing facility level of care eligibility assessment must be conducted prior to the start of the HCBS Medicaid waiver and at least annually thereafter.

(b) Prior to the start of AFC services, the case manager will complete an AFC level of service assessment. The level of service assessment tool must assess the consumer's needs in multiple areas, including the following:

- (1) Expressive and receptive communication;**
- (2) Orientation;**
- (3) Adaptation to change;**
- (4) Judgment;**
- (5) Memory;**
- (6) Awareness of own needs;**
- (7) Behavior;**
- (8) Wandering;**
- (9) Night needs;**
- (10) Feeding and nutrition;**
- (11) Transferring;**
- (12) Dressing and undressing;**
- (13) Bathing;**
- (14) Personal hygiene;**
- (15) Toileting;**
- (16) Bladder and bowel control;**
- (17) Mobility; and**
- (18) Medication treatment procedures.**

(c) The level of service assessment will include interviews with:

- (1) The prospective consumer;**
- (2) His or her family; and**
- (3) Prior care providers as appropriate.**

(d) The interviews should also include any:

- (1) physician;**
- (2) nurse practitioner;**
- (3) registered nurse;**
- (4) pharmacist;**
- (5) therapist; or**
- (6) other health or mental health professional;**

involved in the care of the consumer.

(e) Once complete, a copy of the level of service assessment document will be given to the prospective consumer or his or her representative, and a copy will be

placed in the consumer file should the prospective consumer become a resident in the home.

(f) The level of service assessment and individual plan of care must be completed prior to the consumer's admission into an AFC home.

Rule 14. Consumer Rights

455 IAC 3-14-1 Consumer rights

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. The fundamental rights of individuals are not diminished by virtue of residence in an AFC home. The consumer maintains all citizen rights afforded under state and federal law. The AFC service provider must respect all rights recognized by law with respect to:

- (1) discrimination;**
- (2) service decisions (including the right to refuse services);**
- (3) freedom from abuse and neglect;**
- (4) privacy;**
- (5) association; and**
- (6) other areas of fundamental rights, including but not limited to, the right to:**

- (A) Participate in planning his or her care and treatment or changes in care and treatment.**
- (B) Privacy and confidentiality of personal and medical records;**
- (C) Privacy in visits and written and oral communication;**
- (D) Send and receive mail unopened;**
- (E) Receive any literature or statement of service that accompany Medicaid payment for their care;**
- (F) Choose activities, schedules and health care consistent with his or her interests;**
- (G) To be free from physical or chemical restraints not required to treat his or her medical symptoms;**
- (H) Access to his or her medical records;**
- (I) Handle his or her own funds or determine who will handle those funds; and**
- (J) Have immediate access to his or her personal funds if the consumer has given authority to the provider to handle the funds.**

(b) Every consumer receiving services in the AFC setting may contact their local or state ombudsman if they have concerns about the provision of this service. The provider is obligated to make available to the consumer the contact information, including phone number, for the ombudsman, as well as for other entities that may assist in ensuring the ongoing rights of the client are upheld. These may include, but are not limited to, the following:

- (1) Police;**

- (2) Local AAA office;
- (3) APS; and
- (4) Legal services.

(c) AFC providers must accord the consumers living with them the basic rights enjoyed by all individuals in this state, including but not limited to the following:

- (1) Freedom from:
 - (A) verbal;
 - (B) sexual;
 - (C) physical;
 - (D) emotional;
 - (E) financial; and
 - (F) mental

abuse;

- (2) Freedom from physical or chemical restraints for the purposes of discipline or convenience, and not required to treat the consumer's medical symptoms;
- (3) Freedom to have records kept confidential and released only with a consumer's consent consistent with state law; and
- (4) Freedom to have a service animal, consistent with the "reasonable accommodations" clause of the Fair Housing Act.

Rule 15. Case Management Responsibilities

455 IAC 3-15-1 Components of case management

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) The components of case management are:

- (1) Level of care assessment;
- (2) Plan of care development;
- (3) Monitoring; and
- (4) Advocacy on behalf of the consumer.

