

Effective 5/3/2023

Part 4
Division of Services for People with Disabilities

26B-6-401 Definitions.

As used in this part:

- (1) "Approved provider" means a person approved by the division to provide home-and community-based services.
- (2) "Board" means the Utah State Developmental Center Board created under Section 26B-1-429.
- (3)
 - (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.
 - (b) "Brain injury" does not include a deteriorating disease.
- (4) "Designated intellectual disability professional" means:
 - (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
 - (i)
 - (A) has at least one year of specialized training in working with persons with an intellectual disability; or
 - (B) has at least one year of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or
 - (b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
 - (i) has at least two years of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability.
- (5) "Deteriorating disease" includes:
 - (a) multiple sclerosis;
 - (b) muscular dystrophy;
 - (c) Huntington's chorea;
 - (d) Alzheimer's disease;
 - (e) ataxia; or
 - (f) cancer.
- (6) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 5, Utah State Developmental Center.
- (7) "Director" means the director of the Division of Services for People with Disabilities.
- (8) "Direct service worker" means a person who provides services to a person with a disability:
 - (a) when the services are rendered in:
 - (i) the physical presence of the person with a disability; or
 - (ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and
 - (b)
 - (i) under a contract with the division;
 - (ii) under a grant agreement with the division; or
 - (iii) as an employee of the division.
- (9)
 - (a) "Disability" means a severe, chronic disability that:

- (i) is attributable to:
 - (A) an intellectual disability;
 - (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. Sec. 435.1010;
 - (C) a physical disability; or
 - (D) a brain injury;
- (ii) is likely to continue indefinitely;
- (iii)
 - (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:
 - (I) self-care;
 - (II) receptive and expressive language;
 - (III) learning;
 - (IV) mobility;
 - (V) self-direction;
 - (VI) capacity for independent living; or
 - (VII) economic self-sufficiency; or
 - (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or more of the following areas:
 - (I) memory or cognition;
 - (II) activities of daily life;
 - (III) judgment and self-protection;
 - (IV) control of emotions;
 - (V) communication;
 - (VI) physical health; or
 - (VII) employment; and
- (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:
 - (A) may continue throughout life; and
 - (B) must be individually planned and coordinated.
- (b) "Disability" does not include a condition due solely to:
 - (i) mental illness;
 - (ii) personality disorder;
 - (iii) deafness or being hard of hearing;
 - (iv) visual impairment;
 - (v) learning disability;
 - (vi) behavior disorder;
 - (vii) substance abuse; or
 - (viii) the aging process.
- (10) "Division" means the Division of Services for People with Disabilities.
- (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division, to receive services that are administered by the division.
- (12) "Endorsed program" means a facility or program that:
 - (a) is operated:
 - (i) by the division; or
 - (ii) under contract with the division; or
 - (b) provides services to a person committed to the division under Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

- (13) "Licensed physician" means:
- (a) an individual licensed to practice medicine under:
 - (i) Title 58, Chapter 67, Utah Medical Practice Act; or
 - (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (b) a medical officer of the United States Government while in this state in the performance of official duties.
- (14) "Limited support services" means services that are administered by the division to individuals with a disability:
- (a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for Medicare and Medicaid Services that permits the division to limit services to an individual who is eligible to receive division services; and
 - (b) through a program that:
 - (i) was not operated by the division on or before January 1, 2020; and
 - (ii)
 - (A) limits the kinds of services that an individual may receive; or
 - (B) sets a maximum total dollar amount for program services provided to each individual.
- (15) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.
- (16) "Public funds" means state or federal funds that are disbursed by the division.
- (17)
- (a) "Related condition" means a severe, chronic condition that:
 - (i) manifests before the day on which an individual turns 22 years old;
 - (ii) is likely to continue indefinitely;
 - (iii) results in substantial functional limitations;
 - (iv) is closely related to an intellectual disability because the condition results in the impairment of:
 - (A) general intellectual functioning, similar to that of an individual with an intellectual disability;
 - or
 - (B) adaptive behavior, similar to that of an individual with an intellectual disability; and
 - (v) requires treatment or services similar to the treatment or services required for an individual with an intellectual disability.
 - (b) "Related condition" does not include mental illness, as that term is defined in Section 26B-5-301.
- (18) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.
- (19) "Substantial danger" means that because of an intellectual disability or related condition, an individual is at risk of:
- (a) suicide;
 - (b) serious bodily self-injury;
 - (c) serious bodily injury because the individual lacks capacity to provide the basic necessities of life, such as food, clothing, or shelter;
 - (d) causing or attempting to cause serious bodily injury or serious emotional harm to another individual;
 - (e) engaging in harmful sexual conduct, as that term is defined in Section 26B-5-301; or
 - (f) suffering serious physical harm or serious emotional harm as a result of being exploited, abused, or neglected.
- (20) "Sustainability fund" means the Utah State Developmental Center Long-Term Sustainability Fund created in Section 26B-1-331.

