

**§ 440.181**

intensive ongoing support to perform in a work setting;

(B) Conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and

(C) Defined as any combination of special supervisory services, training, transportation, and adaptive equipment that the State demonstrates are essential for persons to engage in paid employment and that are not normally required for nondisabled persons engaged in competitive employment.

(3) *Services not included.* The following services may not be included as habilitation services:

(i) Special education and related services (as defined in sections 602(16) and (17) of the Education of the Handicapped Act) (20 U.S.C. 1401 (16) and (17)) that are otherwise available to the individual through a local educational agency.

(ii) Vocational rehabilitation services that are otherwise available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

(d) *Services for the chronically mentally ill*—(1) *Services included.* Services listed in paragraph (b)(8) of this section include those provided to individuals who have been diagnosed as being chronically mentally ill, for which the agency has requested approval as part of either a new waiver request or a renewal and which have been approved by CMS on or after October 21, 1986.

(2) *Services not included.* Any home and community-based service, including those indicated in paragraph (b)(8) of this section, may not be included in home and community-based service waivers for the following individuals:

(i) For individuals aged 22 through 64 who, absent the waiver, would be institutionalized in an institution for mental diseases (IMD); and, therefore, subject to the limitation on IMDs specified in § 435.1008(a)(2) of this subchapter.

(ii) For individuals, not meeting the age requirements described in paragraph (d)(2)(i) of this section, who, absent the waiver, would be placed in an IMD in those States that have not

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opted to include the benefits defined in § 440.140 or § 440.160.

[59 FR 37716, July 25, 1994, as amended at 65 FR 60107, Oct. 10, 2000]

**§ 440.181 Home and community-based services for individuals age 65 or older.**

(a) *Description of services*— Home and community-based services for individuals age 65 or older means services, not otherwise furnished under the State's Medicaid plan, or services already furnished under the State's Medicaid plan but in expanded amount, duration, or scope, which are furnished to individuals age 65 or older under a waiver granted under the provisions of part 441, subpart H of this subchapter. Except as provided in § 441.310, the services may consist of any of the services listed in paragraph (b) of this section that are requested by the State, approved by CMS, and furnished to eligible recipients. Service definitions for each service in paragraph (b) of this section must be approved by CMS.

(b) *Included services.* (1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Respite care services.

(7) Other medical and social services requested by the Medicaid agency and approved by CMS, which will contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

[57 FR 29156, June 30, 1992]

**§ 440.185 Respiratory care for ventilator-dependent individuals.**

(a) "Respiratory care for ventilator-dependent individuals" means services that are not otherwise available under the State's Medicaid plan, provided on a part-time basis in the recipient's home by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State) to an individual who—

(1) Is medically dependent on a ventilator for life support at least 6 hours per day;

(2) Has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the