

Exhibit A. A copy of the timeline that includes additional details is attached hereto as Joint Exhibit B.

Prior to submitting these exhibits to the Court with this status report, IDHW stressed to class counsel that these timelines are merely drafts. Although the Department states that the timeline represents its most current thinking on when it would complete the various tasks set out there, and IDHW's assumptions that underly the estimates for accomplishing each of these tasks, the Department recognizes that changes may be required at the conclusion of the status conference in this matter on January 17, 2023. Class counsel has reviewed the timeline with class representatives and class members and has communicated the class's significant concerns with the proposed timeline to IDHW counsel and staff.

Under this timeline, the principal tasks leading to IDHW beginning to utilize the SIS-A as the needs assessment tool for Adult Developmentally Disabled Waiver Services (Adult DD Waiver Services), are as follows:

- a) **Obtain a renewal of Idaho's current 1915(c) Waiver.** The Department has already submitted its request for renewal of its 1915(c) Waiver – which is the federal authority given by the Centers for Medicare and Medicaid Services (CMS) that allows states to operate programs such as the Adult DD Waiver Services. The Department has also recently submitted a request for an additional extension of its current waiver authority as the Department continues to finalize responses to CMS for the renewal. The changes to the Adult DD Waiver Services program that will be implemented with the new resource allocation model must be approved by CMS as a subsequent amendment to IDHW's current Waiver authority. The Department has endeavored to accurately forecast a

federal approval date for the renewal; however, federal approval ultimately rests with CMS and any delay by CMS has the potential to delay implementation of the new model.

b) **Obtain CMS Approval of 1915(c), 1915(i), and State Medicaid Plan Amendments.**

After the Department receives CMS approval of the renewal of Idaho's 1915(c) Waiver authority, the Department will be able to post proposed federal authority amendments for tribal (sixty (60) days) and public (thirty (30) days) comment. At the end of the comment period the Department will review the comments received. Upon internal approval of the Waiver amendments and State Plan amendments, the Department will submit to CMS a request for approval of the Amendments that will authorize the changes that attend implementation of the new resource allocation model. As set forth in the timeline, the Department anticipates submitting its Waiver and State Plan Amendments to CMS at the beginning of April 2023. CMS has ninety (90) days to review and respond to amendments with either an approval, denial, or Request for Additional Information (RAI); however, informed by previous experience, the timeline anticipates that CMS is likely to respond to the Department's amendment submissions with a Request for Additional Information. The Department has ninety (90) days to review and respond to the RAI. CMS then has ninety (90) days to review and respond to the Department's response to the RAI. On IDHW's proposed timeline, the Department has allowed approximately two (2) months after CMS approval to allow time for the Independent Assessment Contractor (IAC) to begin scheduling SIS-A assessments, for the IAC system to go live, and for associated state administrative rules to be published. **Thus, the Department anticipates that IAC will begin administering SIS-A assessments in early December 2023.**

c) **Award Contract for Independent Assessment Providers.** Assessments are currently being conducted by Liberty Healthcare under a contract that ends on June 30, 2023. The Department anticipates posting the new IAC contract Request For Proposal (RFP) in January 2023. The Department anticipates receiving bids and reviewing those bids between February and April 2023, and awarding the new contract in May 2023.

Although the Department can lessen the impact of a new IAC by making the ability to begin assessments in a timely manner a condition of the RFP, the Department believes it may still need time to transition the system to a new contractor. The timeline reflects such a transition, should it be necessary.

d) **Administrative Rule Promulgation.** A number of administrative rules will need to be adopted as part of implementing the new resource allocation model. These rules must be published in the Idaho Administrative Bulletin in the month prior to their effective date. In IDHW's proposed timeline, the Department proposes submitting in October 2023 the rule changes for publication in the November 2023 edition of the Administrative Bulletin.

As to such issues as the suitable representative plan and the information that will be provided to participants in their Budget Notices, the parties disagree as to what is required by the demands of Due Process. The parties may have to seek, through appropriate motions, the Court's assistance in resolving these issues.

As to issues about which there is still significant disagreement, the parties set forth their respective positions as to the status those issues below.

SECTION II (IDHW Status Report)

The Department is providing this status report fully aware of the fact that the date set by this Court for when the new resource allocation model was to be implemented has come and

gone. The Department has been open and honest with the Court and class counsel regarding the impact that passage of the federal American Rescue Plan (ARP) has had on the Department's prior plans for implementation. In its Notice Regarding Status of CMS Waiver and State Plan Amendments dated April 15, 2022 (Dkt. 482), the Department informed the Court that meeting the Court's June 2022 deadline for implementing a new budget model was contingent upon receiving approval of amendments to the State's Developmental Disabilities Waiver ("DD Waiver") and Medicaid state plan from federal Centers for Medicare and Medicaid Services ("CMS"). Then, in its subsequent Status Report Regarding Implementation of New Resource Allocation Model dated August 31, 2022 (Dkt. 504), the Department informed the Court that the Department had received technical assistance from CMS to the effect that the only way the Department can implement its new resource allocation model without violating ARP's Maintenance of Effort ("MOE") requirements is to have new applicants and new enrollees submit to both the old budget tool assessment (SIB-R), as well as the new resource allocation's assessment (SIS-A). The Department further informed the Court, class counsel, and CMS that it had determined that it was not advisable to implement the new resource allocation model until expiration of the ARP MOE period, which is currently estimated to be this summer.

After so informing CMS, the Department received word from CMS that CMS agreed that waiting to implement the new resource allocation model until after the ARP MOE period had expired was the appropriate course of action. After receiving CMS's opinion regarding the Department's implementation decision, the Department provided CMS with a memorandum dated August 30, 2022, from class counsel that outlined several alternatives for implementing the new resource allocation model before expiration of the ARP MOE period. In a recent discussion with the Department, CMS informed the Department that it normally does not get involved in a

state's decisions regarding the operational feasibility of the state's program, and that after giving class counsel's August 30 memorandum full consideration, CMS did not find anything that would alter its policy of deferring implementation decisions to the state.

The Department was unable to move forward with concrete plans for implementing the new resource allocation model until it was conclusively determined that CMS would require both the old and new assessments and that the Department would be unable to perform two parallel assessments as a condition of implementing the new model.

Although there is undoubtedly much work for the Department to accomplish as it moves toward implementing assessments with the SIS-A, with the timeline that is now before the Court, the Department has moved the task of implementing the new resource allocation model from the hypothetical into the concrete. Each of the tasks to be accomplished is given a specific timeframe and the Department continues to dedicate personnel and resources to completing these tasks. Nevertheless, the Department has made every attempt to identify the dependencies that may impact the implementation of the new model, which dependencies have been identified in the timeline. The most significant of these are as follows:

A. The time that CMS may take to approve the Department's Adult DD Waiver and the Waiver Amendments is completely beyond the Department's control. The Department's relationship with its federal funding partner CMS, is both collaborative and hierarchal. For a requested federal authority change, the Department can inform CMS of factors weighing on the state's need for urgent review and approval and can quickly respond to questions from CMS on the material. However, the Department cannot direct CMS process or staff resource, and cannot make demands. As a federal regulator and funder over the state Medicaid programs, CMS exercises approval authority, and for complex changes involving

additional services, the Department would not expect cursory review from CMS. The Department's previous CMS review experiences bear this out. The Department will work with both CMS and class counsel to do everything possible to obtain all required approvals from CMS as expeditiously as possible.

B. The Department must publish proposed administrative rule changes in the Idaho Administrative Bulletin before they become effective and may not seek such publication until several preliminary tasks have been accomplished. Implementation of the new model will require changes to the Department's administrative rules, the Department must provide public notice of a proposed rule change through publication in the Idaho Administrative Bulletin. Under this process, the content of the temporary and proposed rule must be fully ready. That is, the rule content cannot change until the rule is being reviewed by the next legislative session. The content of the temporary and proposed rules incident to the new resource allocation model are dependent on the completion of the following tasks; 1) CMS approval of the waiver amendments, 2) if necessary, this Court has approved the content of the budget notices, 3) if necessary, this Court has approved the Suitable Representative Plan, and 4) if necessary, this Court has approved the Department's Plan for regular testing of the assessment tool as required by the Settlement Agreement. The Department has also identified as an additional dependency receiving confirmation from the IAC vendor (whether Liberty or another vendor) that it will be able to implement system changes needed to begin administering the SIS-A on or before December 4. The timeline provides challenging yet realistic timeframes for accomplishing these tasks. While the Department will certainly begin the rulemaking process before CMS approvals have been given, it is prohibited from taking the required step of publishing the rules until CMS approvals have been given.