Amended by Chapter 46, 2025 General Session

26B-6-402 Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

- (1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department.
- (2) In accordance with this part, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state.
- (3) Within appropriations from the Legislature, the division shall provide services to any individual with a disability who is eligible to receive division services.
- (4)
 - (a) Except as provided in Subsection (4)(c), any new appropriations designated to serve eligible individuals waiting for services from the division shall be allocated, as determined by the division by rule based on the:
 - (i) severity of the disability;
 - (ii) urgency of the need for services;
 - (iii) ability of a parent or guardian to provide the individual with appropriate care and supervision; and
 - (iv) length of time during which the individual has not received services from the division.
 - (b) Funds from Subsection (4)(a) that are not spent by the division at the end of the fiscal year may be used as set forth in Subsection (7).
 - (c) Subsections (4)(a) and (b) do not apply to any new appropriations designated to provide limited support services.
- (5) The division:
 - (a) has the functions, powers, duties, rights, and responsibilities described in Section 26B-6-403; and
 - (b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out the responsibilities described in Subsection (5)(a).
- (6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support that the division provides to an individual with a disability:
 - (a) are provided in the least restrictive and most enabling environment;
 - (b) ensure opportunities to access employment; and
 - (c) enable reasonable personal choice in selecting services and support that:
 - (i) best meet individual needs; and
 - (ii) promote:
 - (A) independence;
 - (B) productivity; and
 - (C) integration in community life.
- (7)
 - (a) Appropriations to the division are nonlapsing.
 - (b) After an individual stops receiving services under this section, the division shall use the funds that paid for the individual's services to provide services under this section to another eligible individual in an intermediate care facility transitioning to division services, if the funds were allocated under a program established under Section 26B-3-108 to transition individuals with intellectual disabilities from an intermediate care facility.

- (c) Except as provided in Subsection (7)(b), if an individual receiving services under Subsection (4)(a) ceases to receive those services, the division shall use the funds that were allocated to that individual to provide services to another eligible individual waiting for services as described in Subsection (4)(a).
- (d) Funds unexpended by the division at the end of the fiscal year may be used only for one-time expenditures unless otherwise authorized by the Legislature.
- (e) A one-time expenditure under this section:
 - (i) is not an entitlement;
 - (ii) may be withdrawn at any time; and
 - (iii) may provide short-term, limited services, including:
 - (A) respite care;
 - (B) service brokering;
 - (C) family skill building and preservation classes;
 - (D) after school group services; and
 - (E) other professional services.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-403 Responsibility and authority of division.

- (1) For purposes of this section "administer" means to:
 - (a) plan;
 - (b) develop;
 - (c) manage;
 - (d) monitor; and
 - (e) conduct certification reviews.
- (2) The division has the authority and responsibility to:
 - (a) administer an array of services and supports for persons with disabilities and their families throughout the state;
 - (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a);
 - (c) consistent with Section 26B-6-506, supervise the programs and facilities of the Developmental Center;
 - (d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of:
 - (i) outreach;
 - (ii) information and referral;
 - (iii) prevention;
 - (iv) technical assistance; and
 - (v) public awareness;
 - (e) supervise the programs and facilities operated by, or under contract with, the division;
 - (f) cooperate with other state, governmental, and private agencies that provide services to a person with a disability;
 - (g) subject to Subsection (3), ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures designed to minimize the risk of error when a person with a disability is admitted to an intermediate care facility for people with an intellectual disability, including:
 - (i) the developmental center; and
 - (ii) facilities within the community;