(b) Case management services for persons who are on a Medicaid waiver are provided by the FSSA Division of Aging certified case managers. The sixteen local AAAs serve as the single point of entry for the Medicaid waivers that require a nursing facility level of care. A case manager from the AAA will be assigned to an applicant. After an applicant has been determined to meet eligibility criteria and approved to receive Medicaid HCBS waiver services, he or she may choose to retain their current AAA case manager or choose a non-AAA or independent case manager, for on-going case management services.

455 IAC 3-15-2 Level of care determination; physician certification

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. (a) The case manager will make level of care determinations for all applicants for this service. This process will utilize the current case management database system.

(b) The 450B physician certification for long-term care services must be completed for new Medicaid waiver consumers. The physician must indicate that a placement in an AFC home would be a “safe and feasible” placement for the consumer.

455 IAC 3-15-3 Development of plan of care

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. (a) An individual plan of care will be developed by the case manager in full cooperation with the consumer or guardian and the provider. This plan of care will describe the medical and other services (regardless of funding source) to be furnished, their frequency, and the type of provider who will furnish each.

(b) All services will be furnished pursuant to a written plan of care and cost comparison budget. The plan of care and cost comparison budget will be subject to the approval of the FSSA waiver services waiver specialists.

(c) Based on the assessment and the authorized plan of care, the individual plan of care will be completed and documented within the initial fourteen (14) day period.

(d) The individual plan of care must support the principles of dignity, privacy, and choice in decision-making, individuality, and independence.

(e) The individual plan of care must:

(1) Describe the consumer’s:

(A) Capabilities;

(B) Needs; and

(C) Preferences; and

(2) Define the division of responsibility in the implementation of services.

(f) The individual plan of care must address, at a minimum, the following elements:

(1) Assessed health care needs;

(2) Social needs and preferences;

(3) Personal care tasks; and

(4) If applicable, limited nursing and medication services, including frequency of service and level of assistance.

455 IAC 3-15-4 Review and update of plan of care

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. (a) The individual plan of care must be reviewed by the provider, the consumer or the consumer's representative, and the HCBS Medicaid waiver case manager, and updated at least every ninety (90) days, or more often as the consumer's condition changes or as determined by the case manager, provider or consumer.

(b) A review note with the date and reviewer's signature must be documented in the record at the time of the review.

(c) If the individual plan of care contains many changes and becomes less legible, a new individual plan of care must be written.

(d) The provider must provide the consumer, HCBS Medicaid waiver case manager, and AAA, with a copy of the individual plan of care, and place a copy in the consumer file.

(e) The plan of care for the consumer must be cost neutral. Medicaid waivers in general require that the plan of care must not exceed the cost of care if provided through a nursing facility. This is also explained in the A & D waiver. The initial AFC level of service assessment will be performed by the AAA waiver case manager with input from the applicant or guardian.

(f) Periodic reviews will take place to determine the appropriateness and adequacy of the services with regard to the consumer's needs. The consumer's case manager along with other interested persons, as appropriate, will conduct an on-site face-to-face review of the level of services assessment and the delivery of services under the plan of care at least every ninety (90) days. This visit will occur in the home setting and will include a general consumer status review that will be completed by the case manager, with input from consumer, guardian, and provider. The form will review indicators of health and safety, and any issues identified as problems will be immediately reported to the BQIS. A consumer may move from one level of service to another level (as determined by the AFC level of service assessment) with the same provider, as long as the provider is approved for that level of service.. When there is need to change the level of service or a provider, an updated plan of care and cost comparison budget will be submitted. It is the case manager's responsibility to assure the plan of care and comparison budget reflects the appropriate level of service that meets the needs of the consumer in an efficient and effective manner.

455 IAC 3-15-5 Annual reassessments of annual plan of care and cost comparison budget

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. (a) Each consumer's plan of care and cost comparison budget will remain in effect for a period not to exceed twelve (12) months.

(b) The plan of care and cost comparison budget must be submitted via the current state approved electronic data base, to the state waiver unit for review at least six (6) weeks prior to expiration of the current plan but no earlier than two (2) months prior to expiration of the current plan. A new level of care assessment must be completed as well as new levels of service assessment.

455 IAC 3-15-6 Electronic database

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 6. All documentation by a case manager must be entered in the current state approved electronic database within the required time frames.

455 IAC 3-15-7 Choice of providers required

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 7. The case manager must assure that each consumer is given the free choice of all qualified providers, including case managers. The consumer must sign the freedom of choice form. This must be documented in the state approved electronic database.