C. As to reaching agreement or obtaining court approval of the scope of information that will be provided to participants in their budget notices, the Department and class counsel continue to disagree on the information that is necessary to satisfy Due Process. The Department has informed class counsel that it will be including in every budget notice a copy of what the developers of the SIS-A refer to as a Family Friendly Report (“FFR”). A copy of the FFR is attached hereto as Department’s Exhibit A. The SIS-A is designed as a “conversational” assessment wherein the assessor and respondent engage in a discussion of each item in the SIS-A. The SIS-A is not designed as a series of discreet questions and answers, from which the assessor adduces the rating he or she feels is appropriate. In fact, respondents will have a copy of the “key” that is used to determine the ratings for each item in front of them during the assessment, and the assessor uses this key to reach an agreement with the respondent about the rating that should be given, based on their overall conversation about that particular item. In order to facilitate the conversation and help reach a consensus, the assessor can navigate between Type of Support, Frequency, or Daily Support Time. Once all of the areas are agreed upon by the respondent group and assessor, the assessor will move to the next question. At the end of the assessment, the system performs an audit to ensure that all questions are answered, including Type of Support, Frequency, and Daily Support Time for each question. If an answer is flagged as not being completed, the assessor and respondent group return to that item and answer the question. The likelihood of an error in recording the rating is further mitigated by the assessor reading back to the respondent all of the ratings for a particular item before moving to the next item. Thus, the FFR provides respondents with all the information they would need to challenge the accuracy of the ratings given by an assessor.

The budget notices will also contain additional information about how the ratings were converted into standard scores, and how standard scores are converted into the “levels” that inform the intensity of the support needs from which the participant’s budget will be calculated. This description will include a listing of the services that the Department anticipates people will utilize on average within each support level, as well as the rates the Department will pay for those services. Thus, with (a) a copy of the respondent’s answers, (b) the assessors ratings that were based on those answers, (c) a description of how a participant’s “level” of services is calculated, (d) a listing of the services the Department will pay for within any support level and (e) the rates the Department will pay for those services, participants will have all of the information that would be needed to mount an appeal of a budget decision.

However, class counsel contends that the information described above is not sufficient to meet the demands of Due Process. In particular, class counsel has insisted that the Department produce and make available to every member of the class, the SIS-A User’s Manual, which is a 144-page document authored, copyrighted, and sold by the American Association on Intellectual and Developmental Disabilities (AAIDD). The SIS-A User’s Manual is not available for purchase by the general population. AAIDD requires the purchaser to have a master’s or doctoral degree in certain fields and/or formal training in the ethical administration, scoring, and interpretation of clinical assessments, or be recognized as a qualified SIS assessor, or be licensed to practice in one’s state in a field related to the purchase. The SIS-A User’s Manual is intended to be a resource for SIS-A interviewers and contains instructions on how to administer and score the SIS-A. The instructions in the User’s Manual provide guidance on the follow-up questions an assessor might ask during the SIS-A in order to ensure collection of the most accurate picture of the participant’s needs as possible.

Although the SIS-A is being used in approximately 23 states throughout the United States, the Department has not found a single jurisdiction that makes the SIS-A User's Manual available to test takers either as part of an appeal or upon any other type of request, nor has the Department found an instance where denying unfettered access to the User's Manual has provided grounds for a Court to determine that a test-taker's due process rights have been violated. More information on the availability or purchase of the User's Manual can be found at <https://www.aaidd.org/publications/bookstore-home/purchase-qualifications-policy>.

The dispute over production of the SIS-A User's Manual has arisen solely because AAIDD has conveyed to the Department its position that the User's Manual contains proprietary information and is an indispensable source of revenue for AAIDD – a 501(c)(3) nonprofit organization. AAIDD also asserts that allowing access to the SIS-A User's Manual by those who are not qualified to use it will irreparably compromise the integrity of the SIS-A, thereby rendering it useless. As a result of the consequences that AAIDD foresees from production of the SIS-A User's Manual, AAIDD has asserted in no uncertain terms that if the User's Manual is produced without restriction or limitation in this litigation, AAIDD will exercise its right to terminate its contract in Idaho and likewise terminate any licenses by which the Department would implement and administer the SIS-A as its needs assessment tool for the Adult DD Waiver services program. Of course, this would delay implementation of a new resource allocation model and extend the life of this litigation for years to come.

The Department has also made it clear to class counsel that it has no objection to producing the User's Manual. It is only due to the promise that AAIDD will terminate its relationship with Idaho that the User's Manual has not been produced. The Department has queried AAIDD as to whether there might be a method by which the Department can be

authorized to either purchase additional copies of the User's Manual that it would make available for a limited time to participants who appeal their budget notice, or in some other way make the User's Manual available to people appealing a budget notice. The Department will keep class counsel apprised of any response we receive from AAIDD.

The Department will continue its efforts to resolve this dispute with class counsel. In the event it appears no resolution will be possible through negotiation the Department will provide the Court with details about the information it plans to provide in budget notices and will seek a ruling from this Court that the information that it proposes to provide to participants is sufficient to satisfy the demands of Due Process.

D. The Settlement Agreement requires the Department to obtain this Court's approval of a "plan to ensure that all participants receive a commitment from a suitable representative to assist the participant before proceeding to informal review and taking any action to confirm a budget reduction produced by the budget tool." (Dkt. 306-1, p. 4 of 91.) Also, the Settlement Agreement defines a Suitable Representative as "any individual chosen by a class member to assist the class member through Informal Review, Extended Formal Review, or at the fair hearing associated with the class member's Calculated Budget appeal, who has also agreed to assist such class member as chosen during the time that the individual remains willing and able to assist that class member." (Dkt. 306-1, p. 7 of 91.) Thus, the Department is in the process of finding an entity that is not within the Department of Health and Welfare that would be able to provide individuals who are able to provide assistance to a class member who is unable to find someone on their own to provide such assistance in an appeal of a budget decision. While the Department is examining the feasibility of providing payment to those who provide assistance during an appeal, the Department is also examining potential sources of assistance that

will be provided on a volunteer basis. This is consistent with this Court's Memorandum Decision and Order dated March 28, 2016, wherein the Court stated, "Due process requires more than just assuming someone will volunteer to assist the participant; it requires that IDHW receive a commitment from someone competent to assist the participant in the appeal. That commitment could be from a family member, guardian, *volunteer*, or other person, if competent." (Emphasis added.) (Dkt. 270 at p. 20.) Moreover, there is nothing in the Settlement Agreement that specifies that the Department must not only provide, but also pay for a suitable representative. Although the Court has stated that "commitments may be very difficult to obtain if time is not compensated," such a caveat does not foreclose a plan whereby competent and independent assistance is provided on a volunteer basis.

Class counsel, however, has repeatedly stated that any Suitable Representative Plan must include provision of paid representation. While the Department is committed to a Plan whereby independent and competent assistance is made available to participants who are unable to find such assistance on their own, the possibility that such assistance can be provided by volunteers is still being considered by the Department.

The Department is currently in discussions with leadership of the State Health Insurance Benefit Advisors (SHIBA) program, which is part of the insurance commissioner's consumer protection services and provides free, unbiased, and confidential assistance with Medicare and health care choices. The Department is looking into the feasibility of having SHIBA volunteers (or possibly staff) provide the assistance that the Department is obligated to provide under the terms of the Settlement Agreement. Those discussions are ongoing, and the Department will keep this Court and class counsel apprised of their progress.

The Department still hopes to be able to develop and implement a Suitable Representative Plan that is agreeable to class counsel such that the Plan eventually submitted to this Court for approval would be accompanied by class counsel's notice of non-opposition. However, from the Department's perspective it appears that class counsel is posing objections to the Department's proposals by terms to the Plan that are not required under the Settlement Agreement, such as the requirement that the Department allocate funds to pay for such a suitable representative, or that the suitable representative have experience in working with people with developmental disabilities.

It is important to also understand that the Department has thus far been unable to find a parallel program of state-provided representation at the appeals level for adults in the developmentally disabled Waiver program. The Department is creating a function and service that to the Department's knowledge does not exist anywhere else in the country. Also, the Department anticipates that with the roll-out of the new resource allocation model there will be an increase in the number of appeals that are taken on budget decisions. However, the Department is presently receiving appeals of budget decisions and has been from the beginning of the program. Nevertheless, the Department has never received notice from a participant that he or she has not been successful in finding someone to assist them in an appeal. Furthermore, since 2017 the Department has made it possible for Support Brokers (SBs) and Targeted Service Coordinators (TSCs) to bill the Department for giving participants assistance in their appeals. Since that time, the Department has processed a grand total of four (4) such requests from SBs or TSCs for payment for providing assistance in a budget appeal.

As with the issue regarding materials to be made available to class members, the Department is committed to continuing to work with class counsel on developing a mutually

agreeable Suitable Representative Plan. However, in the event such an agreement cannot be reached, the Department will submit what it believes to be a Plan that meets the obligations set forth in the Settlement Agreement to this Court for approval.

E. Other Issues Raised by Class Counsel

Inasmuch as the content of Budget Notices and the Suitable Representative Plan require this Court's approval pursuant to the Settlement Agreement, the Department considers these two issues to be of primary significance. Nevertheless, class counsel has raised other issues that do not require resolution as a condition of satisfying the obligations set forth in the Settlement Agreement, but which the Department is still working to resolve. That is, this litigation is not the only front on which the Department is considering and making program improvements. Among the other issues raised by class counsel are:

1. Post-Implementation Protections

The Settlement Agreement created a "Bridge Period" that terminates when the new resource allocation model is implemented, and during which participants may elect either their "Calculated Budget" (derived from the old Budget Tool) or their "Injunction Budget" (which is the highest budget a class member has received since July 1, 2011). Notwithstanding the Settlement Agreement's provisions on when access to the Injunction Budget will end, the Department has extended participants' access to the Injunction Budget for two years following implementation of the new model. This has been termed by the parties as the "overlap" period.

