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115 CMR 14.00: SELF-DIRECTED PROGRAMS

14.01: Scope and Authority

- (1) 115 CMR 14.00 applies to adult self-directed programs (SDP) funded by the Department.
- (2) 115 CMR 14.00 is promulgated pursuant to M.G.L. c. 19B, §§1 and 19 and M.G.L. c. 123B, §2.
- (3) Commentaries may be used throughout 115 CMR 14.00 to clarify certain issues, concepts, or problems, as well as to give specific examples of typical situations that may arise under 115 CMR 14.00. These commentaries are intended to be illustrative only, and do not apply to fact situations different from those specifically described in 115 CMR 14.00.

14.02: Purpose

Self-directed programs offer eligible individuals an alternative to traditional services operated, certified, licensed, or contracted for or otherwise funded by the Department and an opportunity to exercise choice and control. Self-directed programs promote independence in service planning while providing equitable access to the Department's resources for individuals receiving services from the Department. Self-directed programs are subject to appropriation.

14.03: Definitions

For purposes of 115 CMR 14.00, the following terms shall have the following meanings:

Agency with Choice or AWC is a self-directed service model in which the participant and a qualified provider share responsibilities for selecting and directing persons to deliver services to the participant.

Financial Management Service or FMS means a service or function provided by an entity to assist a participant in disbursing allocated funds in accordance with the participant's individual budget and person-centered plan. The FMS entity shall owe the participant a fiduciary duty and meet minimum qualifications as established by the Department.

Individual Budget is an allocation of state funds based upon the participant's assessed needs, as determined by the Department in consultation with the participant and the participant's chosen planning team. The individual budget is used to facilitate self-determination and to purchase services, supports, or goods available in the self-direction program.

Participant is the individual who is eligible for and receives services, supports, and goods through a self-directed program. When used herein, the term participant may refer to the individual, their guardian or other legally authorized person, as the context implies.

Participant Directed Program or PDP is a self-direction model in which the participant hires their own support staff, designs their schedule, and makes other decisions about how to use their

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individual budget. The FMS entity assists the PDP participant in accordance with the participant's individual budget and person-centered plan.

Person-Centered Planning Process is an approach to determining, planning, and working toward the development of the participant's vision with input from families and other trusted people who know the person well. Person-centered planning is the process used to develop the Individual Support Plan (ISP), defined in 115 CMR 2.01, and in accordance with 115 CMR 6.20 – 6.25.

Self-Directed Programs or SDP means programs offered by the Department to implement and facilitate the goals of self-determination as described in M.G.L. c. 19B, §19.

Support Broker assists the participant in selecting and managing funds available through a self-directed program. The participant's DDS service coordinator may serve as the support broker; or the participant may hire an independent support broker paid through the individual budget.

Traditional Services are services contracted for or otherwise funded by the Department, subject to rate-setting pursuant to M.G.L. c. 118, §13C, and provided by a public or private provider certified and/or licensed by the Department. Traditional day services offer a maximum number of hours per day; traditional residential supports offer supervision and supports for 24 hours per day. Other traditional services include but are not limited to services available under the Home and Community Based Services (HCBS) adult intellectual disability Waiver programs approved by the Centers for Medicare and Medicaid Services under the Social Security Act, § 1915(c).

14.04: Eligibility for SDP

(1) Eligibility for SDP. To be eligible for a self-directed program under 115 CMR 14.00, an individual must:

- (a) meet the Department's adult general or special eligibility requirements;
- (b) choose to self-direct and comply with the requirements of 115 CMR 14.05(1) (*Responsibility of the SDP Participant*);
- (c) provide the Department necessary information including, but not limited to, medical information regarding the individual's health and safety; and
- (d) as determined by the Department and consistent with 115 CMR 6.20(2) (principles governing individual support planning), be able to be safely served within available self-directed programs. The Department shall consider the safety of the participant as well as the safety of others.

Commentary: For example, if the Department determines a participant's condition or needs require supports in excess of those available in the participant's chosen SDP or cannot be safely served within the limits of the SDP, the individual may be ineligible to self-direct at that time. In this case, the Department will utilize the person-centered planning process to transition the participant to a program that meets their needs.

14.05: SDP Roles and Responsibilities

(1) Responsibility of the SDP Participant.

- (a) The participant must demonstrate an ability and desire to participate in a SDP, including, but not limited to:
 - 1. actively participate in person-centered planning and development of the ISP, including setting goals and objectives;
 - 2. choose a self-direction model;
 - 3. choose qualified providers and change qualified providers when appropriate;
 - 4. specify how services are to be provided;
 - 5. identify service providers and refer for provider enrollment;
 - 6. schedule the provision of services and how they are to be provided;
 - 7. specify additional service provider qualifications;
 - 8. substitute service providers when necessary; and
 - 9. utilize other available resources, services, supports, and goods, including generic services and those available through MassHealth or other state agencies, in order to meet needs.
 - (b) The participant must make decisions in the development of the individual budget, including, but not limited to:
 - 1. allocate funds among services, supports, and goods included in the individual budget; and
 - 2. determine the amount paid for services, supports, and goods within the limits established by the Department.
 - (c) The participant must work collaboratively with the Department and the FMS entity, including but not limited to:
 - 1. timely review and submit provider invoices for services rendered to the support broker; and
 - 2. authorize payment for services, supports, and goods received by the participant.
- (2) Responsibility of the Support Broker or Service Coordinator.
- (a) The support broker or service coordinator shall, at the time of the planning meeting and as a part of the ongoing planning process:
 - 1. Provide information to the participant regarding the participant's responsibilities as described at 115 CMR 14.05(1), choice of self-direction model, choice of qualified providers, and ability to change providers; and
 - 2. Assess the participant's continued ability and desire to self-direct.