Rule 16. Quality Assessment and Provider Compliance

455 IAC 3-16-1 Monitoring for quality assurance; inspections

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) FSSA waiver services must conduct an inspection of the AFC home prior to issuance of a HCBS Medicaid waiver provider agreement, and will conduct an announced or unannounced inspection annually.

(b) Inspection may also take place upon the following conditions:

(1) Receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of consumers; or

(2) Anytime FSSA waiver services has reason to believe a home:

(A) Has violated a condition of the Medicaid waiver provider agreement or a provision of this article; or

(B) Is operating without a HCBS Medicaid waiver provider agreement.

(c) Inspections may also take place for the purpose of routine monitoring of the consumer's care.

(d) Once an on site review has taken place, another inspection may be necessary to determine if cited deficiencies have been corrected.

(e) Mini inspections will also be completed during case manager visits, with completion of health and safety indicator checklist to identify any concerns.

(f) Inspectors will respect the private possessions of consumers and other consumers, providers and staff while conducting an inspection.

455 IAC 3-16-2 Monitoring for quality assurance; access to records

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 2. Representatives of FSSA waiver services must have full access and authority to examine and copy AFC home and consumer records required to be maintained by the provider. The provider will be responsible for making any copies requested. Copying of records will be done in a manner that is compliant with HIPAA rules.

455 IAC 3-16-3 Monitoring for quality assurance; access to premises and equipment

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. Representatives of FSSA waiver services must have access to inspect the physical premises, including the buildings, grounds, equipment, and any vehicles relating to HCBS Medicaid waiver program participation and complaint investigations in the AFC home.

455 IAC 3-16-4 Monitoring for quality assurance; authority to interview

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 4. Representatives of FSSA waiver services must have authority to interview the provider, primary caregiver, substitute caregivers, and consumers. Interviews must be confidential and conducted privately.

455 IAC 3-16-5 Monitoring for quality assurance; authorized entrance

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 5. Providers must authorize caregivers to permit entrance by the FSSA waiver services for the purpose of inspection, investigation, and other duties within the scope of their authority.

455 IAC 3-16-6 Monitoring for quality assurance; advance notice not required

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 6. Representative of FSSA waiver services must have authority to conduct inspections with or without advance notice to the provider, staff, or a consumer of the home. FSSA waiver services may, in their discretion, determine to

not give advance notice of any inspection if they believe that notice might obstruct or diminish the effectiveness of the inspection or enforcement of the provisions of this article.

455 IAC 3-16-7 Monitoring for quality assurance; entrance by ombudsman

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 7. The ombudsman has the right to enter the home at the request of the consumer, providing any additional quality oversight.

455 IAC 3-16-8 Incident reporting

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 8. In accordance with 460 IAC 1.2, any unusual occurrence including but not limited to, alleged, suspected, or actual abuse, neglect, or exploitation of an individual, will require an incident report to be completed by the provider or the case manager, or both.

455 IAC 3-16-9 Process for filing incident report

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 9. The process for filing an incident report includes the following steps:

- (1) Incident is identified;**
- (2) Reporting entity reports the incident using the prescribed process. The report will include a detailed explanation as to:
 - (A) what happened;**
 - (B) when it happened;**
 - (C) how it happened;**
 - (D) action taken after the incident;**
 - (E) necessary follow-up; and**
 - (F) any additional information necessary;****
- (3) BQIS will review the incident and assign the appropriate coding;**
- (4) BQIS will e-mail the incident report information to the case manager;**
- (5) The case manager will follow up to ensure the health and safety is in place for the individual. The case manager will follow up every seven (7) days until the incident is resolved.**

455 IAC 3-16-10 Suspected abuse or exploitation investigation

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 10. FSSA waiver services, BQIS, or designee will work with the ombudsman and adult protective services to investigate and act on suspected abuse or exploitation immediately and to follow up on other complaints or concerns as quickly as possible. The primary purpose of the prompt response is to protect the

consumer and correct the situation. Investigations of complaints alleging injury, abuse, or neglect must be completed as soon as possible and in accordance with complaint standards utilized by the ombudsman program and adult protective services.

