

## CMS UPDATE ON POLICIES RELATED TO FISCAL MANAGEMENT ACTIVITIES

US DHHS/OASPE Sponsored Government and Vendor Fiscal/Employer Agent Workshop

November 1, 2007, Baltimore, Maryland

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## Questions

- **Question:** What does CMS require in order for a Medicaid agency to delegate the task of executing Medicaid provider agreements to an F/EA, i.e., what does the State have to do to formalize this delegation...an MOU, what?
- **Answer:** The State must expressly indicate in writing (usually through a Memorandum of Understanding) that the administrative function of executing and holding provider agreements is delegated to the F/EA entity. The Medicaid Agency should have processes in place to monitor the execution of this function to ensure that the provider agreements are executed in the manner prescribed by the Medicaid agency. The delegation of the execution and holding of the provider agreement does NOT permit any deviation from the provider agreements developed and approved by the Single State Medicaid Agency.



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## Questions

- **Question.** When does CMS require a Medicaid agreement for self-direction programs?
- **Answer:** Most of the authorities that States may use to offer self-direction require the presence of a Medicaid provider agreement. States have addressed this requirement in various ways, including the utilization of abbreviated provider agreements, or through the utilization of Organized Health Care Delivery Systems. In addition, CMS has offered some limited guidance (specific to 1915(c) waivers) in the revised waiver application instructions related to incidental, non-routine purchase of goods and services (page 186 of Version 3.4).

With regard to 1915(j), CMS expects to give more guidance on provider qualifications as well as the need for provider agreements in the regulation.



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## Questions

- **Question:** What types of goods and services may an F/EA pay in contrast to the goods and services for which a vendor can bill the MMIS directly?
- **Answer:** The 1915(c) Instructions provide a core service definition for individually directed goods and services that indicates that these items are not otherwise provided through the waiver or the State plan. These items are typically items not traditionally provided through the waiver. Individually directed goods and services is not a mechanism that may be used to circumvent other guidance and restrictions on claiming, and the services must be documented in the service plan. CMS is not prescriptive on what the FMS may provide or procure, however, these goods or services must be different than goods and services otherwise available through the waiver.



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## HCBS Waivers 1915(c) of the Social Security Act



## HCBS Waivers – Section 1915(c) of the Act

- Section 1915(c) Waivers permit a State to waive certain Medicaid requirements in order to furnish an array of home and community based services that promote community living.
- States may waive the following provisions through 1915(c):
  - Comparability
  - Statewideness
  - Income and Resources for the Medically Needy



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## HCBS Waivers – Section 1915(c) of the Act (continued)

- Waiver services complement and/or supplement the services that are available through the Medicaid State plan and other Federal, state and local public programs as well as the supports that families and communities provide to individuals



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## HCBS Waivers – Section 1915(c) of the Act (continued)

- States have flexibility in designing waivers, including the latitude to (among others):
  - Determine the target group(s) of Medicaid beneficiaries served through the waiver;
  - Specify the services that are furnished to support participants in the community;



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## HCBS Waivers – Section 1915(c) of the Act (continued)

- Determine qualifications of waiver providers;
- Design strategies to assure the health and welfare of waiver participants;
- Manage the waiver to provide the cost effective delivery of HCBS;
- Develop and implement a Quality Management Strategy to ensure that the waiver meets Federal statutory assurances; AND
- Incorporate opportunities for individuals to direct and manage their waiver services



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## HCBS Waivers – Section 1915(c) of the Act (continued)

When a State elects to offer self-direction in a 1915(c), the State may design the program around a number of different elements:

- Statewideness
- Availability of Self-Direction Option
- Direction by a Representative
- Specification of self-directed services
- Employer and/or Budget Authority
- Coverage of Individually Directed Goods and Services



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## HCBS Waivers – Section 1915(c) of the Act (continued)

When a State offers self-direction as part of a 1915(c) waiver, the State must provide information on the following aspects of their program:

- Person-Centered Planning
- Information about self-direction
- Financial Management Services (FMS)
- Assistance in Support of Self-Direction
- Budget Safeguards
- Transition
- Termination from Self-direction Option
- Quality



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## Fiscal Management (FM) in 1915(c) Waivers

- States may elect to offer FM activities as a service under the waiver, or as an administrative activity. **NOTE: This only applies to 1915(c) – NOT 1915(i) or 1915(j), where FM activities may only be claimed administratively.**
- When the State offers as a service, the State must establish reasonable provider qualifications and provide for open enrollment of all willing and qualified providers.



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## Fiscal Management (FM) in 1915(c) Waivers, (continued)

- When States offer as a service, they may claim service match for the rendered activities.
- When States include FM as an administrative activity, the State may claim the administrative match rate.