The Settlement Agreement provides that it will terminate 2 years after implementation of the new resource allocation model to allow for analysis that will ensure that the new model is accurately performing the task it is designed to perform. Although not required by the Settlement Agreement, providing an "overlap" period will enable the Department to collect the

data it needs to ensure the accuracy of the new model without the risk to existing participants of having their budgets dramatically lowered. While class counsel acknowledges that such an overlap period mitigates, if it does not completely moot, concerns about the accuracy of the new resource allocation model for existing participants, class counsel has asserted that new entrants into the Adult DD Waiver services program would have no equal “protections.” Because it is impossible for the Department to create an Injunction Budget, or any type of guaranteed minimum budget for someone who has never been in the Adult DD Waiver services program, the same *type* of protections that are given to existing participants will, as a practical matter, be unavailable to new participants. Nevertheless, the Department is providing an expedited budget modification process for participants with no injunction budget, which request will be allowed any time a participant looking for a budget modification does not have a transition budget.

The Department anticipates that as data is gathered from existing and new participants during this “overlap” period, any systemic budget shortfalls will be identified, and adjustments will be made to ameliorate such shortfalls.

2. Obtaining Adequate Funding for Needed Staff

Class counsel has recently asserted that the Department has breached the Settlement Agreement by failing to seek proper funding necessary to implement the terms of this Settlement Agreement. However, as the Court is undoubtedly aware, seeking line-item budget allocations within the Department of Health & Welfare (the agency with the largest budget in State government), is more complicated than simply submitting requests for things the Department wants, or even for things that the Department *must* have. The Department submitted its discretionary and non-discretionary budget requests to the Division of Financial Management on September 1, of last year with a revision submitted in November. Non-discretionary requests include ongoing funds to support payment of services, administration of the program, and existing contracts. Discretionary

requests include new items such as provider rate increases, new contracts, or funding for new efforts.

In addition to the Medicaid budget request, the Department must also evaluate needs across other Divisions as part of the Department's request. Thus, the focus on Medicaid's maintenance budget, or non-discretionary request, is reflected in its November revised request. The Medicaid Division saw substantial growth in the maintenance budget due to increased caseload tied to the Public Health Emergency Maintenance of Effort requirements; increased utilization across services; inflation; and out of state care.

. The Department will be able to discuss and divulge additional details regarding its budget request after the Governor's State of the State address on January 9th.

3. Language Access

Class counsel has pointed out that there is a shortage of bilingual personnel available to assist non-native English speakers. Although the Department has made translation lines available to participants and the IAC has trained bilingual assessors on staff who are knowledgeable about the tool and the program, the Department agrees that there is a shortage of bilingual providers and supports across the state. Providers are focused on hiring any direct care staff (regardless of other language proficiencies) at this time due to widespread workforce challenges, and the Department remains open and committed to working with stakeholders on solutions to bolster the availability of bilingual providers beyond what is available via translation services. Also, the Department is working with Community NOW!'s Culturally Responsive Advisory Group (CRAG) on its recommendations regarding language and cultural barriers. However, since there is no mention of language access being the basis for the due process violations that are being claimed in the First Amended Complaint, nor is language access

mentioned anywhere in the Settlement Agreement, the Department believes that as important as this issue is, it is beyond the scope of this litigation. The Department is, again, cognizant of the need to improve participants' access to language assistance and is open to discussing potential remedies with any concerned stakeholders, including class counsel. However, in prioritizing which issues it will direct its limited resources to address, the Department views improving language access as an issue that certainly needs to be addressed but need not be fully resolved in order to resolve this litigation.

4. Workforce Crisis Issues

The Department agrees wholeheartedly with class counsel that the challenges participants are having in recruiting and retaining staff are dire – throughout the state and the entire country. The Department has taken steps to mitigate the effects of this crisis, such as providing a process for requesting a budget modification based on difficulty recruiting and retaining staff under the current “health and safety” budget modification provisions and adopting provider rate increases. The Department and the Medicaid Division have made the direct care staff workforce crisis a priority issue and have included an initiative to do so in the Department’s Strategic Plan and received appropriations last legislative session for a number of provider rate increases for Home and Community Based Services providers who serve the Adult Developmental Disability community; these rate increases were effective July 1, 2022. However, much like the language access issue, addressing the workforce crisis, while incredibly important, is not part of the Settlement Agreement or a condition of compliance with the Settlement Agreement. The Department is certainly open to collaborating with counsel outside of this litigation on efforts to address the workforce shortage.

///

SECTION III
(Plaintiffs' Status Report)

I. IDHW Is in Violation of the Court's Orders

Half a decade ago IDHW asked the Plaintiff class for an extension until this year—2023—to implement the new budgeting system that the Class Action Settlement Agreement (CASA) requires. (*See* Dkt. 353-1, at 3; *see also* Dkt. 353-2.) The CASA gave IDHW until 2019, and "no later than January 2020," to implement the new system. (Dkt. 463, at 2.) At the time, class counsel spent months consulting with class members and representatives about IDHW's request, and then months trying to negotiate in good faith with IDHW before giving notice in July 2019 that the class could not accept IDHW's request to delay implementation "for several years, while offering to take no steps to address the ongoing violations of the Constitutional rights of Idahoans utilizing developmental disability services under Medicaid." (Dkt. 353-2 ex. H; Dkt. 353-1 at 3–5.) When IDHW then ignored class counsel's request to meet and confer, Plaintiffs filed a Motion to Enforce the Settlement Agreement (Dkt. 353).

The parties litigated over the deadline for the next year. The Department filed multiple papers seeking to extend even its deadline just to respond to Plaintiffs' enforcement motion (Dkt. 354, 356.) It then filed a motion asking at first to have until January 2023 to implement the new system (Dkt. 373), and then later asked to have until January 2024 (Dkt. 411). Two years ago, in December 2020, this Court ruled on the parties' motions, imposing on IDHW a "firm deadline" of June 2022, which was meant to "stave off two years' worth of delay" for the class. (Dkt. 463 at 5; Dkt. 429.)

In presenting the deadline dispute to the Court in 2019, Plaintiffs flagged two ongoing due process violations that needed to be remedied if the class were forced to wait longer than they agreed for a new, fair system:

- lengthy delays in resolving class members’ administrative appeals, leaving the services they depend on in limbo for months, and
- an emerging crisis in class members’ ability to retain and recruit the support workers they need, exacerbated both by the existing budget system (which is still based on 2009–2010 data) not being adjusted for inflation and by uncertain criteria governing when IDHW will increase a budget to match current market realities.

(Dkt. 353-1 at 12–15.) The Department’s own submissions flagged a third need, for

- training about the Department’s “exception review” and “change of conditions” processes, which allow class members to seek higher budgets when they need them.

(Dkt. 374-9 para. 9(B).) When the Court set the June 2022 deadline, it did not address these issues. The Department has not addressed them either. A round of extensive consultation with class members this past summer revealed that class members’ difficulty recruiting and retaining support workers is now a full-blown crisis. Plus, over the past two years, bilingual workers have left the program, leaving class members with limited English proficiency in crisis as well, because they are unable to navigate the system and understand IDHW’s processes and notices. The Department has failed to address any of these ongoing issues, despite that class counsel have repeatedly raised them.

June 2022 has also come and gone, and IDHW has failed to implement the new system. It now contends, like it did in 2019 when it lost the deadline dispute, that it will not implement the new system until at least 2024. The Department has failed to seek any leave from or stay of the Court’s order that the new system be implemented by June 2022.

II. IDHW has failed to Validate the Budget Model

At the heart of the CASA is a list of 24 "Action Steps" that IDHW must complete before its implementation deadline. (Dkt. 306-1 at 8–9 (PDF pp. 9–10).) Among them is the fundamental requirement that IDHW "validate" the new budget system. It must do so with particularity: IDHW must validate the “service mixes by support level and living setting” specifically—the mechanisms by which the new system will categorize class members and assign them specific dollar-amount budgets.

Human Services Research Institute (HSRI)—the consultant that the CASA designates to help develop the new system—explains the new system’s “support levels” this way:

Idaho’s new resource allocation model uses a five-level framework where participants are assigned to a support level consistent with need as assessed by the Supports Intensity Scale–Adult Version (SIS-A). Levels 1, 2, and 3 include individuals with low, moderate, and high general support needs, respectively. Level M is assigned to individuals with extraordinary medical support needs, while Level B is assigned to individuals with extraordinary behavioral support needs.

In turn, “service mixes,” HSRI explains, “are a way to group participants based on what they are eligible for (i.e., Adult DD Waiver or State Plan HCBS Only), the way they choose to get their supports (i.e., Traditional or Self-Direction), and the type of in-home habilitative support they choose to receive (if any).”

