

**ATTACHMENT 1**  
**ASSISTED LIVING PROVIDER PROVISIONS**

**A 1.1 PURPOSE:** The South Dakota Department of Human Services, (DHS) Division of Long Term Services and Supports (State) provides home and community-based service options to individuals 65 years of age and older and 18 years of age and older with disabilities. State services enable these South Dakotans to live independent, meaningful lives while maintaining close family and community ties. State provides home and community-based services sufficient in type, scope, amount, duration, and frequency, as specified in the Long Term Services and Supports Care Plan/Service Plan (LTSS Care Plan; see Provision B 2.2), to prevent or delay premature or inappropriate institutionalization.

State consumers are given information on available home and community-based services and have the right to choose between receiving services in his/her home and community or receiving services in a nursing facility. When a consumer chooses an Assisted Living setting to receive services, a partnership between the State and the Assisted Living Provider is developed to ensure the health, safety, and welfare of the consumer.

**A 1.2 PROVISION:** In addition to the requirements outlined in the SD Medicaid Provider Agreement, the Provider agrees to the following:

**A 1.3 RULES AND REGULATIONS:** The Provider shall comply with all Administrative Rules of South Dakota (ARSD) and South Dakota Codified Laws (SDCL) relative to the services provided. The Provider agrees to comply in full with all licensing requirements and other standards required by federal, state, county, city or tribal statute, regulation or ordinance in which the service and/or care is provided. Liability resulting from noncompliance with licensing and other standards required by federal, state, county, city or tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all consumers served is assumed entirely by the Provider. Medicaid rules and regulations supersede all Assisted Living policies and procedures.

**A 1.4 INTERPRETERS:** The State will utilize DHS approved interpreters, at State expense, whenever necessary for communication between the LTSS Specialist and the consumer. Interpreter services are authorized by the LTSS Specialist. The consumer must choose an approved LTSS Interpreter Agency, and the LTSS Specialist and Provider will cooperatively arrange for interpreter services as necessary for service provision.

**A 1.5 VERIFICATION AND DOCUMENTATION:** The Provider is required to maintain documentation and verification demonstrating compliance with this Agreement. This documentation must be readily available upon request.

**A 1.6 REIMBURSEMENT:** The rate(s) for services are specified in the HOPE Waiver Fee Schedule located at <http://dhs.sd.gov/ltss/ltssproviders.aspx>. Assisted Living Services are billed at a tiered daily rate. Rate tiers are determined by a standardized needs assessment tool that is completed by the LTSS Specialist at least annually with all consumers of the HOPE waiver. The information collected during the assessment generates a RUG score based on an algorithm developed by InterRAI.

Assisted Living staff are expected to participate in the assessment process and doing so will ensure the most accurate tier is assigned. If a Provider is concerned that a consumer is not accurately classified into the appropriate tier based on his/her last assessment and/or there is an error on the 'Therap Service Auth', the Provider should not acknowledge the 'Therap Service Auth'. The Provider should contact the LTSS Specialist assigned as the consumer's case manager to resolve any potential discrepancies.

All services authorized and delivered by the Provider to eligible consumers will be reimbursed at stated rates. The HOPE Waiver reimbursement rates are updated in July of each year. The Room and Board portion of the rate is adjusted in January of each year, based on the Cost of Living Adjustment (COLA). Notification of reimbursement rate adjustments is provided when these updates occur.

Approved claim forms, including all required information (e.g. Provider's National Provider Identifier, consumer's primary diagnosis code, etc.) will be submitted by the Provider to the State for payment of services authorized and provided.

The Provider must only bill for services acknowledged in Therap and delivered by the Provider.

The State will not reimburse or otherwise be made liable for purchases or transactions made by the Provider on behalf of the consumer.

