

**Title 23: Division of Medicaid**

**Part 208: Home and Community Based Services (HCBS) Long Term Care (LTC)**

**Part 208 Chapter 3: HCBS Assisted Living (AL) Waiver**

*Rule 3.1: General*

- A. The Division of Medicaid covers certain Home and Community Based Services (HCBS) services as an alternative to institutional care in a nursing facility through the Assisted Living (AL) Waiver.
- B. The AL Waiver is administered and operated by the Division of Medicaid.

Source: Social Security Act 1915(c); 42 CFR § 440.180; Miss. Ann. Code § 43-13-117.

*Rule 3.2: Eligibility*

- A. To be eligible for the Assisted Living Waiver Program a waiver participant must:
  - 1. Be twenty-one (21) years of age or older,
  - 2. Require nursing facility level of care as determined by a standardized comprehensive preadmission screening, and
  - 3. Be in the Social Security Income (SSI) Category of Eligibility (COE) or an aged, blind, or disabled individual who meets all factors of eligibility if income is under 300% of the SSI limit for an individual. If income exceeds the 300% limit, the individual must pay the amount that is over the limit each month to the Division of Medicaid under an Income Trust, provided the individual is otherwise eligible. The individual must also meet the resource limit as set by the Division of Medicaid.
- B. To be eligible for care in a Traumatic Brain Injury Residential facility a participant must:
  - 1. Meet all the requirements in Miss. Admin. Code Part 208, Rule 3.2.A.,
  - 2. Have a diagnosis of an acquired traumatic brain injury defined by the Division of Medicaid as a non-degenerative structural brain damage excluding a brain injury that is congenital or due to injuries induced by birth trauma,
  - 3. Have completed acute rehabilitation treatment,
  - 4. Be in a crisis/high stress environment with behavioral needs which place the participant at high risk for institutionalization,
  - 5. Have documentation as to why the services could not be provided inside the State of Mississippi, and

6. Have an Executive Director's Letter of Approval for Out of State Placement.

Source: 42 CFR § 440.180; Miss. Code Ann. § 43-13-121.

History: Added Miss. Admin. Code, Part 208, Rule 3.2.B. to correspond with the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.3: Provider Enrollment*

To become an HCBS/AL Waiver provider, the prospective provider must:

- A. Submit a provider enrollment packet complete with all necessary information.
- B. Submit a copy of the current and active license/certification to function as a Personal Care Home – Assisted Living Facility (PCH-AL) or meet licensure requirements deemed acceptable by the Division of Medicaid to meet minimum requirements specific for a Traumatic Brain Injury Residential facility.
- C. Successfully pass a facility inspection by a Division of Medicaid inspector.
- D. Satisfy all criteria and requirements for enrollment as a Medicaid provider in accordance with Miss. Admin. Code Part 208, Chapter 1, Rule 1.1, upon completion of items A., B. and C. in Miss. Admin. Code Part 208, Rule 3.3.

Source: 42 CFR Part 455, Subpart E; Miss. Code Ann. §§ 43-13-5; 43-11-13; 43-11-121.

History: Revised Miss. Admin. Code, Part 208, Rule 3.3.B. to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.4: Freedom of Choice*

Medicaid beneficiaries have the right to freedom of choice of approved Medicaid providers for services as outlined in Miss. Admin. Code Part 200, Chapter 3, Rule 3.6.

Source: Social Security Act 1902(a)(23); Miss. Code Ann. § 43-13-121.

*Rule 3.5: Prior Approval/Physician Certification*

- A. Prior approval must be obtained from the Division of Medicaid before an individual can receive services through the Home and Community-Based Waiver Program.
- B. Functional eligibility for waiver services is determined through a comprehensive Pre-Admission Screening.
  - 1. The physician must certify that the individual meets nursing home level of care.

2. Clinical eligibility must be determined annually using the pre-admission screening for continued AL Waiver services.

C. The Plan of Care must be developed that:

1. Is person-centered,
2. Involves collaboration between the case manager and the participant and/or their designated representative or responsible party,
3. Is all inclusive to meet the needs, desires and goals, including personal goals, for the participant, and
4. Is approved by the Division of Medicaid prior to enrollment into waiver services.

D. A waiver participant shall be locked into only one (1) waiver program at a time.

Source: 42 CFR § 441.301 (b)(1)(i); Miss. Code Ann. § 43-13-121.

History: Revised Miss. Admin. Code, Part 208, Rule 3.5.C. to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.6: Covered Services*

A. The AL Waiver covers Case Management Services provided by a social worker licensed to practice in the State of Mississippi with at least two (2) years of full-time experience in direct services to elderly and disabled individuals.