455 IAC 3-16-11 Retaliation prohibited

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 11. The AFC home provider and any caregivers must not retaliate in any way against any consumer after the consumer or someone acting on his or her behalf has filed a complaint, been interviewed, or served as a witness, and must ensure that all caregivers follow the incident reporting procedures.

455 IAC 3-16-12 Procedures for corrections of violations

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 12. (a) If, as a result of an inspection or investigation, FSSA waiver services determine that abuse, exploitation, or neglect has occurred, the provider must be notified verbally to immediately cease the abusive act. The incident will be reported through the provisions of this rule and reported to adult protective services, arrangements will be made for immediate relocation of the consumer, and the provider's enrollment in the HCBS Medicaid waiver program will be terminated.

(b) If an inspection or investigation indicates a violation of this article or provider agreement other than abuse, FSSA waiver services must notify the provider in writing of such violations.

(c) Except as provided under subsection (a), FSSA waiver services may require the provider to develop a corrective action plan that will be approved by BQIS and the division.

(d) The provider must notify BQIS and the division of the correction of violations no later than the date specified in the notice of violation.

(e) FSSA waiver services must conduct a re-inspection of the home after the date that the FSSA waiver services receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(f) For violations that present an imminent danger to the health, safety or welfare of consumers, the HCBS Medicaid waiver provider agreement may be immediately suspended and arrangements made to move the consumers.

(g) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if FSSA waiver services, BQIS, or

designee has not received a report of compliance from provider, FSSA waiver services may terminate the HCBS Medicaid waiver provider agreement.

(h) Providers may appeal any decision by following the appeals process as described in 460 IAC 1.2-7-1.

455 IAC 3-16-13 Disenrollment of a provider

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 13. (a) FSSA waiver services must deny, suspend or revoke HCBS Medicaid waiver program enrollment if a provider, caregiver or other person who has unsupervised access to consumers in the adult foster care home, has:

- (1) Been convicted of a crime against a person;**
- (2) Been convicted of a crime relating to financial exploitation;**
- (3) Been found by a court in a protection proceeding to have abused or financially exploited a vulnerable adult;**
- (4) Obtained or attempted to obtain HCBS Medicaid waiver program enrollment by fraudulent means or misrepresentation;**
- (5) Permitted, aided, or abetted the commission of any illegal act on the AFC home premises;**
- (6) A criminal background check that does not fully comply with 455 IAC 3-4-3(9);**
- (7) Been convicted of the illegal use of drugs or an alcohol-related offense within the past five (5) years without evidence of rehabilitation including a discharge summary from a rehabilitation program;**
- (8) Been convicted of the illegal selling or distribution of drugs;**
- (9) Been convicted of any crime involving a firearm used in the commission of a felony or in an act of violence against a person;**
- (10) Refused to permit authorized division representatives to interview consumers or have access to consumer records pursuant to section 5 of this rule;**
- (11) Interfered with:**
 - (A) An ombudsman;**
 - (B) An adult protective services investigator;**
 - (C) Representatives of a money management program recognized by the division;**
 - (D) An HCBS Medicaid waiver case manager; or**
 - (E) Any person or entity from an AAA or the division in the performance of quality assurance and consumer protection activities on behalf of a citizen in the performance of official duties; or**
- (12) Been found by a court in a proceeding to have committed an act of domestic violence toward a family or household member.**

(b) Failure of a provider to follow a consumer's plan of care or any provisions of this article, or failure by a provider to comply with the consumer rights established under any of the HCBS Medicaid waiver programs, is considered

a willful violation of the HCBS Medicaid waiver programs and subject to disenrollment.

(c) FSSA waiver services must deny, revoke, or refuse to renew the HCBS Medicaid waiver provider agreement where it finds there has been substantial non-compliance with these standards or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for consumers in an AFC home.

455 IAC 3-16-14 Limit on reenrollment

Authority: IC 12-8-8-4; IC 12-9.1-2-3

Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 14. A provider whose HCBS Medicaid waiver provider agreement has been revoked, voluntarily surrendered during a pending revocation or non-renewal process, or whose application has been denied must not be permitted to apply to re-enroll in the HCBS Medicaid waiver program for one (1) year from the date the revocation, surrender, or denial is final, or for a longer period if specified in the order revoking or denying the enrollment.