To be reimbursed at the established rate, the consumer must be physically present in the Assisted Living Center and must be receiving the assisted living service, except in the following situations:

Hospital reserve bed days: An Assisted Living Center may bill SD Medicaid for a maximum of five consecutive days when a recipient is admitted to an inpatient hospital stay. Up to five consecutive days may be billed to SD Medicaid per hospitalization; however, the recipient must return to the Assisted Living Center for a minimum of 24 hours before additional hospital reserve bed days will be paid. When a consumer is transferred from an Assisted Living Center to a hospital, it is expected that the Provider will accept the consumer back at the Assisted Living Center at the time of hospital discharge.

Therapeutic leave days: An Assisted Living Center may bill SD Medicaid for a maximum of five therapeutic leave days per month. Therapeutic leave days may

be consecutive or non-consecutive. Therapeutic leave days are leave days from the Assisted Living Center for non-medical reasons (e.g., visits to the homes of family or friends).

The State's reimbursement for services rendered shall be considered payment in full. Except for the cost-share for waiver services, the Provider may not bill the consumer for any additional fees. The Provider will be advised of the consumer's cost-share, if any, and will be responsible for collecting the cost-share from the consumer.

## **STANDARD PROGRAM DEFINITIONS**

**B 2.1 "Assisted Living Services"** include personal care and supportive services that are furnished to eligible consumer(s) who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable consumer(s) needs and to provide supervision, safety and security. Services shall support full access to the greater community of consumers receiving Medicaid home and community-based services to the same degree of access as individuals not receiving Medicaid home and community-based services. The assisted living location promotes the health, treatment, comfort, safety, and well-being of consumer(s), with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under state law). Services that are provided by third parties must be coordinated with the Assisted Living Provider and the Long Term Services and Supports Specialist (LTSS Specialist).

Nursing and skilled therapy services are incidental rather than integral to the provision of assisted living services. Payment is not made for 24-hour skilled care. Federal financial participation is not available for room and board, items of comfort or convenience, or the costs of facility maintenance, upkeep and improvement.

The following waiver services cannot be billed separately: homemaker; personal care, respite care, emergency response service, meals, environmental accessibility adaptations, and chore services.

Adult companion services, adult day services, nursing, nutritional supplements, specialized medical equipment, and specialized medical supplies may be authorized by the LTSS Specialist, based on assessed need as identified in the LTSS Care Plan with a threshold equal to the average cost of nursing home care. When these additional services are authorized by the LTSS Specialist, the services/supplies must be provided by a third party that is enrolled as a HOPE Waiver Medicaid Provider.

**B 2.2 "Critical Service Need Consumer"**, is a consumer who needs service(s) (i.e., oxygen, injection, medication, wound care, therapy) provided on each assigned day without disruption, or without such service(s) the consumer's health condition would decline. The LTSS Specialist will communicate with the Provider (through the LTSS Care Plan) when a consumer has been identified as a Critical Service Need Consumer. When a Critical Service Need Consumer is identified, the LTSS Specialist is responsible

to work with the consumer and the Provider to develop a back-up plan for service provision during an emergency. The LTSS Specialist assists the consumer to identify any services that will be needed during an emergency.

The Provider must notify LTSS Specialist whenever a change in the Consumer occurs and/or a modification may be necessary. The Provider is required to provide input and participate in the development of the initial and ongoing LTSS Care Plan.

**B 2.3 “Eligible Consumer”** is any person in need of services who has been determined eligible by DHS. State will provide on-going Case Management for each consumer. Case Management will include reassessing the consumer’s needs and eligibility at least annually, facilitating the development of the LTSS Care Plan, convening annual and as-needed person-centered planning meetings to develop and approve changes to the LTSS Care Plan, authorizing additional services by the Provider and/or third parties, and resolving any consumer concerns and other consumer-related issues.

