

# DDS



Department of  
Developmental Services

## Self-Direction and the Home and Community-Based Services Waivers

December 2023

**BACKGROUND**

## Background: History

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- In 1983, chapter 1915(c) Home and Community-Based Services was adopted as part of the Social Security Act.
- This allows states to ask Medicaid permission to waive certain regulations that only allowed a state to use Medicaid funds for physician, hospital and/or institutional care.
- The funds that would have paid for institutional care can now be directed towards providing services out in the community for individuals who meet Nursing Facility (NF), Intermediate Care Facility for the Intellectually Disabled (ICF/ID) or hospital level of care.

## **Background: Waiver Assurances**

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- States must apply to the Centers for Medicare and Medicaid Services (CMS) for a Home and Community-Based Services waiver.
- The application describes the proposed waiver's design and must include enough information that lets CMS determine that the waiver meets applicable statutory and regulatory requirements and assurances.
- States must renew waivers every five years after the initial application.

## Background: Waiver Assurances (continued)

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States must assure that waivers:

- ✓ Ensure the protection of people's health and welfare
  
- ✓ Provide adequate and reasonable provider standards to meet the needs of waiver participants.
  - Verify providers meet required licensure and/or certification standards
  - Monitor providers to assure adherence to waiver requirements.
  - Implement policies and procedures for verifying that provider training is conducted in accordance the requirements of the waiver.

## Background: Waiver Assurances (continued)

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- ✓ Ensure that services follow an individualized and person-centered plan of care.
  
- ✓ Demonstrate that providing waiver services won't cost more than providing these services in an institution (“cost-neutral”)
  - Demonstrate there is a system in place for insuring financial accountability of the waiver
  - Provide evidence waiver claims are coded and paid for with the reimbursement methodology specified in the waiver and only for services rendered.
  - Provide evidence to CMS that rates remain consistent with the approved rate methodology throughout the five-year waiver cycle.

## Background: Importance of the Waivers

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- The waivers allow Massachusetts to be reimbursed by the federal government 50% on what it spends on certain services to support individuals in the community.
- The waiver is integral to keeping DDS's budget strong which allows us to fund services and prevents budget cuts.
- The waivers allow participants to earn a higher monthly income and maintain MassHealth Standard.
- Gives waiver participants the right to a Fair Hearing when denied enrollment in the waiver or when any action is taken that adversely affects the participant, such as a reduction in services.

# **WAIVER RULES AND LIMITATIONS**



## Waiver Rules and Limitations

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- DDS is obligated to adhere to the many rules, specifications, and assurances written in the waiver.
- These rules are based on CMS requirements and federal regulation.
- Failure to adhere to the rules can result in a loss of revenue or the repayment of revenue to the federal government.

## Waiver Rules and Limitations: The Community Rule

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### The Community Rule:

- In January 2014, the Federal Government issued a rule that defines what a home and community-based setting is.
- The Community Rule ensures that waiver participants have access to the benefits of community living, and that they live and receive services in integrated, non-institutional settings.
- If the state doesn't adhere to the Community Rule, we are unable to get federal reimbursement for the cost of waiver services.

## Waiver Rules and Limitations: The Community Rule

- The Community Rule has an outcome-oriented definition of home and community-based settings:
  - Settings are not solely based on:
    - Location
    - Geography
    - Physical characteristics
    - Number of individuals
    - