

# SELF-DIRECTED SERVICES UNDER MEDICAID § 1915(j) AND (k) STATE PLAN AUTHORITIES

## Self Direction Conference

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# Purpose of Session

Provide an overview of the authorities available through the Medicaid program that States may use to provide self-directed home and community-based services and supports

# Medicaid in Brief

- States determine their own unique programs
- Each State develops and operates a State plan outlining the nature and scope of services; the State Plan and any amendments must be approved by CMS
- Medicaid mandates some services, States elect to provide other services (“optional services”)
- States choose eligibility groups, optional services, payment levels, providers

# Medicaid State Plan Requirements

- States must follow the rules in the Act, the Code of Federal Regulations (generally 42 CFR), the State Medicaid Manual, and policies issued by CMS
- States must specify the services to be covered and the “amount, duration, and scope” of each covered service
- States may not place limits on services or deny/reduce coverage due to a particular illness or condition
- Services must be medically necessary

# Medicaid State Plan Requirements (cont'd.)

- Third party liability rules require Medicaid to be the “payor of last resort”
- Generally, services must be available statewide
- Beneficiaries have free choice of providers
- State establishes provider qualifications
- State enrolls all willing and qualified providers and establishes payment for services (4.19-B pages)
- Reimbursement methodologies must include methods/procedures to assure payments are consistent with economy, efficiency, and quality of care principles

# **§ 1915(j) Self-Directed Personal Assistance Services Overview**

# § 1915(j) Self-Directed Personal Assistance Services Enabling Legislation & Regulations

- Enacted as Section 6087 of the Deficit Reduction Act of 2005
- Statute: Section 1915(j) of the Social Security Act
- Federal Regulations 42 CFR 441.450 through 441.486
- Effective 1/1/07

# § 1915(j) Self-Directed Personal Assistance Services State Plan Option

- Provides a self-directed service delivery model for:
  - State Plan personal care benefit and/or
  - Home and community-based services under section § 1915(c) waiver
- State flexibility:
  - Can limit the number of individuals who will self-direct
  - Can limit the option to certain areas of the State or offer it statewide
  - Can target the population using section § 1915(c) waiver services

# § 1915(j) Features

- Individuals have “employer” authority - can hire, fire, supervise and manage workers capable of providing the assigned tasks
- Individuals have “budget” authority - can purchase personal assistance and related services from their budget allocation
- Participation is voluntary - can dis-enroll at any time
- Participants set their own provider qualifications and train their providers of PAS

# § 1915(j) Features

- Participants determine amount paid for a service, support or item
- Self-directed State Plan PAS is not available to individuals who reside in a home or property that is owned, operated or controlled by a provider of services not related to the individual by blood or marriage.

# § 1915(j) Features

- If the State Medicaid agency allows the following, participants can:
  - Hire legally liable relatives (e.g., parents, spouses)
  - Manage a cash disbursement
  - Allow for Permissible Purchases:
    - Purchase goods, supports, services or supplies that increase their independence or substitute for human assistance (to the extent expenditures would otherwise be made for the human assistance)
  - Use a discretionary amount of their budgets to purchase items not otherwise delineated in the budget or reserved for permissible purchases
  - Use a representative to help them direct their PAS