**B 2.4 “LTSS Care Plan/Service Plan”** is a written person-centered plan developed by the LTSS Specialist with a consumer, as well as any individuals the consumer chooses, and must be finalized and agreed to, with the informed consent of the consumer in writing, and signed by all individuals and providers responsible for its implementation. The LTSS Care Plan (Attachment 2) reflects the services and supports that are important for the individual to meet the needs identified through an assessment of need, as well as what is important to the individual with regards to preferences for the delivery of such services and supports. If a consumer needs special supports or modifications based upon an assessed health and safety need, it must be identified within the LTSS Care Plan. Any modification of the federal regulations for the HCBS Settings Final Rule, as described at CFR 42 § 441.710(a)(1)(vi), must be individualized and addressed in the LTSS Care Plan. If a provider is implementing any modification(s) to any of these federal home and community-based settings requirements, the modification(s) must be discussed with the LTSS Specialist and documented in the LTSS Care Plan.

The Provider must notify the LTSS Specialist whenever a change in the consumer occurs and/or a modification may be necessary. The Provider is expected to provide input and participate in the development of the initial and ongoing LTSS Care Plan.

**B 2.5 “Therap”** is the online case management documenting and billing software.

**B 2.6 “Therap Service Auth”** is the electronic document in Therap which details the services authorized for the consumer. The “Therap Service Auth” must be acknowledged by the Provider within 7 business days of receipt. Failure to acknowledge the “Therap Service Auth” within the designated time frame may negatively affect reimbursement for services provided.

If a Provider is concerned that there is an error on the 'Therap Services Auth', the Provider should not acknowledge the 'Therap Service Auth'. The Provider should contact the LTSS Specialist assigned as the consumer's case manager to resolve any potential discrepancies.

### **STANDARD PROGRAM REQUIREMENTS**

**C 3.1** The Provider must conduct fingerprint background checks to screen for abuse, neglect, and exploitation for all employees that provide direct services or supports. The Provider may request the State's approval for an alternative background check by completing and submitting a "Provider Request for Approval of Alternative Background Check", along with a description of the alternative background check (produced by the company that process the background checks).

To receive approval, the alternative background check results for employees hired by the Provider must be readily accessible to the State upon request and the description of the alternative background check must include verification that the following threshold criteria are met:

- The alternative background check verifies the identity of the individual hired utilizing at least two unique types of identification (must include a government issued photo ID and an additional document that meets I-9 standards)
- The alternative background check identifies the criminal history of the individual hired
- The alternative background check creates a report of the criminal history of the individual hired which is readily accessible to the provider

An employee hired to provide direct services or supports to consumers residing in an Assisted Living Center must meet the following minimum standards:

1. Be 16 years of age or older.
2. Be employed by an enrolled Medicaid Provider.
3. Pass a State fingerprint (or State approved) background check.
  - a. The following are a list of fitness criteria that would automatically preclude an individual from being hired/contracted:
    - i. A crime of violence as defined by SDCL 22-1-2 or a similar statute from another state;
    - ii. A sex crime pursuant to SDCL chapters 22-22 or 22-24A or SDCL 22-22A-3 or similar statutes from another state;
    - iii. Class A and/or B felony convictions.
  - b. The following are a list of fitness criteria that may preclude an individual from being hired/contracted at the discretion of the provider:
    - i. Other felonies not described in 3.a.iii.
    - ii. Misdemeanor convictions related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;

- iii. Any convictions, including any form of suspended sentence, which are determined to be detrimental to the best interests of SD Medicaid. This includes convictions related to a person's character such as perjury and fraud related charges as individuals determined to be dishonest with any party should not be assumed to be honest with SD Medicaid;
- iv. Conviction related to obstruction of a criminal investigation.

**C 3.2** The Office of the Inspector General (OIG) has the authority to exclude individuals and entities from federally funded health care programs and maintains a list of all currently excluded individuals. The Provider must check the OIG List of Excluded Individuals and Entities (LEIE) to ensure that new hires and current employees are not on the excluded list at a minimum of once every six months. Search the OIG exclusions database online at <https://exclusions.oig.hhs.gov/>. The Provider must have a policy that specifies the processes for conducting this verification.