The CASA prescribes that the capstone task to validate the support levels and service mixes is a “pre-implementation review,” which is supposed to “validate service packages and other key aspects of the framework.” (Dkt. 306-1 ex. 1 at 19 (PDF p. 59).) That pre-implementation review, which IDHW conducted in February 2021, purported to “determine whether the draft support levels and service mixes will meet most people’s needs when implemented.” (HSRI, *Pre-Implementation Review Findings*, 5 (2021),

<https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=19317&dbid=0&repo=PU>

[BLIC-DOCUMENTS](#).) But by mistake, HSRI failed to include any class members from the massive and growing group of people on "Self-Direction" in the underlying cohort of 800 class members whose data it used to develop the new system. *See id.* at 16–17. Although a few class members had switched over to Self-Direction by the time the pre-implementation review was done, their representation in the 100-person sample IDHW used for pre-implementation review was neither complete nor sufficient. *See id.*

So, it may come as no surprise that the pre-implementation review found, and HSRI's "Final Report" on the new system flagged, "shortcomings in the self-directed service mixes/budgets" that will lead to inadequate budgets for many class members. HSRI, *Resource Allocation Model Final Report 72* (2022), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=21240&dbid=0&repo=PU> [BLIC-DOCUMENTS](#). For instance, HSRI found that budgets under the new system "were not completely adequate for most individuals" on Self-Direction who need live-in support workers. *Id.* at 67. Indeed, the pre-implementation review findings suggest that the new system would only "somewhat" meet about 23% of those class members' needs and would "not at all" meet the needs of another 23% of them. *Id.* Yet, HSRI's report also noted class members on Self-Direction already make up a quarter of the entire class, and that that proportion is expected to grow. *Id.* at 77.

HSRI stressed in its final report that "the concerns raised about the adequacy of budgets for adults who self-direct must be addressed." *Id.* at 73. It also recommended that IDHW "explore changes" to base rates used in calculating Self-Direction budget amounts. *Id.* Although IDHW tells class counsel it has begun to explore those changes, IDHW has still not said if,

when, or how it will address these problems with the new system. The new system, accordingly, has yet to be validated. Action step 13 in the CASA is not done.

In hopes of addressing these problems, both parties agree that there should be an “overlap period” as the new system launches. During an overlap period, class members would get a budget under the new system but be able to fall back on a budget from the old system, if that budget is higher. Although neither the old nor new system are fair for all class members, an overlap period would give both sides time to analyze more robust data about the new system and, hopefully, properly validate it after curing any deficiencies that the additional data confirms or uncovers.

III. IDHW’s Proposed Timeline Will Unfairly and Illegally Burden Certain Portions of the Class Compared to Others

But unfortunately, the overlap period that IDHW now proposes is unfair and unconstitutional. The Department proposes that *only* class members who already have an old system budget would be able to fall back on it if their new system budget turns out to be inadequate. This needlessly disadvantages two discrete groups of class members:

1. class members who enter the program or switch to Self-Direction after the new system’s implementation, and
2. class members whose circumstances change significantly after the new system’s implementation, requiring a budget recalculation.

Both groups would be protected if the new system had been properly and fully validated, but it has not been. The Department’s proposed overlap period would foist the burden of correcting the problems with the new system, which IDHW has failed to fix, onto these class members, including those new to the system—the ones with the least wherewithal to contend with IDHW’s

complex appeal processes. Although the old system has problems as well, at least it provides some backstop when the new system generates inadequate budgets.

The Department's proposals would merely patch over the new system's problems with a different set of due process and equal protection problems.

IV. IDHW Intends, Once Again, to Compute Budgets Based on Secret Assessments

From the first, this lawsuit has been about transparent decision making, which due process requires. The initial complaint, filed January 18, 2012, focused on the “black box” that was IDHW's assessment and budgeting process for adults with developmental disabilities—and the unconstitutionally deficient budget notices that resulted from it. (*See* Dkt. 1, at 12–18.) At summary judgment, four years later, the parties litigated whether IDHW could withhold from class members details about their “SIB-R” evaluations—the assessment instrument that IDHW has been using with the old budget tool. This Court, in its summary judgment ruling, explained why due process demanded access to assessment materials, addressing IDHW's justification based on proprietary interests:

IDHW justifies this by submitting the Declaration of Tracy Boney, Vice-President of Product Management and Strategy at Houghton Mifflin Harcourt Publishing Company, the company that developed the SIB-R and holds the copyright on that work. *See Boney Declaration (Dkt. No. 100-2)*. He alleges that the company will suffer substantial economic loss if the SIB-R is copied, and that its confidentiality prevents the “teaching to the test” phenomenon. *Id.* at ¶ 6(b).

Mathews requires that the Court weigh this potential harm against the importance of the SIB-R to the participant's budget and the risk of erroneous deprivation. The SIB-R scores are very important in the overall IIN scoring that establishes a budget for the participant, and determines the available services. IDHW's ban prevents participants from challenging errors or effectively cross-examining IAPs who claim their assessments are accurate. Finally the risk of error – either mathematical, clerical, or substantive, as discussed above – is substantial. These risks of erroneous deprivation outweigh the harm described above; the *Mathews* analysis compels a finding of a due process violation. *See American-Arab Anti-Discrimination Committee v. Reno*, 70 F.3d 1045, 1069 (9th Cir. 1995) (“the very foundation of the adversary process assumes that use of undisclosed information will violate due process because of the risk of error”).

K.W., 180 F. Supp at 717.

Following that ruling, the Court entered a Partial Declaratory Judgment (Dkt. 301) prohibiting IDHW from hiding its budget setting methodologies, including "any training manuals and instructions provided to assessment personnel employed by or contracted with the Department, that are used in connection with determining individual DD budgets." (Dkt. 301 at 2.) And the Court approved the CASA, which includes provisions specifically ensuring that class members have access to SIB-R materials. (CASA sec. V.D and ex. 3.)

Yet, now once again with the new system, IDHW wants to hide assessment materials. The Department intends to use a new assessment instrument, the "SIS-A," for the new system. The Department and AAIDD (the publishers of the SIS-A) are currently relying on the exact same bases to justify hiding SIS-A materials from class members. The Department refuses to give class members access to the SIS-A score sheets that assessors will complete about them, and the manual explaining how assessors must administer and score the SIS-A. The manual, called the SIS-A User's Manual, establishes and describes the proper procedure for performing a SIS-A assessment. The score sheet, called the Interview and Profile Form, is used to actually record the answers given by respondents to the questions that make up the SIS-A.

Instead, IDHW has proposed to give class members just a "Family Friendly Report" about their SIS-A results. This handicaps class members whenever they must evaluate or appeal their budget under the new system: one side (IDHW) will know both their SIS-A results and how those results were determined, but the other side (the person using Medicaid) will only know the SIS-A results and any notes the assessor chose to include in the Family Friendly Report. This is the same obvious due process problem the parties already litigated at summary judgment. The

parties have been unable to resolve issues relating to these materials despite meeting and conferring several times.

V. IDHW Has Withdrawn its Suitable Representative Plan and Has not Proposed Any Alternative

Adults with developmental disabilities often require assistance in understanding budget assignments and the process for addressing errors in the assessment or circumstances which necessitate increased budgets to maintain participant health and safety. As this Court noted: “Due process requires more than just assuming someone will volunteer to assist the participant; it requires that IDHW receive a commitment from someone competent to assist the participant in the appeal.” *K.W. v. Armstrong*, 180 F. Supp. 3d 703, 716 (D. Idaho 2016).

The CASA requires the Department to submit a final suitable representative plan to the Court for approval. (Dkt. 306-1 at 9–10 (PDF pp. 10–11).) This approval is necessary prior to implementation of the new budget tool. Implementation without a suitable representative plan would result in many participants receiving budgets that simply fail to meet their needs and no meaningful way for them to appeal erroneous determinations or seek additional services. The Department submitted a Suitable Representative Plan in March, 2022 (Dkt 476-1) and Plaintiffs objected. In the spring and summer of 2022 class counsel met several times with class members, caregivers, advocacy groups and service providers. These meetings resulted in an August 2022 memo to the Department summarizing the position of the class and proposing possible solutions. The parties had previously sought Court intervention and guidance to expedite resolution of outstanding issues, including plans for suitable representation. This Court asked the parties to submit supplemental briefing on the question of good faith and fair dealing as it relates to approval of any suitable representative plan. Rather than responding to the proposals set out in

the August 2022 memo from class counsel, or waiting for additional guidance from the Court, the Department preemptively withdrew its Suitable Representative Plan the day supplemental briefing was due. Plaintiffs timely filed their Supplemental Brief (Dkt. 516) noting substantial deficiencies in the plan and the Department's failure to comply with the CASAs dispute resolution process.

The Department's withdrawn Suitable Representative Plan relied on volunteers and Department staff to assist participants in challenging budgets or seeking additional services for changed needs. The Court expressed concern with the Department's reliance on unpaid volunteers at the Status Conference on November 28, 2022. In December, 2022, the Department informed class counsel that it would be exploring another possibility that, yet again, would rely primarily on volunteers. There is currently no proposed Suitable Representative Plan.