# States Using the § 1915(j) Authority

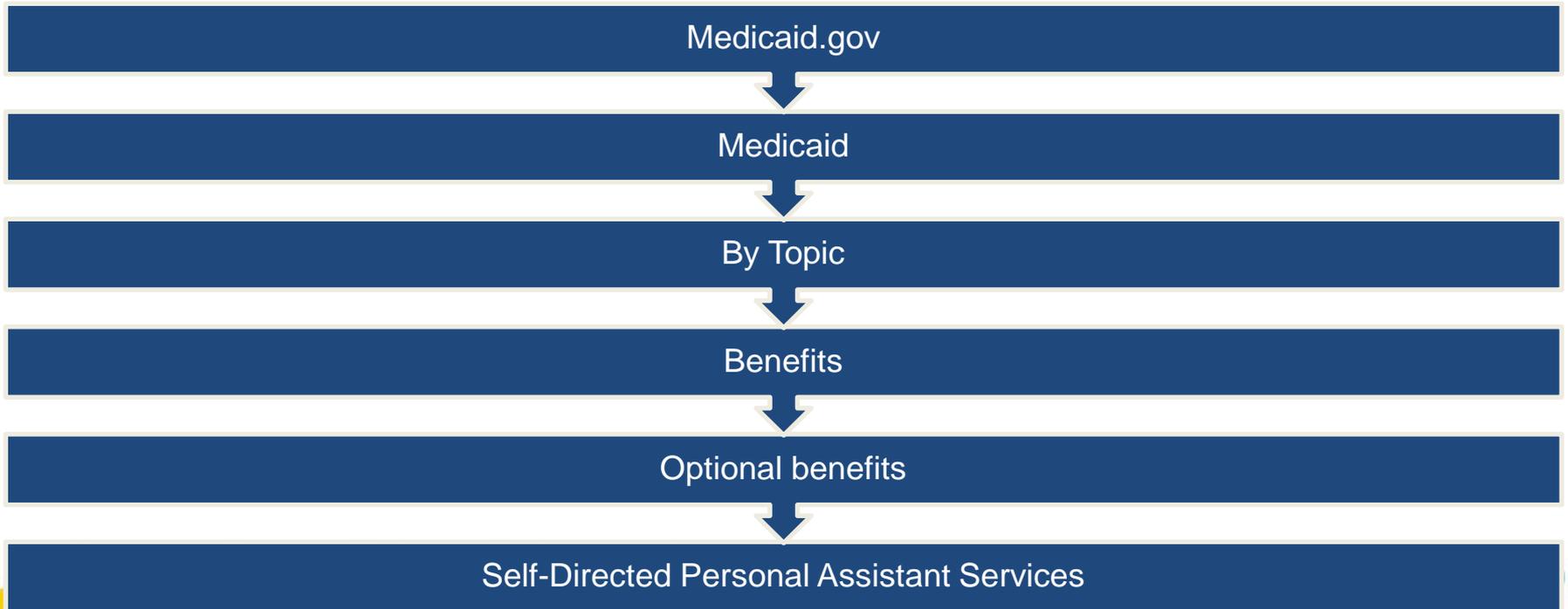
## Approved States: AL, OR, AR, FL, NJ, TX, CA, WI

- Self-direction of PCS State plan benefit: FL, AR, NJ, TX, CA, WI
- Self-direction of section § 1915(c) waiver services: AL, OR, FL, AR
- Statewide: OR, FL, AR, NJ, TX, CA
- Offers the cash option: AL, OR, AR, NJ, CA
- Allows for Permissible Purchases: WI
- Limits the number of individuals who can participate: AL, AR
- Allows participants to hire legally liable relatives: TX, AL, OR, NJ, FL, CA, WI

# § 1915(j) - Resources

- SMD Letters and Preprint

<http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/self-directed-personal-assistant-services-1915-j.html>



# § 1915(k) Community First Choice Overview

# § 1915(k) The Community First Choice Option Enabling Legislation & Regulations

- Section 2401 of the Affordable Care Act added a new section § 1915(k) to the Social Security Act which establishes a new **State plan option** to provide “person-centered” home and community-based attendant services and supports
- The CFC final rule was issued May 7, 2012. (This did not finalize the settings requirements of 441.530)  
<https://www.federalregister.gov/articles/2012/05/07/2012-10294/medicaid-program-community-first-choice-option>
- The HCBS final rule which finalized the home and community based setting requirements for 1915(c), § 1915(i) and § 1915(k)-CFC was issued January 16, 2014, Effective date is March 17, 2014  
<https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>

# § 1915(k) Community First Choice: Program Overview

- Purpose is to provide attendant care services and other community supports to Medicaid eligible individuals who have an institutional level of care
- CFC services are provided to individuals in their homes and communities
- CFC services are provided in a manner that highlights consumer direction, person-centered planning, and flexible service delivery options
- CFC services must be provided in settings that are home and community-based in nature

# § 1915(k) Community First Choice: Key Features

- CFC is a State plan option, not a waiver
- CFC programs must be provided in a manner that is consistent with all State plan requirements, including Freedom of Choice and Comparability, and be provided on a Statewide basis
- The state cannot cap the number of individuals served and cannot target to certain populations, disabilities, or parts of the state
- States receive a six (6) percentage point increase in FMAP for the provision of CFC services

# § 1915(k) Community First Choice: Eligibility

- Must be eligible for medical assistance under the State plan
  - CFC does not create an independent eligibility path
- Must meet an institutional level of care that would be furnished in:
  - A hospital providing long term care services;
  - A nursing facility;
  - An intermediate care facility for individuals with intellectual disabilities;
  - An institution providing psychiatric services for individuals under age 21; or
  - An institution for mental disease for individuals age 65 and over, if the cost could be reimbursed under the State plan
- Must be part of an eligibility group that is entitled to receive nursing facility services; if not, income may not exceed 150% of FPL
- Enrollment is voluntary

# § 1915(k) Community First Choice: Included Services

All CFC benefits **must** include these services:

- Assistance with Activities of Daily Living (ADLs), Instrumental Activities of Daily Living (IADLs), and health-related tasks through hands-on assistance, supervision, and/or cueing
- Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks
- Back-up systems (such as electronic devices) or mechanisms to ensure continuity of services and supports
- Voluntary training to individuals on how to select, manage and dismiss attendants

# § 1915(k) Community First Choice: ADLS and IADLs

- Activities of Daily Living: Basic personal everyday activities including, but not limited to tasks like eating, grooming, personal hygiene and toileting, bathing, and transferring.
- Instrumental Activities of Daily Living include activities related to living independently in the community, including but not limited to meal planning and preparation, managing finances, shopping for essential items like food and clothing, performing household chores, communicating with others, and traveling around and participating in the community.