**C 3.3** The Provider must report bed occupancy in the format and frequency required by Long Term Services and Supports.

**C 3.4** In accordance with South Dakota law, the Provider is mandated to immediately report any suspected abuse, neglect or exploitation of a consumer. The Provider must have a policy for abuse, neglect or exploitation reporting which conforms to the mandatory reporting laws and must provide training on mandatory reporting laws to staff on an annual basis. See South Dakota Codified Law (SDCL) 22.46 for South Dakota's laws regarding abuse, neglect or exploitation of elders or adults with disabilities.

**C 3.5** The Provider agrees to fully comply with the HCBS Settings Final Rule, 42 CFR §441.301(c)(4) and (5) specified here and in the HCBS Settings Guide to Expectations and Compliance. The Provider also agrees to cooperate with all action steps included in South Dakota's HCBS Settings Final Rule Transition Plan. Both documents are available online at <https://dss.sd.gov/medicaid/hcbs.aspx>.

**C 3.6** The Provider's facility standards and policies must address the federal Medicaid requirements for Home and Community-Based Settings (HCBS Settings Final Rule) as specified in 42 CFR §441.301(c)(4) and (5). Specific policies that must be addressed as part of facility standards include the following:

1. Access to the broader community;
2. Privacy, dignity, respect, autonomy, choice, control, free from coercion and restraints, all consumer's rights as noted in ARSD 44:70 and the HCBS Settings Guide to Expectations and Compliance;
3. Consumer leases/tenant agreement requirements;
4. Roommate choice policy;
5. Visitor/Guest policy;
6. Policy to address ability to lock door to sleeping or living unit; and
7. Policy to address access to food.

**C 3.7** The Provider must have a written Quality Assurance and Improvement Plan detailing all activities conducted by the Provider to ensure quality service provision. The Provider must also have a Quality Assurance policy specifying how the Provider will discover, fix, and report problems. The Provider will cooperate with quality performance site visit activities conducted by State.

The Provider agrees to participate in any evaluation and/or consumer satisfaction program developed and/or conducted by the State which will be used to determine the effectiveness of service provision statewide.

**C 3.8** The Provider must have an Admission, Transfer and Discharge policy. When the Provider determines services to a consumer must be discontinued, the Provider must notify the consumer in writing at least 30 days before the transfer or discharge, unless a change in the consumer's health requires immediate transfer or discharge or if the consumer has not resided in the Assisted Living Center for 30 days. The written notice must specify the reason for and effective date of the transfer or discharge and the new location to which the consumer will be transferred or discharged to; the conditions under which the consumer may refuse transfer within Assisted Living; and a description of how the consumer may appeal a decision by Assisted Living to transfer or discharge the consumer as per ARSD 44:70:09:14 Admission, Transfer, and Discharge Policies. Additionally, per ARSD 44:70:04:16 Discharge Planning, the Assisted Living Center shall initiate planning with applicable agencies to meet identified needs of consumer and consumer shall be offered assistance to obtain needed services upon discharge. Information necessary for coordination and continuity of care shall be made available to the assisted living setting and/or whomever the consumer is discharged to and to each referral agency as required by the discharge plan.

**C 3.9** The Provider must have a Grievance policy pursuant to ARSD 44:70:09:10. A consumer may voice grievances without discrimination or reprisal. A grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other consumers, and/or infringement of the consumer's rights. The Assisted Living Center shall adopt a grievance process and make the process known to each consumer and to the consumer's immediate family. The grievance process shall include the facility's efforts to resolve the grievance and documentation of the grievance; the names of the persons involved; the disposition of the matter; and the date of disposition.

**C 3.10** The Provider must have an incident reporting policy. The Provider must immediately notify State of any consumer-related concerns, incidents and occurrences, including possible exploitation, that are not consistent with routine care. The Provider must follow the Department of Health's policy for documenting the circumstances of any incident that involves restraint, seclusion, serious injury, missing person, or death from other than natural causes.