The Department has provided no information or estimate of anticipated costs for continuing reimbursement to Support Brokers and Targeted Service Coordinators (which is included in the Bridge Period's Suitable Representative provisions) when the new budget model is fully implemented. The Department has provided no information or explanation why it cannot develop a Suitable Representative Plan that includes payment for work on budget appeals. The Department cannot claim noncompliance based on financial impossibility when it apparently has not included Suitable Representative reimbursement in its 2024 legislative budget request.

The Department's continued insistence on unpaid volunteers places additional demands on those who are already at the breaking point. Family members are struggling to care for loved ones when paid support workers are leaving for higher paid employment elsewhere. Support Brokers and Targeted Service Coordinators are also leaving to pursue better employment

opportunities. The response to this crisis cannot be to require additional, uncompensated work for those who are already overworked and underpaid.

The Department cannot comply with due process if its plan is to continue as it has by demanding unpaid services while maintaining low wages that are driving good support brokers, and service coordinators from the field and expecting those remaining to pick up the slack, when there is simply no slack left. The Department must comply with the CASA and develop a Suitable Representative Plan for Court approval, before it imposes budgets, including budget cuts, on the class.

VI. The Department Has Not Yet Proposed a Testing Plan.

Both the Court's summary judgment decision and the CASA call for a plan of continued testing to assure that any new budget tool did not create or cause new violations of the law. In its summary judgment ruling, the Court found that numerous problems with the then-existing budget tool would only be identified, much less corrected, if IDHW was actually looking for them and so "regular testing must be done to ensure that the budget tool is working as intended." *K.W.*, 180 F. Supp. 3d at 712. The parties agreed that IDHW would submit for Court approval "a final plan to the Court to regularly test the new resource allocation model after it is implemented." (CASA, Dkt. 306-1 at 9 (PDF p. 10)).

The Department has not proposed or submitted any testing plan. This Court expressly found that the failure to regularly test the adequacy of the budget tool's outcomes, along with other flaws in the system, directly contributed to a budget tool that was arbitrarily denying at least some program participants the resources they needed and thus denying them due process of law. *K.W.*, 180 F. Supp. 3d at 712. Without a testing plan in place the new budget tool is almost

certain to suffer the same flaws as prior versions, resulting in a repetition of the due process violations that this lawsuit and the settlement agreement were meant to prevent.

VII. In Order to Implement the Budget Model and Resolve This Case IDHW Must Complete Specific Tasks.

In addition to the items the parties agree must be completed, which are set out in the joint portion of this report, a number of other tasks are required if the CASA is to be completed and this case to reach a point it can be terminated.

A. Class and Stakeholder Outreach

The Settlement Agreement explicitly requires ongoing class outreach, and stakeholder involvement in all aspects of the development of the new budget tool. (CASA, sec. V.A.5). This obligation extended from the approval of the CASA through and until a final plan for testing is completed. (*Id.*). The obligation extended to soliciting comment from the class, reviewing those comments, and reporting to the class on all matters including development and finalizing of the new budget model, the suitable representative plan, and the testing plan. (*Id.*). That process was required to occur at least every six months. The Department has not made sufficient efforts to solicit comments from class members, review those comments, or report on development of the budget tool in the past six months, and there have never been any efforts by IDHW to solicit or review comments on a Suitable Representative Plan or a Testing Plan.

Ongoing, regular and robust stakeholder involvement was an express agreement by the parties, and must be re-initiated and carried out until there are final, approved plans for a budget tool, suitable representatives, and regular testing.

B. Determine the Overlap Period

This Report discusses an “overlap period” that will provide critical data as well as a degree of protection against unintentional due process violations while the new budget tool is implemented. Plaintiffs believe that this overlap during which personal care budgets are protected against further due process violations is necessary to assure a lawful transition as well as to ensure the new budget model is validated as required by the settlement agreement. The Department has expressed its willingness, but the details remain to be resolved. Like nearly all items covered by the CASA, the details of implementation can be the result of agreement or court approval. Either way, the details of implementation, including the overlap, must be resolved before implementation occurs.

C. Develop and Implement a Suitable Representative Plan

Implementing a new budget tool which relies heavily on an appeal process to ensure its adequacy requires that those affected be able to understand the process, evaluate the outcomes and take appropriate steps. A plan to ensure each class member has a Suitable Representative is a critical element of ensuring compliance with due process. Per the terms of the Settlement Agreement, the Suitable Representative Plan must be the product of consultation with class members and other stakeholders, must be presented to Class Counsel, and either the parties must reach agreement, or the matter must be referred to the Court for resolution.

D. Develop and Implement a Testing Plan

The failure to engage in any regular testing or evaluation of the budget tool contributed to this Court’s prior finding that the tool was denying due process of law because it arbitrarily denied individuals benefits. Like the Suitable Representative plan, a plan for regular testing must be developed with the input and advice of the relevant stakeholders and must either reflect the

parties' mutual agreement or receive the Court's approval. More importantly, the testing plan is a necessary element to avoid implementation of a new budgeting regime that continues to violate the constitutional rights of Idahoans.

VII. The Court Must Intervene to Protect the Class's Rights and Enforce the Settlement Agreement.

The Court should not wait any longer to intervene to ensure that IDHW complies with the CASA, that the class gets the fair and constitutional system it is entitled to, and that this case does not drag on for another decade. The Court should set a scheduling order governing IDHW's implementation responsibilities that works expeditiously towards a hearing, if necessary, on IDHW's noncompliance.

The Court should, first, allow Plaintiffs a brief period (about two months) for formal discovery regarding IDHW's noncompliance. The Department has indisputably violated the CASA by, at the very least, failing to comply with this Court's June 2022 implementation deadline. When considering whether to grant discovery to probe compliance issues like these, "[i]f significant questions regarding noncompliance have been raised, appropriate discovery should be granted." *California Dept. of Social Services v. Leavitt*, 523 F.3d 1025, 1034 (9th Cir. 2008). Discovery here will help both class counsel and this Court evaluate any of IDHW's arguments that its noncompliance and delay were somehow justified, and also assess what remedies are feasible and appropriate. *See Kelly v. Wengler*, 979 F. Supp. 2d 1237, 1242 (D. Idaho 2013). Plaintiffs seek only a limited time to propound written discovery requests and then complete a short series of 3 to 5 depositions. If commenced soon, discovery could be completed by mid-March.

After that, if the discovery process and the parties' negotiations have not resolved outstanding issues, the parties should submit motions to resolve those issues.¹ Plaintiffs propose a motion deadline of March 31, 2023, with responses due April 21 and replies due May 5, following the Local Rules. The Court should then hold a hearing, taking further testimony and evidence, if necessary, sometime in May.

Following this schedule, the Court should have the information it needs to rule on IDHW's compliance and any appropriate remedies by June 2023. This schedule is aimed at keeping this case on track and preventing yet another round of delay that could come if the parties are left to negotiate without structured court intervention.

Respectfully submitted,

Date: January 10, 2023

ACLU OF IDAHO FOUNDATION

By /s/ Richard Eppink
RICHARD EPPINK
AADIKA SINGH

PIOTROWSKI DURAND, PLLC

By /s/ James Piotrowski
JAMES PIOTROWSKI
MARTY DURAND

Attorneys for Plaintiffs

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By /s/ Alan W. Foutz
STEVEN L. OLSEN
BRIAN V. CHURCH
ALAN W. FOUTZ

Attorneys for Defendants

¹ It is not possible to anticipate precisely what motions will be necessary until discovery is completed, but additional motions to enforce the settlement agreement, plus a motion for contempt over IDHW's failure to comply with the Court's prior order setting a firm deadline of June 2022, are the most likely.