- (h) determine whether to approve providers;
 - (i) monitor and sanction approved providers, as specified in the providers' contract;
 - (j) subject to Section 26B-6-410, receive and disburse public funds;
 - (k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;
 - (l) establish standards and rules for the administration and operation of programs conducted by, or under contract with, the division;
 - (m) approve and monitor division programs to insure compliance with the board's rules and standards;
 - (n) establish standards and rules necessary to fulfill the division's responsibilities under Part 5, Utah State Developmental Center, and Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability, with regard to an intermediate care facility for people with an intellectual disability;
 - (o) assess and collect equitable fees for a person who receives services provided under this chapter;
 - (p) maintain records of, and account for, the funds described in Subsection (2)(o);
 - (q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:
 - (i) applying to receive the services; or
 - (ii) currently receiving the services;
 - (r) in accordance with state law, establish rules:
 - (i) relating to an intermediate care facility for people with an intellectual disability that is an endorsed program; and
 - (ii) governing the admission, transfer, and discharge of a person with a disability;
 - (s) manage funds for a person residing in a facility operated by the division:
 - (i) upon request of a parent or guardian of the person; or
 - (ii) under administrative or court order; and
 - (t) fulfill the responsibilities described in Section 26B-1-430.
- (3) The due process procedures described in Subsection (2)(g):
- (a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and
 - (b) with regard to facilities in the community, do not require commitment to the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-404 Director -- Qualifications -- Responsibilities.

- (1) The director of the division shall be appointed by the executive director.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities, intellectual disabilities, and other disabilities.
- (3) The director is the administrative head of the division.
- (4) The director shall appoint the superintendent of the developmental center and the necessary and appropriate administrators for other facilities operated by the division with the concurrence of the executive director.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-405 Division responsibilities -- Policy mediation.

- (1) The division shall establish its rules in accordance with:
 - (a) the policy of the Legislature as set forth by this part; and
 - (b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The division shall:
 - (a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;
 - (b) establish rules for the assessment and collection of fees for programs within the division;
 - (c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay and implement the schedule with respect to service recipients and their families where not otherwise prohibited by federal law or regulation or not otherwise provided for in Section 26B-6-411;
 - (d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;
 - (e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection (2)(d);
 - (f) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding;
 - (g) review implementation and compliance by the division with policies established by the board to ensure that the policies established by the Legislature in this chapter are carried out;
 - (h) annually report to the executive director; and
 - (i) upon request by a legislator or a legislative committee, provide a report detailing actions the division has taken to enhance the quality of life for individuals with disabilities, including how the division has:
 - (i) provided services and support in the most person-centered way, reflecting the unique desires, assessed competencies, and limitations of each individual, and in the least restrictive environment best suited to each individual's needs;
 - (ii) ensured opportunities to access employment; and
 - (iii) enabled reasonable personal choice in selecting services and support that promotes:
 - (A) independence;
 - (B) productivity; and
 - (C) integration in community life.
- (3) The division may not make, amend, or repeal a rule or policy if the effect of making, amending, or repealing the rule or policy would be to reduce or eliminate day program services, supported employment services, or employment preparation services for individuals with disabilities, unless the division:
 - (a) provides notice of the proposed rule or policy change to all persons who would be affected by the change at least 30 days before the proposed change becomes effective;
 - (b) holds a public hearing on the proposed rule or policy change:
 - (i) before the proposed change becomes effective; and
 - (ii) no less than seven days nor more than 30 days after the division satisfies the notice requirement in Subsection (3)(b)(i); and
 - (c) appropriately funds a reasonably equivalent service for individuals served by the reduced or eliminated day program services, supported employment services, or employment preparation services.
- (4) In accordance with the federal directive to provide services and supports in a setting and manner that is person-centered, and to empower individuals whose circumstances and

disabilities make it unlikely for them to find suitable competitive integrated employment, the division shall support providers by permitting the providers maximum flexibility in creating and implementing employment preparation programs and additional personally meaningful services and supports.

- (5) The executive director shall mediate any differences which arise between the policies of the division and those of any other policy board or division in the department.

Amended by Chapter 494, 2024 General Session

26B-6-406 Powers of other state agencies -- Severability.

Nothing in this part shall be construed to supersede or limit the authority granted by law to any other state agency. If any provision of this part, or the application of any provision to the person or circumstance, is held invalid, the remainder of this part shall not be affected.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-407 Program for provision of supported employment services.