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## Fiscal Management in 1915(c) Waivers, (continued)

- Regardless of the mechanism used by the State to claim for FM activities, the 1915(c) waiver requires the State to describe the functions that will be performed by the F/EA (or agency with choice). At a minimum, these must include the following:



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## Fiscal Management in 1915(c) Waivers (continued)

### When a State offers Employer Authority:

- Assist participants in verifying support worker citizenship status;
- Collect and process timesheets of support workers; and,
- Process payroll, withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurance.



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## Fiscal Management in 1915(c) Waivers (continued)

### When a State offers Budget Authority:

- Maintain a separate account for each participant's budget;
- Track and report disbursements and balances of participant funds;
- Process and pay invoices for goods and services approved in the service plan; and
- Provide participant with periodic reports of expenditures and the status of the participant directed budget.



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## HCBS as a State Plan Option 1915(i) of the Social Security Act

*Section 6086 of the  
Deficit Reduction Act 2005*



## HCBS as a State Plan Option – Section 1915(i) of the Act

- Effective January 1, 2007
- States can amend their state plans to offer HCBS as a state plan optional benefit.
- Breaks the “eligibility link” between HCBS and institutional care
- Individualized, person-centered care plans



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## HCBS as a State Plan Option – Section 1915(i) of the Act (continued)

- **Similarities to 1915(c):**
  - Evaluation to determine program eligibility
  - Assessment of need for services
  - Plan of care
  - Health and Welfare
  - Quality
  - Self Direction
  - Ability to not apply state-wideness and income and resource rules



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## HCBS as a State Plan Option – Section 1915(i) of the Act (continued)

- **Differences from 1915(c):**
  - Financial Eligibility Criteria
  - Program Eligibility
  - Institutional care requirements
  - Length of time for operation
  - Financial estimates
  - Services
  - Waiver of comparability



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## HCBS as a State Plan Option – Section 1915(i) of the Act (continued)

- **Self-Direction in 1915(i) requires:**
  - Assessment;
  - Service plan directed by the individual or the individual's authorized representative;
  - Specification of the self-directed services;
  - Methods of self-direction; and
  - Self-directed budget.



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## HCBS as a State Plan Option – Section 1915(i) of the Act, (continued)

- **Financial management functions:**
  - Must be offered (no cash option in 1915(i));
  - Administrative claiming rate only;
  - Draft pre-print requires information that tracks closely to 1915(c) waiver application.



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## HCBS as a State Plan Option – Section 1915(i) of the Act (continued)

- **Status:**
  - CMS is currently developing regulations for 1915(i);
  - A draft pre-print has been made available for use by States;
  - Only one State has been approved to date to include 1915(i) coverage in their State plan: Iowa.



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## Optional Self-Direction Personal Assistance Services 1915(j) of the Social Security Act

*Section 6087 of the  
Deficit Reduction Act 2005*



## Section 1915(j) Key Features

- Section 6087 of the Deficit Reduction Act of 2005
- Amends §1915 of SSA – new 1915 (j)
- Effective 1/1/07
- States may elect to offer the opportunity to self-direct “personal assistance services” (PAS) in the State Plan so demonstrations and waivers would not be necessary



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## Key Features (continued)

- **Self-directed PAS means:**
  - State plan personal care and related services, or
  - Home and community-based services in a section 1915(c) waiver,
  - That are provided under a self-directed PAS program,
  - Under which individuals, in an approved plan and budget,



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## Key Features (continued)

- Purchase personal assistance and related services, and
- Permits participants to hire, fire, supervise and manage the individuals providing such services.
- Can target populations, limit numbers and limit by geographic areas
- **States must assure:**
  - Safeguards to protect health and welfare & ensure financial accountability



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## Key Features (continued)

- Individuals are evaluated by the State for their need for personal care
- Participation is voluntary and individuals are informed of feasible alternatives to the PAS program
- Support system is available prior to and throughout enrollment
- Annual report of number of participants and expenditures
- Triennial evaluation of impact on health & welfare of participants vs. non-participants

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## Key Features (continued)

- **Individuals have both employer and budget authority:**
  - Can hire, fire, supervise and manage workers capable of providing the assigned tasks
  - Can purchase personal assistance and related services
- **At State's election:**
  - Can permit hiring of legally liable relatives
  - Can permit individuals to purchase items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance



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## Key Features (continued)

- **Services may not be provided to:**
  - individuals residing in property owned, operated or controlled by a provider of services not related by blood or marriage.
- **The self-directed service plan and budget require that:**
  - Individuals exercise choice and control over budget, planning and purchase of PAS
  - Individuals' needs, strengths, preferences for PAS are assessed
  - The plan for services and supports is developed using person-centered planning process



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## Key Features (continued)

- The budget is developed based on the assessment and plan, and a methodology that uses valid, reliable cost data and is open to the public
- Amount is expected cost of services if not self-directed
- May not restrict access to other medically necessary care & services not included in budget

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## Key Features (continued)

- Quality assurance and risk management techniques are in place
- State may employ a financial management entity to make payments to providers, track costs, make reports; payment at the 50 percent administrative rate



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## State Medicaid Director (SMD) Letter and Preprint

- **SMD Letter, with preprint, issued September 13, 2007**
  - <http://www.cms.hhs.gov/SMDL/SMD/list.asp#TopOfPage>
    - Search under "Personal Assistance Services"



- **SMD Letter guidance:**
  - States must already have in place traditional personal care services through the State plan or be operating a section 1915(c) Home and Community-Based Services waiver that includes the services to be self-directed under section 1915(j).
    - If individual leaves this State plan option, they can still get the services they were determined to be eligible for and to need.