DRAFT - KW Schedule Dec 6, 2022



Primary	Contingency Planning/Footnotes	Start Date	End Date	2022				2023				2024				2025				2026			
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
32	<p>Key Assumptions for the DRAFT Shortest Possible Timeline:</p> <ul style="list-style-type: none"> • DRAFT timeline as of Dec 1, 2022 • Assumes AAIDD continues to work with Idaho and does not pull their contract • Assume only one waiver renewal extension (and assumes CMS will approve 1915c waiver by Dec 31, 2022) • Does include a 2nd 90-day review cycle by CMS for the waiver amendments • Assumes we have court & CMS approval of everything (waiver amendments, suitable rep, budget notices, testing Plan) – by 10/1/2023 • Shortest possible timeline contemplates no change in the IAP vendor (with the available info we have currently) and are ready to implement by 11/15/2023; however, it's important to acknowledge that the IAP procurement could impact the timeline in areas outside our control • Begin assessments December 1, 2023 • Budget notices go out mid January 2024 • Injunction budgets offered to current participants through 12/31/25 	<p>Key Schedule Considerations</p> <ul style="list-style-type: none"> • IAP procurement could shift timelines significantly; several components of the timeline will be heavily dependent upon the winning contractor and are outside department control. The new contractor may require an extensive overlap period with the new contractor and current contractor operating at the same time, which could extend the budget model implementation date for a currently unknown period of time. • It is possible that the department may require a 2nd temporary waiver extension that would go through Mar 31, 2023 • Possible extension of procurement and contracting activities between the Division of Purchasing and the Department. This may be tied to complexities with the procurement process (evaluation and scoring; responding to questions; etc.) and the timeline to award and finalize a contract. 																					
34	IAP Contracting - DOP Process as Planned (dependent upon DOP timelines that are outside dept. control)	Dependent on Department of Purchasing timelines that are outside dept. control	12/01/22	05/31/23																			
35	Coordinate with contracting team to prepare for Independent Assessment Provider (IAP) RFP	Dependent on Department of Purchasing timelines that are outside dept. control. We are required to competitively procure this contract which ends on 6/30/2023. There are no extensions available.	12/01/22	12/30/22																			
36	Post IAP contract RFP beginning of the new year	Dependent on Department of Purchasing timelines that are outside dept. control. We are required to competitively procure this contract which ends on 6/30/2023. There are no extensions available.	01/02/23	01/31/23																			
37	Receive Bids and Department / DOP Review of Proposals and respond to RFP questions	Dependent on Department of Purchasing timelines that are outside dept. control. We are required to competitively procure this contract which ends on 6/30/2023. There are no extensions available.	02/01/23	04/24/23																			
38	Award IAP contract	Dependent on Department of Purchasing timelines that are outside dept. control. We are required to competitively procure this contract which ends on 6/30/2023. There are no extensions available.	05/01/23	05/31/23																			
44	New IAP Contract Starts	The Department will evaluate timeline based on transition activities between contractors	06/01/23	06/01/23																			
45	New IAP Contract Starts	The Department will evaluate timeline based on transition activities between contractors	06/01/23	06/01/23																			
49	IAP Contractor System Updates	The Department will evaluate timeline based on transition activities between contractors	12/01/22	11/17/23																			
50	Determine IAP system updated requirements for SIS-A go-live (for SIS-A renorming strategy, injunction budget overlap period, etc.)	Current IAP contractor is unable to accurately project a timeline until the business requirements are determined; the first meeting to discuss this with IAP has already occurred and additional meetings are being scheduled.	12/01/22	02/28/23																			
51	IAP system development and testing for SIS-A go-live		03/01/23	08/31/23																			
52	IAP start scheduling SIS-A / Vineland assessments	Dependent on timeline in the new IAP contract following IAP procurement The current IAP contractor is scheduling approximately 6 weeks in advance	10/16/23	10/27/23																			

Primary	Contingency Planning/Footnotes	Start Date	End Date	2022				2023				2024				2025				2026								
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4					
53	Decision Gate - Notify IAP to publish system changes	Dependent on timeline in the new IAP contract following IAP procurement The current IAP contractor requires implementing the system changes approximately 2 weeks prior to when the first SIS-A assessments are conducted.	11/13/23	11/17/23																								
54	IAP makes system changes		11/17/23	11/17/23																								
62	Court approval of Suitable Rep and Testing Plan		12/01/22	04/28/23																								
63	Collaborate with Class Counsel to revise the Suitable Rep Plan		12/01/22	02/01/23																								
64	Finalize Testing Plan and collaborate with Class Counsel to obtain approval.		12/01/22	02/01/23																								
65	If required, obtain court approval of negotiations on Suitable Rep Plan	Dependent upon time required to negotiate with class counsel and, if required, the court	02/01/23	04/28/23																								
66	If required, obtain court approval the Testing Plan	Dependent upon time required to negotiate with class counsel and, if required, the court	02/01/23	04/28/23																								
69	1915c Waiver Renewal (without a 2nd temporary extension; assumes CMS approval by 12/31/22)		11/01/22	12/30/22																								
70	Respond to CMS request for additional info (RAI) on DD Waiver renewal (1915c) and obtain CMS approval	The submission is dependent upon CMS for approval. A second temporary waiver extension could add additional 90 days to the timeline for CMS approval of the 1915c waiver (CMS approval by 3/31/23).	11/01/22	12/30/22																								
75	Waiver Amendment / SPA Coordination		12/01/22	12/01/23																								
76	Finalize draft waiver amendments (1915c and 1915i) and SPA and be ready to post for tribal / public comment	Dependent upon timing of CMS	12/01/22	01/13/23																								
77	Post for waiver amendments and SPAs public comment	Dependent upon timing of CMS	01/16/23	01/16/23																								
78	60-day tribal comment period and 30-day public comment period for waiver amendments and SPA	Dependent upon timing of CMS	01/16/23	03/17/23																								
79	Policy team reviews comments received for the waiver amendments / SPA	Dependent upon timing of CMS	03/18/23	03/24/23																								
80	Internal approval of draft waiver amendments and SPA prior to submission to CMS	Dependent upon timing of CMS	03/25/23	03/31/23																								
81	Formal submission to CMS of the waiver amendments and SPA	Dependent upon timing of CMS	04/03/23	04/03/23																								
82	CMS review period for waiver amendments and SPA (90-day period)	Dependent upon timing of CMS	04/03/23	07/03/23																								
83	Request for Additional Information (RAI) received from CMS / develop responses, coordinate with CMS on response, and send formal response to CMS	Dependent upon timing of CMS	07/03/23	07/17/23																								
84	CMS reviews department RAI responses (90-day period)	Dependent upon timing of CMS	07/03/23	09/29/23																								
85	CMS approval of waiver amendments and SPA		09/29/23	09/29/23																								
86	Waiver amendments and SPA go into effect	The department is planning on 2 months between CMS approval and effective dates, to allow time for the IAP to begin scheduling SIS-A assessments, for the IAP system to go-live, for the associated state administrative rules to publish, etc. The court will need to approve the budget notices prior to rules and waiver amendments going into effect. If required, we may need court approval on the Suitable Rep plan and Testing Plan prior to the rules going into effect.	12/01/23	12/01/23																								
99	Budget Notice Revisions		12/01/22	10/02/23																								
100	Revise draft budget notices		12/01/22	06/15/23																								
101	Planning for public meeting on budget notices, draft announcement of the meeting and post/distribute the announcement		05/15/23	06/15/23																								
102	Public meetings on budget notices (1 in English and 1 in Spanish)		06/15/23	06/29/23																								

Primary	Contingency Planning/Footnotes	Start Date	End Date	2022				2023				2024				2025				2026			
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
138 <input type="checkbox"/> Injunction Budget Overlap Period	Dependent on all activities that must proceed SIS-A implementation	01/01/24	01/01/26									Injunction Budget Overlap Period								Injunction Budget Overlap Period			
139 Begin assigning budgets with SIS-A	Dependent on all activities that must proceed SIS-A implementation	01/01/24	01/31/24									Begin assigning budgets with SIS-A											
140 Begin access to revised Appeal Assistant Support (formerly called Suitable Rep)	Dependent on all activities that must proceed SIS-A implementation	01/01/24	01/01/24									Begin access to revised Appeal Assistant Support (formerly called Suitable Rep)											
141 Offer injunction budget to current participants	Dependent on all activities that must proceed SIS-A implementation	01/01/24	12/31/25									Offer injunction budget to current participants								Offer injunction budget to current participants			
142 Conduct mid-implementation review and make adjustments	Dependent on when we begin SIS-A assessments	01/01/25	12/31/25													Conduct mid-implementation review and make adjustments							
143 Work with IAP System to prepare for any budget allocation changes, as needed	Dependent on when we begin SIS-A assessments	07/01/25	12/31/25																	Work with IAP System to prepare for any budget allocation changes, as needed			
144 Revise budget notices, as needed, and prepare to implement	Dependent on when we begin SIS-A assessments	07/01/25	12/31/25																	Revise budget notices, as needed, and prepare to implement			
145 Communicate upcoming changes related to the overlap period	Dependent on when we begin SIS-A assessments	07/01/25	12/31/25																	Communicate upcoming changes related to the overlap period			
146 Implement changes to budgets - no more use of injunction budgets	Dependent on when we begin SIS-A assessments	01/01/26	01/01/26																	Implement changes to budgets - no more use of injunction budgets			