14.06: Development of Individual Budgets

- (1) The Department shall establish a methodology, set forth in guidance, to determine individual budgets fairly, equitably, and transparently.
- (2) The Department shall set the individual budget for each SDP participant annually at the beginning of the fiscal year.
- (3) The Department shall set the individual budget based upon the participant's assessed needs and prioritization for services consistent with 115 CMR 6.07(1)(b)1, in consultation with the participant's person-centered planning team.

- (4) The Department shall consider the equivalent cost of traditional services the Department has assessed the participant as needing; provided that the individual budget may not exceed the equivalent cost of traditional services.
- (5) The Department will assess participants' utilization of services and may adjust the individual budget accordingly. Funds not spent by the participant during the prior budget year shall revert back to the Department.
- (6) In setting the individual budget, the Department shall consider all of a participant's resources, including, but not limited to, income, recurrent payments, health insurance, scholarships, financial assistance programs, eligibility for government benefits or other entitlements.

14.07 Services, Supports and Goods Available through the Self-Direction Program

- (1) Services, supports and goods available through an SDP consist of staffing supports and non-staffing goods and services.
- (2) Staffing supports available through an SDP may include the following:
 - (a) adult companion;
 - (b) behavioral supports and consultation;
 - (c) individualized day supports;
 - (d) individualized home supports;
 - (e) family training;
 - (f) live-in caregiver;
 - (g) peer support;
 - (h) respite; and
 - (i) supported employment.
- (3) Non-staffing goods and services available through an SDP may include the following:
 - (a) assistive Technology,
 - (b) home modifications,
 - (c) specialized medical equipment and supplies,
 - (d) transitional assistance,
 - (e) transportation,
 - (f) vehicle modifications, and
 - (g) individual goods, services, equipment, or supplies that will provide direct benefit to the participant and support specific outcomes that are identified in the participant's ISP.
- (4) Services, supports, or goods shall not supplant other services, supports, or goods the participant may be eligible for, including from other available state funded services, e.g., Personal Care Assistant (PCA) services.
- (5) Services, supports and goods included in an SDP must meet a Department assessed need identified in the participant's ISP.

Commentary: A participant may combine self-directed services with generic services and other federal and state benefits to live at home with their family, but SDP services, supports and goods but may not exceed the service limits available from the SDP.

- (6) Services, supports and goods are selected by the participant and their cost cannot exceed the participant's individual budget or service limits defined by the Department.
- (7) Services, supports and goods must meet the Department's criteria for allowable expenses, must directly benefit the participant and must be documented through invoices, receipts, timesheets or other documentation.

Commentary: The services, supports or goods must directly benefit the participant. For example, expenditures for community participation or recreation may include the cost of dining out for the participant, but cannot include such expenditures for the participant's family. Self-directed funds may be used to pay for the participant's vacation, but may not be used to cover travel or accommodations for the participant's family or friends.

14.08 Termination from SDP

- (1) The Department may terminate a participant's self-directed program if the participant does not comply with 115 CMR 14.00 or if the Department determines, in accordance with 115 CMR 14.04(1)(d), the program cannot safely meet the participant's needs.
- (2) In the event of termination from a self-directed program, the participant, and the planning team, including the support broker and service coordinator, shall meet to develop a transition plan.

Commentary: If the participant cannot be safely served at home due to behaviors that endanger the participant other family members, the Department may determine that the participant is not eligible for SDP at that time, and will plan for their transition to another service model. If the participant's support needs change such that supporting the participant safely exceeds the cost of traditional services, the Department may determine that the participant should transition to another service model.

14.09 Appeals

- (1) Scope and Purpose. 115 CMR 14.09 contains the standards and procedures for an individual or participant to file an appeal related to their SDP.
- (2) Initiation of an Appeal.
 - (a) An appeal may be initiated by the participant, their guardian, or legally responsible party within 14 days of the receipt of the individual budget determination or notice of termination from the self-directed program.
 - (b) An appeal is initiated by sending written notice to the regional director for the region in which the participant resides.
 - (c) Appeals of ISPs, POCs, and individual budgets shall be consolidated for efficiency and to ensure the timely adjudication of appeals.
- (3) Grounds for Appeal. A participant may appeal based on the following grounds:
 - (a) the individual budget amount was not based upon the participant's assessed needs as determined by the Department;

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- (b) the value of the individual budget is not the equivalent of what the Department would have spent providing services, supports, or goods to the participant if the participant had chosen to receive traditional services; and
- (c) the Department's termination of the participant from the self-directed program.

(4) The Appeal Process: Informal conferences and fair hearings shall be conducted in accordance with applicable provisions at 115 CMR 6.33.

(a) General provisions at 115 CMR 6.34 (1-3) and (5) shall apply to appeals under 115 CMR 14.09.

(b) For appeals based on 115 CMR 14.09 (3)(a) or (b), the individual budget set by the Department will remain in effect during the pendency of the appeal.

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