- (1) There is established a program for the provision of supported employment services to be administered by the division.
- (2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of the program described in this section.
- (3) In accordance with Subsection (4), within funds appropriated by the Legislature for the program described in this section, the division shall provide supported employment services to a person with a disability who:
- (a) is eligible to receive services from the division;
 - (b) has applied for, and is waiting to, receive services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient supported employment services from other sources;
 - (e) the division determines would substantially benefit from the provision of supported employment services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of supported employment services.
- (4)
- (a) The division shall provide supported employment services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (5) It is the intent of the Legislature that the services provided under the program described in this section:
- (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-408 Pilot Program for the Provision of Family Preservation Services.

- (1) There is established a pilot program for the provision of family preservation services to a person with a disability and that person's family, beginning on July 1, 2007, and ending on July 1, 2009.
- (2) The family preservation services described in Subsection (1) may include:
 - (a) family skill building classes;
 - (b) respite hours for class attendance; or
 - (c) professional intervention.
- (3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of this section.
- (4) In accordance with Subsection (5), within funds appropriated by the Legislature for the pilot program described in this section, the division shall provide family preservation services to a person with a disability, and that person's family, if that person:
 - (a) is eligible to receive services from the division;
 - (b) has applied for, and is willing to receive, services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient family preservation services from other sources;
 - (e) is determined by the division to be a person who would substantially benefit from the provision of family preservation services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of family preservation services.
- (5)
 - (a) The division shall provide family preservation services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (6) It is the intent of the Legislature that the services provided under the pilot program described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-409 Employment first emphasis on the provision of services.

- (1) When providing services to a person with a disability under this chapter, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment that enables the person to:
 - (a) purchase goods and services;
 - (b) establish self-sufficiency; and
 - (c) exercise economic control of the person's life.

- (2) The division shall develop a written plan to implement the policy described in Subsection (1) that includes:
 - (a) assessing the strengths and needs of a person with a disability;
 - (b) customizing strength-based approaches to obtaining employment;
 - (c) expecting, encouraging, providing, and rewarding:
 - (i) integrated employment in the workplace at competitive wages and benefits; and
 - (ii) self-employment;
 - (d) developing partnerships with potential employers;
 - (e) maximizing appropriate employment training opportunities;
 - (f) coordinating services with other government agencies and community resources;
 - (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and
 - (h) arranging sub-minimum wage work or volunteer work when employment at market rates cannot be obtained.
- (3) The division shall, on an annual basis:
 - (a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);
 - (b) determine whether the goals for the previous year have been met; and
 - (c) modify the plan described in Subsection (2) as needed.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-410 Disbursal of public funds -- Background check of a direct service worker.

- (1) For purposes of this section, "office" means the same as that term is defined in Section 26B-2-101.
- (2) Public funds may not be disbursed to pay a direct service worker for personal services rendered to a person unless the office approves the direct service worker to have direct access and provide services to a child or a vulnerable adult pursuant to Section 26B-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:
 - (a) before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for a license under Section 26B-2-120.
- (4) A child who is in the legal custody of the department or any of the department's divisions may not be placed with a direct service worker unless, before the child is placed with the direct service worker, the direct service worker passes a background check under Section 26B-2-120.
- (5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:
 - (a) the provisions of this section are not applicable to a direct service worker employed by the public transit district; and
 - (b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:
 - (i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 26B-2-120; and
 - (ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 344, 2023 General Session

Superseded 9/1/2025

26B-6-411 Parent liable for cost and support of minor -- Guardian liable for costs.

- (1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for the support of the child in accordance with Title 81, Chapter 6, Child Support, and Chapter 9, Part 1, Office of Recovery Services, until the person reaches 18 years old.
- (2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 26B-6-412, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.
- (3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or guardian for the support or maintenance of that person, it shall be repaid upon demand.

Amended by Chapter 366, 2024 General Session

Effective 9/1/2025

26B-6-411 Parent liable for cost and support of minor -- Guardian liable for costs.

- (1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for the support of the child in accordance with Chapter 9, Part 1, Office of Recovery Services, Title 81, Chapter 6, Child Support, and Title 81, Chapter 7, Payment and Enforcement of Spousal and Child Support, until the person reaches 18 years old.
- (2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 26B-6-412, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.
- (3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or guardian for the support or maintenance of that person, it shall be repaid upon demand.