DRAFT - KW Schedule Dec 6, 2022



Primary	Contingency Planning/Footnotes	2022				2023				2024				2025				2026				
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
32	<p>Key Assumptions for the DRAFT Shortest Possible Timeline:</p> <ul style="list-style-type: none"> DRAFT timeline as of Dec 1, 2022 Assumes AAIDD continues to work with Idaho and does not pull their contract Assume only one waiver renewal extension (and assumes CMS will approve 1915c waiver by Dec 31, 2022) Does include a 2nd 90-day review cycle by CMS for the waiver amendments Assumes we have court & CMS approval of everything (waiver amendments, suitable rep, budget notices, testing Plan) – by 10/1/2023 Shortest possible timeline contemplates no change in the IAP vendor (with the available info we have currently) and are ready to implement by 11/15/2023; however, it's important to acknowledge that the IAP procurement could impact the timeline in areas outside our control Begin assessments December 1, 2023 Budget notices go out mid January 2024 Injunction budgets offered to current participants through 12/31/25 	<p>Key Schedule Considerations</p> <ul style="list-style-type: none"> IAP procurement could shift timelines significantly; several components of the timeline will be heavily dependent upon the winning contractor and are outside department control. The new contractor may require an extensive overlap period with the new contractor and current contractor operating at the same time, which could extend the budget model implementation date for a currently unknown period of time. It is possible that the department may require a 2nd temporary waiver extension that would go through Mar 31, 2023 Possible extension of procurement and contracting activities between the Division of Purchasing and the Department. This may be tied to complexities with the procurement process (evaluation and scoring; responding to questions; etc.) and the timeline to award and finalize a contract. 																				
34	+ IAP Contracting - DOP Process as Planned (dependent upon DOP timelines that are outside dept. control)	Dependent on Department of Purchasing timelines that are outside dept. control																				
44	+ New IAP Contract Starts	New IAP Contract Starts																				
49	+ IAP Contractor System Updates	IAP Contractor System Updates																				
62	+ Court approval of Suitable Rep and Testing Plan	Court approval of Suitable Rep and Testing Plan																				
69	+ 1915c Waiver Renewal (without a 2nd temporary extension; assumes CMS approval by 12/31/22)	1915c Waiver Renewal (without a 2nd temporary extension; assumes CMS approval by 12/31/22)																				
75	+ Waiver Amendment / SPA Coordination	Waiver Amendment / SPA Coordination																				
99	+ Budget Notice Revisions	Budget Notice Revisions																				
107	+ Stakeholder Listening Tour	Stakeholder Listening Tour																				
110	+ Administrative Rule Promulgation (assumes no delay due to CMS waiver approval)	Administrative Rule Promulgation (assumes no delay due to CMS waiver approval)																				
120	+ Training Prior to Go-Live	Training Prior to Go-Live																				
123	+ Operational Activities	Operational Activities																				
129	+ IAP Contractor Begins SIS-A / Vineland Assessments	IAP Contractor Begins SIS-A / Vineland Assessments																				
138	+ Injunction Budget Overlap Period	Injunction Budget Overlap Period																				

Introduction to the SIS Report:

The Supports Intensity Scale Adult Version (SIS-A) profile information is designed to assist in the service planning process for the individual, their parents, family members, and service providers. The profile information outlines the type and intensity of support the individual would benefit from to participate and be successful in his or her community. The SIS-A profile report is best applied in combination with person-centered planning to achieve the desired outcome in creating individual goals.

Rating Key for Sections 2 and 3

This describes the rating for Type of Support, Frequency and Daily Support time for each of the six areas discussed in your SIS-A profile

Type of Support	Frequency	Daily Support Time
<p>What help do you need to do the (item) on your own or by yourself</p> <p>If engaged in the activity over the next several months, what would the nature of the support look like?</p> <p>Which support type dominates the support provided?</p>	<p>How frequently is supported needed for this activity?</p>	<p>If engaged in the activity over the next several months, in a typical 24-hour day, how much total, cumulative time would be needed to provide support?</p>
<p>0 = None No support needed at any time</p> <p>1 = Monitoring (reminders). For example * Encouragement, general supervision * Checking in, observing, telling, &/or giving reminders to complete the activity * Asking questions to trigger the individual to complete steps within the activity</p> <p>2 = Verbal/Gesture Prompting (demonstration). For example: * Step by step instruction Walking a person through required steps * Providing visual prompts, showing * Modeling, teaching, role play, social stories</p> <p>3 = Partial Physical Assistance (help through doing). For example: * Individual participates in some parts of the activity * Some, essential steps are required to be completed for the person</p> <p>4 = Full Physical Support (doing for). For example: * All essential steps need to be completed for the person</p>	<p>0 = None or less than monthly</p> <p>1 = At least once a month, but not once a week</p> <p>2 = At least once a week, but not once a day</p> <p>3 = At least once a day, But not once an hour</p> <p>4 = Hourly or more frequently</p>	<p>0 = None</p> <p>1 = Less Than 30 Minutes</p> <p>2 = 30 Minutes to Less Than 2 Hours</p> <p>3 = 2 Hours to Less Than 4 Hours</p> <p>4 = 4 Hours or More</p>

Section 2. Supports Needs Index**2A. Home Living**

Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Operating home appliances/electronics	0 - None	0 - None or Less Than Monthly	0 - None	0
2. Bathing and taking care of personal hygiene and grooming needs	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Using the toilet	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Dressing	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Preparing food	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Eating food	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Taking care of clothes (includes laundering)	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Housekeeping and cleaning	0 - None	0 - None or Less Than Monthly	0 - None	0

2B. Community Living

Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Getting from place to place throughout the community (transportation)	0 - None	0 - None or Less Than Monthly	0 - None	0
2. Participating in recreation/leisure activities in the community	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Participating in preferred community activities (church, volunteering, etc.)	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Accessing public buildings and settings	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Using public services in the community	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Shopping and purchasing goods and services	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Interacting with community members	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Going to visit friends and family	0 - None	0 - None or Less Than Monthly	0 - None	0

2C. Lifelong Learning

Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Learning and using problem-solving strategies	0 - None	0 - None or Less Than Monthly	0 - None	0
2. Learning functional academics (reading signs, counting change, etc.)	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Learning health and physical education skills	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Learning self-determination skills	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Learning self-management strategies	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Participating in training/educational decisions	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Accessing training/educational settings	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Interacting with others in learning activities	0 - None	0 - None or Less Than Monthly	0 - None	0
9. Using technology for learning	0 - None	0 - None or Less Than Monthly	0 - None	0

2D. Employment				
Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Learning and using specific job skills	0 - None	0 - None or Less Than Monthly	0 - None	0
2. Accessing/receiving job/task accommodations	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Interacting with coworkers	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Interacting with supervisors/coaches	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Completing work-related tasks with acceptable speed	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Completing work-related tasks with acceptable quality	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Changing job assignments	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Seeking information and assistance from an employer	0 - None	0 - None or Less Than Monthly	0 - None	0

2E. Health and Safety

Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Taking medications	0 - None	0 - None or Less Than Monthly	0 - None	0
2. Ambulating and moving about	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Avoiding health and safety hazards	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Obtaining health care services	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Learning how to access emergency services	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Maintaining nutritious diet	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Maintaining physical health and fitness	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Maintaining emotional well-being	0 - None	0 - None or Less Than Monthly	0 - None	0

2F. Social				
Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Using appropriate social skills	0 - None	0 - None or Less Than Monthly	0 - None	0
2. Participating in recreation/leisure activities with others	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Socializing outside the household	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Making and keeping friends	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Engaging in loving and intimate relationships	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Socializing within the household	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Communicating with others about personal needs	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Engaging in volunteer work	0 - None	0 - None or Less Than Monthly	0 - None	0

Section 3. Supplemental Protection and Advocacy Scale

Protection and Advocacy Activities				
Item	Type of Support	Frequency	Daily Support Time	Total Score
1. Advocating for self	1 - Monitoring	2 - At Least Once a Week, But Not Once a Day	1 - Less Than 30 Minutes	4
2. Making choices and decisions	0 - None	0 - None or Less Than Monthly	0 - None	0
3. Protecting self from exploitation	0 - None	0 - None or Less Than Monthly	0 - None	0
4. Exercising legal/civic responsibilities	0 - None	0 - None or Less Than Monthly	0 - None	0
5. Belonging to and participating in self-advocacy/support organizations	0 - None	0 - None or Less Than Monthly	0 - None	0
6. Obtaining legal services	0 - None	0 - None or Less Than Monthly	0 - None	0
7. Managing money and personal finances	0 - None	0 - None or Less Than Monthly	0 - None	0
8. Advocating for others	0 - None	0 - None or Less Than Monthly	0 - None	0

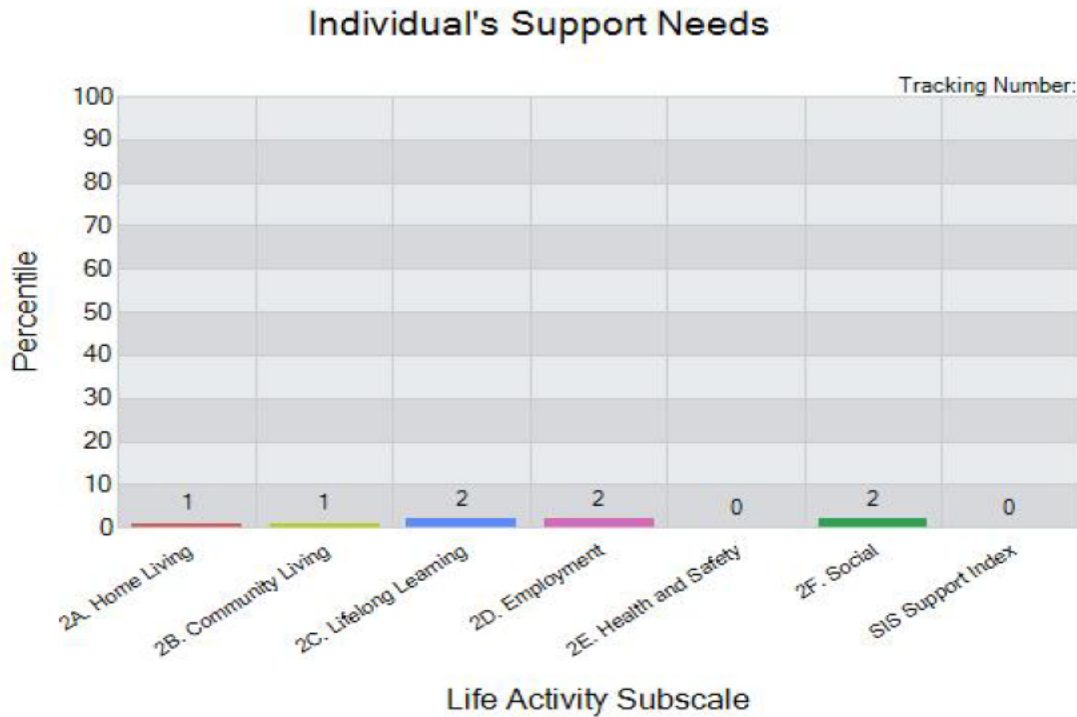
Support Needs Profile - Graph

The graph provides a visual presentation of the six life activity areas from section 2.