B. AL Services include the following:

1. Personal care services rendered by personnel of the licensed facility,
2. Homemaker services,
3. Attendant care services,
4. Medication oversight/administration with personnel operating within the scope of applicable licenses and/or certifications,
5. Therapeutic, social, and recreational programming services,
6. Intermittent skilled nursing services and interventions ordered by the physician and provided:
  - a. At least eight (8) hours a day, including weekends and holidays, to assess and assist

the waiver participant with services including but not limited to medication administration and oversight, and

- b. By a nurse with an active and unencumbered license. If the facility employs a Licensed Practical Nurse (LPN), the LPN must have supervision by either a Registered Nurse (RN), nurse practitioner, or a physician.
7. Transportation services must be provided by the AL Waiver provider or through the Division of Medicaid's Non-Emergency Transportation (NET) program if the waiver participant has not reached the maximum NET service limits.
  8. An electronic emergency attendant call system in each PCH-AL facility which:
    - a) Is available to waiver participants who are:
      - 1) At risk of falling,
      - 2) At risk of becoming disoriented, or
      - 3) Experiencing some disorder placing them in physical, mental or emotional jeopardy.
    - b) Includes twenty-four (24) hour on-site response staff to meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence, and provides for supervision, safety and security.
  9. Provision of normal, daily personal hygiene items including, at a minimum, deodorant, soap, shampoo, toilet paper, facial tissue, laundry soap and dental hygiene products.

C. AL Waiver providers must provide:

1. A setting physically accessible to the participant but is not located in:
  - a) A nursing facility,
  - b) An institution for mental diseases,
  - c) An intermediate care facility for individuals with intellectual disabilities (ICF-IID),
  - d) A hospital providing long-term care services, or
  - e) Any other location that has qualities of an institutional setting.
2. A private, home-like living quarter with a bathroom consisting of a toilet and sink and must:

- a) Be a unit or room in a specific physical place that can be owned, rented or occupied under another legally enforceable agreement by the waiver participant, and the participant has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city or other designated entity, and
- b) Provide each waiver participant privacy in their sleeping or living unit with:
  - 1) Lockable entrance doors with appropriate staff having keys to doors,
  - 2) The option to share living units only at the choice of the participant, and
  - 3) The freedom to furnish and decorate their sleeping or living units.
3. A setting which integrates and facilitates the individual's full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community in the same manner as individuals without disabilities,
4. A setting selected by the individual from among all available alternatives and is identified in the person-centered plan of care,
5. Protection of an individual's essential personal rights of privacy, dignity and respect, and freedom from coercion and restraint,
6. Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
7. Individual choice regarding services and supports, and who provides them,
8. An assessment of safety needs of an individual with cognitive impairment supported by a specific assessed need and addressed in the plan of care,
9. Freedom and support of participants to control their own schedules and activities and have access to food at any time,
10. Freedom to have visitors of their choosing at any time,
11. A living environment supportive of the participant to exercise their rights to:
  - a. Attend religious and other activities of their choice,
  - b. Manage their own personal financial affairs or receive a quarterly accounting of financial transactions made on their behalf,
  - c. Not be required to perform services for the facility,
  - d. Receive mail unopened or in compliance with the facility policy,

- e. Be treated with consideration, kindness, respect and full recognition of their dignity and individuality,
- f. Retain and use personal clothing and possessions as space permits,
- g. Voice grievances and recommend changes in licensed facility policies and services,
- h. Not be confined to the licensed facility against their will and allowed to move about in the community at liberty,
- i. Free from physical and/or chemical restraints,
- j. Allowed to choose a pharmacy or pharmacist provider in accordance with State law,
- k. Decide when to go to bed and get up in the morning,
- l. Furnish and decorate their sleeping or living space,
- m. Allows the participant to decide when to eat his or her meals,
- n. Have nutritious snacks available at all times, and
- o. Use the dining room for congregate meals and socialization.

Source: 42 CFR §§ 431.53, 440.170(a), 440.180; Miss. Code Ann. § 43-13-121.

History: Revised Miss. Admin. Code Part 208, Rule 3.6.B. and added Miss. Admin. Code Part 208, Rule 3.6.C. to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.7: Quality Management*

- A. AL Waiver providers must meet applicable service specifications. Refer to the Miss. Admin. Code, Part 208, Chapter 1.
- B. AL Waiver providers must report changes in contact information, staffing, and licensure within ten (10) calendar days to Division of Medicaid.
- C. Providers must maintain compliance with all current waiver requirements, regulatory rules and regulations and administrative codes as specified by the licensing agency.
  - 1. If an AL Waiver provider fails to maintain compliance, the Division of Medicaid may halt the acceptance of Medicaid referrals or waiver admissions until the AL Waiver provider demonstrates compliance with the regulatory agency.