# § 1915(k) Community First Choice: Permissible Services

In addition to required services, States **have the option** to provide permissible services and supports that are linked to an assessed need or goal in the individual's person-centered service plan.

Permissible services and supports may include the following:

- Funding for transition costs such as security deposits for an apartment or utilities, purchasing bedding, basic kitchen supplies, and other necessities required for transition from an institution
- Expenditures relating to a need identified in an individual's person-centered plan that increases his/her independence or substitutes for human assistance to the extent the expenditures would otherwise be made for the human assistance

# § 1915(k) Community First Choice: Excluded Services

- Room and board
- Special education and related services provided under IDEA and vocational rehab
- Assistive technology devices and assistive technology services (other than those defined in 441.520(a)(3))\*
- Medical supplies and equipment \*
- Home modifications\*

\* These services may be provided if they meet the requirements of the permissible services described in the last slide and at 441.520(b)(2)

# § 1915(k) Community First Choice: Self-Directed Service Delivery Models

- Agency-provider model
- Self-directed model with a service budget
- Other service delivery model approved by the Secretary

# § 1915(k) Community First Choice: Agency Provider Model

- Agency either provides or arranges for services
- Individual has a significant role in selection and dismissal of employees, for the delivery of their care, and the services and supports identified in the person-centered service plan
- State establishes provider qualifications

# § 1915(k) Community First Choice: Self-directed Model with Service Budget

- Provides individuals with the maximum level of consumer control
- Affords the person the authority to:
  - Recruit and hire or select attendant care providers
  - Dismiss providers
  - Supervise providers including assigning duties, managing schedules, training, evaluation, determining wages and authorizing payment
- Must include Financial Management Activities
  - Must make available for those who want it, and must provide this if individuals cannot manage the cash option without assistance
- At the state's discretion, may disburse cash or use vouchers

# Service Planning Process

Assessment of Functional  
Need



Person Centered  
Planning Process



Person-Centered Plan

# § 1915(k) Community First Choice: Home and Community-Based Settings Requirements

- Home and Community-Based Settings regulations for CFC are found at 42 CFR 441.530
- All settings in which CFC services may be provided must be determined to be compliant with home and community-based setting requirements before CMS approves the CFC Program and before the state may implement the program
- Guidance is provided in Home and Community-Based Services Toolkit  
<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>

# § 1915(k) Community First Choice: Home and Community-Based Settings Requirements (cont'd)

- The setting requirements for § 1915(k) state plan amendments are THE SAME as § 1915(c) waivers and § 1915(i) state plan amendments
- Transition plans are not permitted to meet the settings requirements in § 1915(k)

# § 1915(k) Community First Choice: Home and Community-Based Settings Exclude

- A nursing facility, an IMD, an ICF-IID, a hospital providing LTC services, or
- Any other locations that have qualities of an institutional setting, as determined by the Secretary
- **CFC services may not be provided in these settings**

# State Requirements

- Maintenance of Existing Expenditures
  - For the first full 12 month period in which the State Plan amendment is implemented, the State must maintain or exceed the level of State expenditures for home and community-based attendant services and supports provided to elderly or disabled individuals under the State Plan, waivers or demonstrations.
- Collaborate with a Development and Implementation Council
  - Must includes a majority of members with disabilities, elderly individuals, and their representatives.
- Establish and maintain a comprehensive continuous quality assurance system

# Annual Data Collection

- Number of individuals who are estimated to receive CFC during fiscal year
- Number of individuals that received CFC during preceding year
- Number of individuals served by type of disability, age, gender, education level, and employment status
- Individuals previously served under other HCBS program under State Plan or waiver

# § 1915(k) Community First Choice: States with currently approved CFC programs

California  
Oregon  
Maryland  
Montana  
Washington  
Texas  
Connecticut  
New York

# HCBS Technical Assistance Available

- Determining what authority will best meet your objectives
- Providing guidance on major features of § 1915(i), § 1915(j), and § 1915(k)
- Advice on integrating § 1915(i), § 1915(k), and § 1915(c) services
- Providing clarification and assistance with the application process
- Identifying and addressing common barriers to implementation

**To request TA/additional information:** <http://www.hcbs-ta.org>

# Questions?

For more information:

- Regional Office Representative

or

- SOTA Co-Leads

<http://www.medicaid.gov/Federal-Policy-Guidance/downloads/CIB07242015-SOTA.pdf>

or

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