The graph reflects the pattern and intensity of the individual's level of support. The intent of the graph is to provide an easy means to prioritize the life activity areas in consideration of setting goals and developing the Individual Support Plan.

Activities Subscale	Total Raw Score	Standard Score	Percentile	Confidence Interval (95%)
2A. Home Living	0	3	1	2-4
2B. Community Living	0	3	1	2-4
2C. Lifelong Learning	0	4	2	3-5
2D. Employment	0	4	2	3-5
2E. Health and Safety	0	2	0	1-3
2F. Social	0	4	2	3-5
Total:	0	20		

SIS Support Needs Index: 54
Percentile: 0



Section 3: Supplemental Protection and Advocacy Scale

Protection and Advocacy Activities	Raw Score
Advocating for self	4
Making choices and decisions	0
Protecting self from exploitation	0
Exercising legal/civic responsibilities	0
Belonging to and participating in self-advocacy/support organizations	0
Obtaining legal services	0
Managing money and personal finances	0
Advocating for others	0

The support needs profile reflects the pattern and intensity of the individual's support. The information provided in sections 1, 2, and 3, can be beneficial in the development of the individual's support plan.

Rating Key For Section 1

Type of Support		
0 = No Support Needed	1 = Some Support Needed	2 = Extensive Support Needed
<p>No support needed because the medical condition or behavior is not an issue, or no support is needed to manage the medical condition or behavior.</p>	<p>Support is needed to address the medical condition and/or behavior. People who support must be cognizant continuously of the condition to assure the individual's health and safety.</p> <p>For example: Checking in and observing Monitoring and providing occasional assistance Minimal physical/hands on contribution Support is episodic and/or requires minimal devoted support time</p>	<p>Extensive support is needed to address the medical condition and/or behavior.</p> <p>For example: Significant physical/hands on contribution Support is intense and/or requires significant support time</p>

Any rating of 2 in this area indicates an exceptional need with Medical conditions and/or Behaviors.

It should be noted that a high total score in section 1 clearly identifies additional support that is required for living safely in the community. The information from section 1 is considered separately from section 2.

Each item under Exceptional Medical and Behavioral is listed and presented from highest to lowest level of support.

Exceptional Medical and Behavioral key items are outlined and may be helpful in the development of the individual's support plan.

Section 1A: Exceptional Medical Support Needs		
Item	Support Needed	Comments
1. Inhalation or oxygen therapy	0 - No Support Needed	
2. Postural drainage	0 - No Support Needed	
3. Chest PT	0 - No Support Needed	
4. Suctioning	0 - No Support Needed	
5. Oral stimulation or jaw positioning	0 - No Support Needed	
6. Tube feeding (e.g., nasogastric)	0 - No Support Needed	
7. Parenteral feeding (e.g., IV)	0 - No Support Needed	
8. Turning or positioning	0 - No Support Needed	
9. Dressing of open wound(s)	0 - No Support Needed	
10. Protection from infectious diseases due to immune system impairment	0 - No Support Needed	
11. Seizure management	0 - No Support Needed	
12. Dialysis	0 - No Support Needed	
13. Ostomy care	0 - No Support Needed	
14. Lifting and/or transferring	0 - No Support Needed	
15. Therapy services	0 - No Support Needed	
16. Hypertension	0 - No Support Needed	
17. Allergies	0 - No Support Needed	
18. Diabetes	0 - No Support Needed	
19. Other - Specify :	0 - No Support Needed	
Total Score	0	

Section 1B: Exceptional Behavioral Support Needs		
Item	Support Needed	Comments
1. Prevention of emotional outbursts	0 - No Support Needed	
2. Prevention of assaults or injuries to others	0 - No Support Needed	
3. Prevention of property destruction (e.g., fire setting, breaking furniture)	0 - No Support Needed	
4. Prevention of stealing	0 - No Support Needed	
5. Prevention of self-injury	0 - No Support Needed	
6. Prevention of suicide attempts	0 - No Support Needed	
7. Prevention of pica ingestion of inedible substances	0 - No Support Needed	
8. Prevention of nonaggressive but inappropriate sexual behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	0 - No Support Needed	
9. Prevention of sexual aggression	0 - No Support Needed	
10. Prevention of substance abuse	0 - No Support Needed	
11. Prevention of wandering	0 - No Support Needed	
12. Maintaining mental health treatments	0 - No Support Needed	
13. Other - Specify :	0 - No Support Needed	
Total Score	0	

Supplemental Questions

1. Does this individual require extraordinary support in response to any medical needs? Such support is defined as direct 1:1 assistance for medical care. Possible medical care related to the condition may include (but is not limited to): respiratory care, seizure management, lifting and transferring, insulin management, etc.

yes

If yes, how many hours per day of support is required?

1

How many days per week is support required to meet the individual's medical support needs?

1

2. Does this individual require extraordinary support in response to behavioral challenges? Such support is defined as constant observation and availability of dedicated 1:1 assistance to prevent or mitigate harmful behavior(s). Such behavior may include (but is not limited to): self-injurious behavior, pica, assault of others, aggressive or inappropriate sexual behaviors, etc.

yes

If yes, how many hours per day of support is required?

1

How many days per week is support required to meet the individual's behavioral support needs?

1

3. Individual displays a risk of falling, as demonstrated by an unsteady gait, active seizures, documented history of falling, or other issue that effects falling. Describe specifics and frequency of falls in the past 12 months.

yes

Notes

test

How Information from My Support Profile Can Be Used in Supports Planning Approaches

Everyone benefits from supports that allow them to take part in everyday life activities and maintain a healthy lifestyle. The Supports Intensity Scale Adult Version (SIS-A) assesses a person's pattern and intensity of support needs across life activities and exceptional medical and behavioral support need areas. The attached 'My Support Profile' summarizes information from the SIS-A that can be used in planning supports for individuals based on their support needs and the individuals' goals and interests.

Planning supports for individuals requires the collective wisdom of a Support Team that is made up of the individual receiving the services and supports, his/her parents or family members, a case manager or supports coordinator, direct support staff who work with the individual, and one or more professionals depending on the individual's support needs. The purpose of this attachment to the 'My Support Profile' is to provide answers to six questions asked frequently by the individual and his/her support team members as collectively they engage in the development, implementation, and monitoring of the individual's support planning.

1. How do we determine what is important to the individual and what is important for the individual?

Identifying support needs that are important to the individual is based on the individual's goals, desires, and preferences.

Identifying support needs that are important for the individual is based on:

- higher support need scores from the 'My Support Profile' in the most relevant life activity areas
- needed supports in health and safety
- interventions prescribed by a professional.

2. How do we focus on the whole person and the individual's quality of life?

The concept of quality of life reflects a holistic approach to an individual and includes areas that are valued by all persons.

Eight core quality of life areas reflect this holistic approach:

- | | | |
|------------------------|-----------------------|---------------------------|
| - Personal Development | - Self-determination | - Interpersonal Relations |
| - Social Inclusion | - Rights | - Emotional Well-being |
| - Physical Well-being | - Material Well-being | |

These eight quality of life areas can be used to develop an ISP.

3. What are the responsibilities of support team members?

Determine what is important to and for the individual

Identify specific support strategies to address the individual's personal goals and assessed support needs

Specify a specific support objective for each support strategy and indicate who is responsible for implementing each support strategy

Implement and monitor the Individual Supports Plan

4. What supports can we use to enhance the individual's well-being?

Natural sources (e.g. family, friends, and community resources)

Technology-based (e.g. assistive technology, information technology, smart technology, and prosthetics)

Environment-based (e.g. environmental accommodation)

Staff directed (e.g. incentives, skills/knowledge, and positive behavior supports)

Professional services (e.g. medical, psychological, therapeutic services)

5. How does information obtained from the SIS-A relate to professional recommendations?

Professional recommendations such as those from a doctor focus on lessening the impact of the individual's disability-related condition.

SIS information focuses on the supports an individual needs in order to be more successful in everyday life activities.

Both types of information need to be a part of planning supports for individuals.

6. How do we know if the supports provided have an effect on the individual?

Informally, people will see an increased involvement of the individual in everyday life activity areas and an improvement in exceptional medical and behavioral support need areas.

Formally, people will see enhanced personal quality of life-related outcomes on one or more quality of life areas.