Amended by Chapter 426, 2025 General Session

26B-6-412 Discretionary trust for an individual with a disability -- Impact on state services.

- (1) For purposes of this section:
 - (a) "Discretionary trust for an individual with a disability" means a trust:
 - (i) that is established for the benefit of an individual who, at the time the trust is created, is under 65 years old and has a disability, as defined in 42 U.S.C. Sec. 1382c;
 - (ii) under which the trustee has discretionary power to determine distributions;
 - (iii) under which the individual may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;
 - (iv) that contains the assets of the individual and is established for the benefit of the individual by the individual, a court, or a parent, grandparent, or legal guardian of the individual;
 - (v) that is irrevocable, except that the trust document may provide that the trust be terminated if the individual no longer has a disability, as defined in 42 U.S.C. Sec. 1382c;
 - (vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and
 - (vii) that provides that, upon the death of the individual, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual.
 - (b) "Medical assistance" means the same as that term is defined in Section 26B-3-101.
- (2) A state agency providing services or support to an individual with a disability may:
 - (a) waive application of Subsection (1)(a)(v) with respect to that individual if the state agency determines that application of the criteria would place an undue hardship upon that individual; and
 - (b) define, by rule, what constitutes "undue hardship" for purposes of this section.
- (3) A discretionary trust for an individual with a disability is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:
 - (a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the beneficiary with a disability; or
 - (b) as provided in Subsection (1)(a)(vi).
- (4) Property, goods, and services that are purchased or owned by a discretionary trust for an individual with a disability and that are used or consumed by a beneficiary with a disability shall not be considered trust property that is distributed to or under the control of the beneficiary.
- (5) The benefits that an individual with a disability is otherwise legally entitled to may not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that individual.
- (6) All state agencies shall disregard a discretionary trust for an individual with a disability as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.
- (7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-413 Scope of home based services -- Purpose -- Principles -- Services for individuals younger than 11 years old.

- (1) The purpose of this section is to provide support to families in their role as primary caregivers for family members with disabilities.
- (2)
 - (a) To enable a person with a disability and the person's family to select services and supports that best suit their needs and preferences, the division shall, within appropriations from the

- Legislature, provide services and supports under this part by giving direct financial assistance to the parent or guardian of a person with a disability who resides at home.
- (b) The dollar value of direct financial assistance is determined by the division based on:
 - (i) appropriations from the Legislature; and
 - (ii) the needs of the person with a disability.
 - (c) In determining whether to provide direct financial assistance to the family, the division shall consider:
 - (i) the family's preference; and
 - (ii) the availability of approved providers in the area where the family resides.
 - (d) If the division provides direct financial assistance, the division:
 - (i) shall require the family to account for the use of that financial assistance; and
 - (ii) shall tell the person with a disability or the person's parent or guardian how long the direct financial assistance is intended to provide services and supports before additional direct financial assistance is issued.
 - (e) Except for eligibility determination services directly connected to the provision of direct financial assistance, service coordination is not provided under this part by the division unless the person with a disability or the person's parent or guardian uses the direct financial assistance to purchase such services.
- (3) The following principles shall be used as the basis for supporting families who care for family members with disabilities:
- (a) all children, regardless of disability, should reside in a family-like environment;
 - (b) families should receive the support they need to care for their children at home;
 - (c) services should:
 - (i) focus on the person with a disability;
 - (ii) take into consideration the family of the person described in Subsection (3)(c)(i);
 - (iii) be sensitive to the unique needs, preferences, and strengths of individual families; and
 - (iv) complement and reinforce existing sources of help and support that are available to each family.
- (4) Except as provided in Subsection (5), after June 30, 1996, the division may not provide residential services to persons with disabilities who are under 11 years old.
- (5) The prohibition of Subsection (4) does not include residential services that are provided:
- (a) for persons in the custody of the Division of Child and Family Services;
 - (b) under a plan for home-based services, including respite and temporary residential care or services provided by a professional parent under contract with the division; or
 - (c) after a written finding by the director that out-of-home residential placement is the most appropriate way to meet the needs of the person with disabilities and his family.

Renumbered and Amended by Chapter 308, 2023 General Session