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## SMD Letter and Preprint (continued)

- **SMD Letter guidance (continued):**
  - State must have sufficient support system to inform, counsel, train and assist participants with their employer-related responsibilities including managing their workers and budgets and performing their fiscal and tax responsibilities.
  - Individuals have discretion whether and to what extent they will avail themselves of these supports, although individuals not participating in the cash option will be utilizing financial management services
  - An individualized back-up plan to address critical contingencies or incidents that would pose a risk of harm to the participant's health or welfare

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## SMD Letter and Preprint (continued)

- **SMD Letter guidance (continued):**
  - State must submit revised State plan 4.19-B pages to describe new section 1915(j) payment methodology if State uses different payment methodology from State plan PCS or section 1915(c) HCBS waiver.
    - Concurrent review of the coverage and reimbursement
  - Voluntary and informed enrollment
  - Voluntary and involuntary disenrollment

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## SMD Letter and Preprint (continued)

- **SMD Letter guidance (continued):**
  - Options for State:
    - Prospective cash disbursements (Individuals selecting cash option are not required to use fiscal management entity).
    - Can permit hiring of legally liable relatives

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## SMD Letter and Preprint (continued)

- **Preprint features:**
  - States to describe quality assurance & improvement plan & individualized risk management methods, tools and process
  - States to indicate if they will permit use of representative
  - States to indicate if they will permit budgets for permissible purchases
  - States to indicate if they will employ a financial management entity or perform the financial management services themselves

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## SMD Letter and Preprint (continued)

- “Use of Cash” in preprint:
  - Use of Cash
    - \_\_\_\_\_ The State elects to disburse cash prospectively to participants self-directing personal assistance services. The State assures that all Internal Revenue Service (IRS) requirements regarding payroll/tax filing functions will be followed, including when participants perform the payroll/tax filing functions themselves.



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## SMD Letter and Preprint (continued)

“Financial Management Services” in preprint:

- Financial Management Services
  - \_\_\_\_\_ The State elects to employ a Financial Management Entity to provide financial management services to participants self-directing personal assistance services, with the exception of those participants utilizing the cash option and performing those functions themselves.



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## SMD Letter and Preprint (continued)

“Financial Management Services” in preprint (continued):

- \_\_\_\_\_ The State elects to provide financial management services through a reporting or subagent through its fiscal intermediary in accordance with section 3504 of the IRS Code and Revenue Procedure 80-4 and Notice 2003 70; or
- \_\_\_\_\_ The State elects to provide financial management services through vendor organizations that have the capabilities to perform the required tasks in accordance with section 3504 of the IRS Code and Revenue Procedure 70-6. (When private entities furnish financial management services, the procurement method must meet the requirements set forth Federal regulations in 45 CFR section 74.40 – section 74.48.)

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## SMD Letter and Preprint (continued)

“Financial Management Services” in preprint (continued):


\_\_\_\_\_ The State elects to provide financial management services using “agency with choice” organizations that have the capabilities to perform the required tasks in accordance with the principles of self-direction and with Federal and State Medicaid rules.

\_\_\_\_\_ The State elects to directly perform financial management services on behalf of participants self-directing personal assistance services, with the exception of those participants utilizing the cash option and performing those functions themselves.



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## Section 1915(j) Experience To Date

- Alabama approved – 5/24/07 
- Four (4) Draft SPAs received: Arkansas, Florida, Kentucky, Oregon
  - CMS is providing technical assistance
- Four (4) offer the cash option: Alabama, Arkansas, Kentucky, Oregon



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## Section 1915(j) Experience To Date (continued)

- One (1) proposes to offer self-direction of both State Plan PCS and section 1915(c) waiver services – Arkansas.
- Four (4) offer/propose to offer self-direction of only section 1915(c) waiver services: Alabama, Florida, Kentucky, Oregon.
- Several other States have consulted with CMS about this new State plan option for self-directed PAS



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## Status of 1915(i) and 1915(j)

Regulations are currently being drafted for sections 1915(i) and (j)

Once published, 60 day public comment period

### 1915(i)

- Iowa approved – 4/5/07
- A draft pre-print has been made available for use by States

### 1915(j)

- Alabama approved – 5/24/07
- SMD Letter, with preprint, issued September 13, 2007
  - <http://www.cms.hhs.gov/SMDL/SMD/list.asp#TopOfPage>
    - Search under "Personal Assistance Services"



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