2. The decision to halt Medicaid referrals or waiver admissions is at the discretion of the Division of Medicaid.

D. Only the Division of Medicaid can initiate, in writing, any interpretation or exception to Medicaid rules or regulations.

Source: 42 CFR § 441.302; Miss. Code Ann. § 43-13-121.

History: Revised Miss. Admin. Code Part 208, Rule 3.7.C. to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.8: Documentation and Record Maintenance Requirements:*

A. Providers participating in the HCBS/AL Waiver program are required to:

1. Maintain legible, accurate, and complete records.
2. Document the services rendered and billed under the program including when a participant is out of the facility and the reason why.
3. Make records available immediately, upon request, to representatives of the Division of Medicaid in substantiation of any and all claims.
4. Maintain records for a minimum of six (6) years or until resolution of any pending investigation, audit or litigation.
5. Maintain statistical and financial data supporting a cost report for at least five (5) years from the date of the cost report, or amended cost report or appeals submitted to the Division of Medicaid.
6. Identify and maintain records of medication allergies of waiver participants.
7. Maintain a current, signed and dated copy of the Division of Medicaid approved admission agreement for each waiver participant which includes, at a minimum:
  - a) Basic charges agreed upon separating costs for room & board and personal care services,
  - b) Period to be covered,
  - c) List of itemized charges, and
  - d) Agreement regarding refunds for payments.

B. Providers must satisfy all requirements for maintenance of records outlined in Miss. Admin. Code Part 200, Chapter 1, Rule 1.3.

- C. AL Waiver providers are required to submit copies of all service logs/documentation along with a copy of their billing for each waiver participant served, to the individual's case manager no later than the fifteenth (15<sup>th</sup>) of the following month in which the service was rendered.

Source: Miss. Code Ann. § 43-13-117; 43-13-118; 43-13-121; 43-13-129.

History: Added Miss. Admin. Code Part 208, Rule 3.8.A.6 and 3.8.A.7 to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.9: Beneficiary Cost Sharing*

For waiver participants in a Home and Community-Based Service Waiver, the co-payment is exempt if the service is being paid through the Waiver. If services are being paid through regular Mississippi Medicaid, the co-payment is applicable unless exempt by one (1) of the beneficiary groups or services stated in Miss. Admin. Code Part 200, Chapter 3, Rule 3.7.

Source: Social Security Act 1902 (a)(14); 42 CFR § 447.50 – 447.59; Miss. Code Ann. § 43-13-121.

*Rule 3.10: Reimbursement*

- A. Reimbursement for AL Waiver provider services cannot be requested earlier than the first (1st) day of the month following the month in which services were rendered.
- B. Reimbursement for AL Waiver provider services is only for those services provided within the facility. The Division of Medicaid does not reimburse for room and board.
- C. Transportation is an integral part of AL Waiver provider services and is not reimbursed separately.

Source: Miss. Code Ann. § 43-13-17, 121.

*Rule 3.11: Hearings and Appeals for Denied/Terminated Services*

- A. Decisions made by the Division of Medicaid that result in services being denied, reduced or terminated, may be appealed in accordance with Part 300 of the Miss. Admin. Code.
- B. The waiver participant/legal representative has thirty (30) days from the date of the notice regarding services to appeal the decision.

Source: 42 CFR §§ 431.210, 441.307, 441.308; Miss. Code Ann. § 43-13-121.

