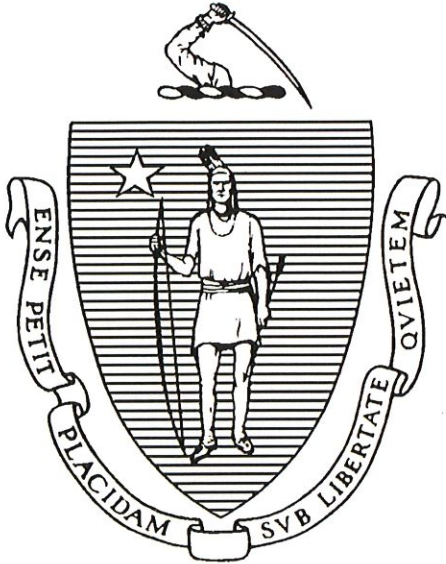


Issue: 1533, Date: October 25, 2024



The --- Massachusetts --- Register ---

Published by:
The Secretary of the Commonwealth,
William Francis Galvin, Secretary

\$15.00

115 CMR Department of Developmental Services

14.00 Self-determination and Self-directed Services

67

Implements M.G.L. c. 19B, § 19 by defining key terms and providing regulatory guidance to individuals and providers of the Department's self-directed services. Self-directed services offer eligible individuals an alternative to traditional services provided by the Department and an opportunity to exercise more choice and control, and promote independence in service planning.

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: Minimal to none

For the first five years: Minimal to none

No fiscal effect: Minimal to none

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: October 2, 2024

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Self-Determination;; Self-Directed Services

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*
115 CMR 14.00 is a new regulation.

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Oct 08 2024

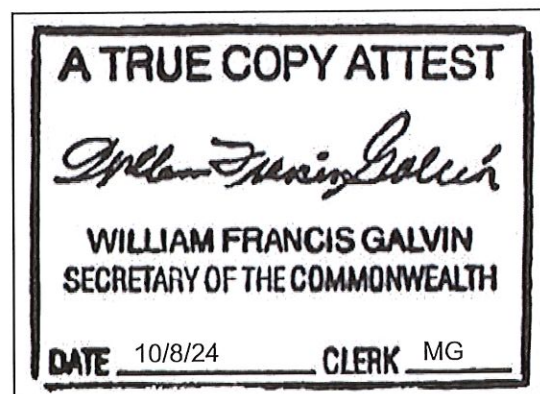
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1533 DATE: 10/25/24

EFFECTIVE DATE: 10/25/24

CODE OF MASSACHUSETTS REGULATIONS

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115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

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115 CMR 14.00: SELF-DETERMINATION AND SELF-DIRECTED SERVICES

Section

- 14.01: Scope and Authority
- 14.02: Purpose
- 14.03: Definitions
- 14.04: Enrollment in SDS
- 14.05: Participation in SDS
- 14.06: Development of Individual Budgets
- 14.07: Minimum Qualifications for Financial Management Service
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- 14.09: Services, Supports and Goods Available through SDS
- 14.10: Termination or Withdrawal from SDS
- 14.11: Appeals

14.01: Scope and Authority

- (1) 115 CMR 14.00 implements and facilitates the self-determination service option for individuals eligible for adult services from 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.

14.02: Purpose

Self-determination and self-directed services offer individuals eligible for adult services through the Department 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-determination and self-directed services promote independence in service planning while providing equitable access to the Department's resources for individuals receiving services from the Department and where applicable, shall be contingent upon federal financial participation.

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 is 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. Financial management services may include facilitating the employment of service and support workers by aiding the participant with payments, fiscal accounting, tax withholding, compliance with relevant state and federal employment laws, verification of provider qualifications, criminal background checks and expenditure reports. The financial management service entity shall owe the participant a fiduciary duty and shall meet minimum qualifications as established by the Department.

Independent Facilitator is a person selected and directed by the participant to assist in the development and execution of a person-centered plan and to assist the participant in making informed decisions about the participant's choices regarding self-determination including, but not limited to, the short-term and long-term planning goals for self-determination and the transition to self-determination. An independent facilitator shall meet minimum qualifications established by the Department prior to assisting a participant and shall not provide any services, supports or goods to the participant under the participant's individual support plan and shall not be employed by a person providing services, supports or goods to the participant. An independent facilitator is not a traditional service.

14.03: continued

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-directed services, and is subject to appropriation.

Participant is the individual who is eligible for and receives services, supports, and goods through a self-directed service. When used in 115 CMR 14.00, Participant may refer to the individual, their guardian or other legally authorized person, such as a durable power of attorney or healthcare proxy.

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 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: *Definitions*, and in accordance with 115 CMR 6.20 through 6.25.

Self-determination is an approach to service delivery in which the participant is given control over the decision-making process for the participant's supports or services and individual budget expenditures.

Self-directed Services or SDS means services offered by the Department to operationalize the goals of self-determination.

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 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: Enrollment in SDS

- (1) SDS under 115 CMR 14.00 are available to:
 - (a) individuals who are eligible for adult services through the Department; and
 - (b) individuals who may be safely served as periodically determined by the Department and consistent with 115 CMR 6.20(2): *Introduction to Individual Planning*. The Department shall consider the safety of the participant as well as the safety of others.