Upon being informed that a consumer has been hospitalized, or discharged from the hospital, the Provider will immediately communicate this information to the LTSS

Specialist to assure the consumer's need for service provision continue to be met appropriately.

**C 3.11** The Provider must have an emergency response policy. An "emergency" is defined as a situation that is sudden, generally unexpected, and demands immediate attention. The Provider must notify the State of the emergency upon resolution of the emergency or transfer of the consumer to emergency responders.

**C 3.12** The Provider must have a health and safety policy. The health and safety policy must detail the use of universal precautions. The provider must provide all supplies and equipment needed for staff members to practice infection control.

**C 3.13** The Provider must have a documentation policy. The documentation policy must include how assisted living staff document service provision, consumer progress and health/safety concerns with a consumer. Documentation must be kept for each consumer. Records must be retained for 6 years after a claim has been paid or denied. Documentation must be easily accessible upon request.

**C 3.14** The Provider must have a quality assurance policy. The Provider must have a written quality assurance and improvement plan detailing all activities conducted by the Provider to ensure quality service provision. The Provider must also have a quality assurance policy specifying how the Provider will discover, fix, and report problems. The Provider will cooperate with provider quality performance audits activities conducted by the State.

The Provider agrees to participate in any evaluation and/or consumer satisfaction program developed and conducted by the State to determine the effectiveness of service provision statewide.

**C 3.15** A copy of all policies must be readily accessible upon request.



<input type="checkbox"/> Critical Service Need		<b>Care Plan</b>			
<b>Name</b>	Name: Consumer Name				DOB:
<b>Residential Address</b>	Street:		City:	State:	Zip Code:
<b>Contact Information</b>	Home:		Cell:	Email:	
<b>Emergency Contact</b>	First:	Last:	Home:	Cell:	Work:
<b>Primary Physician</b>	Name:		Address:	Office:	Fax:
<b>LTSS Specialist</b>	Name:		Email:	Office:	

**Picture of My Life:**

Consumer Name

<b>Personal Goal</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	

<b>ADDENDUM TO CARE PLAN</b>
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<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	
<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	
<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	
<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	

<b>Six Month Review Signature</b>	
X	
Consumer's Signature or Authorized Representative's Signature	Date
X	
LTSS Specialist Signature	Date

<b>Emergency/Disaster Preparedness Plan</b>		
The consumer received the following: Ready Brochure, Emergency Readiness Checklist and File of Life.		<b>Additional Information Provided</b>
<b>Fire</b> Smoke detector Fire extinguisher Evacuation plan		
<b>Tornado</b> Weather alert Interior room plan Emergency shelter plan		
<b>Blizzard/Power Outage</b> Food supply Water supply Power/heat alternative		
<b>Critical Service Back Up Plan in case of an Emergency</b>		

### Assisted Living Request for Modifications to LTSS Care Plan

<b>Consumer Name:</b> Consumer Name <b>Legal Guardian (if applicable):</b>	<b>Assisted Living Name:</b> <b>Name of person completing this form:</b>
<input type="checkbox"/> <b>No modification(s) being requested (signatures required)</b>	<input type="checkbox"/> <b>In Home Consumer (does not apply/signatures not required)</b>