*Rule 3.12: Education, Training and Supervision*



- A. All AL Waiver providers must have policies and procedures assuring safeguards to protect the safety, health and well-being of all waiver participants which must include:
  - 1. Definitions of abuse, neglect and exploitation,
  - 2. Education for employees in detection of abuse, neglect and exploitation,
  - 3. Guidance for facility staff to prevent abuse, neglect and exploitation, and
  - 4. Reporting requirements for abuse, neglect, exploitation and critical incidents.
- B. AL Waiver providers must provide all staff with training upon hire and annually thereafter in the following areas:
  - 1. Vulnerable Persons Act regarding prevention of abuse, neglect and exploitation,
  - 2. Resident Rights and Dignity,
  - 3. Care of an Alzheimer's resident,
  - 4. Care of residents with mental illness, and
  - 5. How to deal with difficult residents.
- C. The AL Waiver provider must maintain evidence of the training listed in the Miss. Admin. Code, Part 208, Rule 3.12.B. on file and easily accessible upon request of the Division of Medicaid.
- D. The AL Waiver provider must assure:
  - 1. Each direct care staff successfully completes forty (40) hours of course curriculum as identified by the State,
  - 2. The training is provided prior to providing care to a waiver participant,
  - 3. Documentation of completion of this course work be maintained at the facility and made available to the Division of Medicaid upon request.
- E. AL Waiver providers must submit an acceptable plan of correction if all training requirements in the Miss. Admin. Code, Part 208, Rule 3.12 are not met continued noncompliance will result in suspension of Medicaid referrals and waiver admissions until successful completion of training requirements is met.
- F. TBI Residential Waiver providers must train all staff upon hire in the following areas including, but not limited to:

1. Identifying, preventing and reporting abuse, neglect and exploitation,
2. Rights and dignity,
3. Crisis prevention and intervention,
4. Caring for individuals with cognitive impairments,
5. Assisting with activities of daily living,
6. HIPAA Compliance,
7. Stress reduction,
8. Behavior programs,
9. Recognition and care of individuals with seizures,
10. Rational/behavioral therapy,
11. Elopement risks,
12. Safe operation and care of individuals with assistive devices,
13. Caring for individuals with disabilities,
14. Safety, and
15. Training in CPR and first aid.

G. All program managers employed by a TBI residential provider must be nationally certified as a Brain Injury Specialist.

Source: 42 CFR §§ 431.210; 441.308; 441.307; Miss. Code Ann. § 43-13-121;

History: Added Miss. Admin. Code Part 208, Rule 3.14 to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.13: Background Checks*

AL Waiver providers must:

- A. Conduct a search of the Mississippi Nurse Aide abuse registry prior to hiring an individual who will provide care to waiver participants including, but not limited to:
  1. Any individual providing direct care or supervision to the residents,

2. Owners,
  3. Operators, and
  4. Transportation drivers.
- B. Maintain documented evidence in the personnel file of each employee to demonstrate to the Division of Medicaid that the Mississippi Nurse Aide Abuse Registry has been searched.
- C. Conduct a disciplinary search with the professional licensing agency, if any, for each employee to determine if any disciplinary actions have been taken against the employee by the agency.
- D. Conduct a National Criminal Background Check by submitting fingerprints to the licensing agency to be electronically submitted to the Federal Bureau of Investigations and the Mississippi Criminal Information Center as specified in the Minimum Standards For Personal Care Homes Assisted Living, Title 15: Mississippi State Department of Health, Part 3: Office of Health Protection, Subpart 1: Health Facilities Licensure and Certification.
- E. Deny or terminate employment of any applicant/employee with a felony conviction, a guilty plea, and/or a plea of nolo contendere to a felony for one (1) or more of the following crimes which have not been reversed on appeal, or for which a pardon has not been granted:
1. Possession or sale of drugs,
  2. Murder,
  3. Manslaughter,
  4. Armed robbery,
  5. Rape,
  6. Sexual battery,
  7. Sex offense listed in Section 45-33-23 (g), Mississippi Code of 1972,
  8. Child abuse,
  9. Arson,
  10. Grand larceny,
  11. Burglary,

12. Gratification of lust,

13. Aggravated assault, or

14. Felonious abuse and/or battery of vulnerable adult.

F. AL Waiver providers cannot grant a waiver for employment of any employee or applicant with offenses listed in Miss. Admin. Code Part 208, Rule 3.13 E.

Source: 42 CFR §§ 431.210, 441.307, 441.308; Miss. Code Ann. § 43-13-121.

History: Added Miss. Admin. Code Part 208, Rule 3.13 to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.

*Rule 3.14: Disaster Preparedness*

A. AL Waiver providers must have disaster preparedness and management procedures to ensure that waiver participant's care, safety, and well-being are maintained during and following instances of natural disasters, disease outbreaks, or similar situations.

B. In the event of termination of an AL Waiver provider agreement, the Division of Medicaid, the participants and their designated representatives, and the licensing agency will work collaboratively to arrange for appropriate transfer of waiver participants to other Medicaid approved providers.

Source: 42 CFR §§ 431.210, 441.307, 441.308; Miss. Code Ann. § 43-13-121.

History: Added Miss. Admin. Code Part 208, Rule 3.14 to correspond with changes in the AL Waiver renewal (eff. 10/01/2013) eff. 05/01/2014.