14.05: Participation in SDS

- (1) Participation in SDS is voluntary. The participant must:
 - (a) express an interest to participate in SDS and choose services through available service models. A participant may self-direct some or all of their services;
 - (b) participate, along with their chosen planning team, to the fullest extent possible in person-centered planning and development of the ISP as defined in 115 CMR 6.20 through 6.25;
 - (c) implement the person-centered plan and the ISP, including the hiring or purchasing of necessary services, supports or goods;
 - (d) utilize other available resources, services, supports, and goods, including natural supports, generic services, as those defined in 115 CMR 2.01: *Definitions*, and those available through MassHealth or other state agencies, in order to meet the participant's assessed needs; and
 - (e) work collaboratively with the Department and the FMS entity.

14.05: continued

(2) Responsibility of the Department.

- (a) The service coordinator shall, at the time of the planning meeting and as a part of the ongoing planning process:
 1. facilitate and assist in the preparation of a person-centered plan, ISP, and individual budget for each participant and, if applicable, the selection of a financial management service and independent facilitator;
 2. collect and disclose information to participants about providers and vendors who provide goods and services to participants; and
 3. provide information to the participant regarding the SDS and the requirements for participation set forth at 115 CMR 14.05(1).

14.06: Development of Individual Budgets

- (1) The Department shall set the individual budget for each SDS participant annually.
- (2) 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., and in consultation with the participant's person-centered planning team.
- (3) The Department shall set the individual budget equivalent to the cost of traditional services based on the participant's needs as assessed by the Department.
- (4) The Department will review the participant's utilization of services and may adjust the individual budget accordingly. Annual individual budget funds not spent by the participant shall revert back to the Department.
- (5) In setting the individual budget, the Department shall consider all of a participant's resources, including income, recurrent payments, health insurance, scholarships, financial assistance programs, eligibility for government benefits, and other entitlements and resources. A participant's failure to apply for or accept services or benefits available to the participant from another public agency and for which a participant is otherwise entitled shall be considered as an available resource for the purpose of setting the individual budget.

14.07: Minimum Qualifications for Financial Management Service

- (1) The FMS entity shall:
 - (a) have experience providing financial management and supporting SDS;
 - (b) process claims in accordance with time standards established by the Department;
 - (c) be flexible and responsive in supporting self-direction; and
 - (d) use and maintain secure and configurable data systems to assure financial and data integrity and meet the reporting requirements of the Department.
- (2) No FMS entity shall provide services prior to execution of a valid contract with the Department.

14.08: Minimum Qualifications for Independent Facilitator

An Independent Facilitator shall:

- (a) be 18 years of age or older;
- (b) comply with M.G.L. c. 19B, § 19 (Fingerprint-based checks to be conducted on applicants seeking license for department's client population residential or day care services or for other agency serving department's client population; individuals with unsupervised contact with persons with intellectual or developmental disability); 101 CMR 15.00: *Criminal Offender Record Checks*; and M.G.L. c. 19C, § 15 (Registry of abusive care providers); and
- (c) have at least two years experience working with individuals with intellectual or developmental disabilities.

14.09: Services, Supports and Goods Available through SDS

- (1) Services, supports and goods available through an SDS 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;
 - (i) chore; and
 - (j) supported employment.
- (3) Non-staffing goods and services available through an SDS may include the following:
 - (a) assistive technology;
 - (b) home modifications and adaptations;
 - (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 objectives that are identified in the participant's ISP.
- (4) Services, supports, or goods shall not supplant other services, supports, or goods for which the participant may be eligible, including from other available state funded services, *e.g.*, MassHealth services.
- (5) Services, supports, and goods must meet a participant's assessed needs.
- (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.

14.10: Termination or Withdrawal from SDS

- (1) A participant may withdraw from a SDS at any time.
- (2) The Department may terminate participation in a SDS if:
 - (a) the participant does not comply with 115 CMR 14.00; or
 - (b) the Department determines SDS cannot safely meet the participant's needs pursuant to 115 CMR 14.04(1)(b).
- (3) In the event a participant withdraws, or the Department terminates participation in a SDS, the participant, and the planning team, including the service coordinator, shall meet to develop a transition plan.

14.11: Appeals

- (1) Scope and Purpose. 115 CMR 14.11 contains the standards and procedures for an individual or participant to file an appeal related to their SDS.
- (2) Initiation of an Appeal.
 - (a) An appeal may be initiated by the participant within 30 days of the receipt of the individual budget determination or notice of termination from SDS pursuant to 115 CMR 14.10(2).
 - (b) Appeals of ISPs, Plans of Care, and individual budgets shall be consolidated for efficiency and to ensure the timely adjudication of appeals.

14.11: continued

- (3) Grounds for Appeal. An individual 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;
 - (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;
 - (c) denial of an individual's request for enrollment in SDS; and
 - (d) termination from SDS pursuant to 115 CMR 14.10(2).
- (4) The Appeal Process: Informal conferences and fair hearings shall be conducted in accordance with applicable provisions at 115 CMR 6.33: *The Appeal Process*.
 - (a) General provisions at 115 CMR 6.34 (1) through (3) and (5) shall apply to appeals under 115 CMR 14.11.
 - (b) For appeals based on 115 CMR 14.11(3)(a) or (b), the individual budget set by the Department will remain in effect during the pendency of the appeal.

REGULATORY AUTHORITY

115 CMR 14.00: M.G.L. c. 19B, §§ 1 and 19 and M.G.L. c. 123B, § 2.