<b>Modification(s) are being requested in the following areas:</b>	
<input type="checkbox"/> Access to all areas of the setting <input type="checkbox"/> Control of his/her own schedule and activities <input type="checkbox"/> Right to have any visitors at any time <input type="checkbox"/> Freedom to come and go <input type="checkbox"/> Access to a variety of foods throughout the day <input type="checkbox"/> Ability to lock bedroom doors or apartment <input type="checkbox"/> Freedom to furnish and decorate bedroom or apartment	<input type="checkbox"/> Right to choose roommate <input type="checkbox"/> Right to privacy when completing activities of daily living <input type="checkbox"/> Ability to communicate with other individuals in private <input type="checkbox"/> Freedom from restraint <input type="checkbox"/> Access to appliances <input type="checkbox"/> Access to personal resources
1.) Describe the restrictive intervention being requested:	
2.) Describe the specific and individualized assessed need related to the restrictive intervention being requested:	
3.) Describe how the intervention is consistent with the specific assessed need:	
4.) Describe the positive interventions and supports that have been attempted to avoid restrictive intervention (documentation of interventions/supports and outcomes must be available upon request):	
5.) Describe less intrusive methods of meeting the need that have been tried but didn't work (documentation of methods and outcomes must be available upon request):	
6.) Describe how you will monitor the modification to measure the ongoing effectiveness and how you will document the outcome:	
7.) Describe established time limits for periodic reviews to determine if the modification is still necessary or can be terminated:	
8.) Include an assurance that interventions and supports will cause no harm to the Consumer:	

<b>Provider Signature</b>	<b>Date</b>
<b>Consumer or Guardian Signature</b>	<b>Date</b>
<b>LTSS Specialist Signature</b>	<b>Date</b>

**By signing below, I acknowledge agreement with this Care Plan and the following statements.**

I have been offered the choice of all providers of services contained in this plan.

I understand I have the right to be free from abuse and neglect. I have been provided with an informational brochure on abuse, neglect and exploitation.

I have been provided with an informational brochure on preventative health care.

I have been provided information on home and community-based services and understand the service options that are available to me. I understand I have the right to choose between receiving services in my home and community and receiving services in a nursing facility.

I understand I have the choice and the right to accept, or to refuse all or part of the services contained in this plan.

I understand it is my responsibility to notify Long Term Services and Supports, who is responsible for monitoring my plan, of any change in my living, medical, or financial status.

I understand I may have a financial responsibility for the services I receive.

X \_\_\_\_\_  
Consumer's Signature or Authorized Representative's Signature

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
LTSS Specialist Signature

\_\_\_\_\_  
Signature Date

Care Plan Effective Date \_\_\_\_\_  
Date

## Notice of Nondiscrimination

As a recipient of Federal financial assistance and a State or local governmental agency, the Department of Human Services does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, or national origin, or on the basis of disability or age in admission or access to, or treatment or employment in, its programs, activities, or services, whether carried out by the Department of Human Services directly or through a contractor or any other entity with which the Department of Human Services arranges to carry out its programs and activities; or on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation or disability in admission or access to, or treatment or employment in, its programs, activities, or services when carried out by the Department of Human Services directly.

The Department of Human Services:

- Provides free aids and services to people with disabilities to communicate effectively with us, such as:
  - Qualified sign language interpreters
  - Written information in other formats (large print, audio, accessible electronic formats, other formats)
- Provides free language services to people whose primary language is not English, such as:
  - Qualified interpreters
  - Information written in other languages

If you need these services, contact your local DHS office.

If you believe that DHS has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a discrimination complaint or grievance with: Discrimination Coordinator, Legal Services, 3800 E. Hwy. 34, c/o 500 E. Capitol Ave., Pierre, SD 57501. Phone: (605) 773-5990, [infodhs@state.sd.us](mailto:infodhs@state.sd.us). You can file a discrimination complaint or grievance in person or by mail, fax, or email. If you need help filing a discrimination complaint or grievance, the Discrimination Coordinator is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at: U.S. Department of Health and Human Services 200 Independence Avenue, SW Room 509F, HHH Building Washington, D.C. 20201 1-800-368-1019, 800-537-7697 (TDD) Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Regulations of the U.S. Department of Health and Human Services issued pursuant to these statutes at Title 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, and 28 CFR Part 35, the Omnibus Crime Control and Safe Streets Act of 1968, Title IX of the Education Amendments of 1972, Equal Treatment for Faith-based Religions at 28 CFR Part 38, and Section 1557 of the Affordable Care Act.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-800-305-9673 (TTY: 711).

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-800-305-9673 (TTY: 711).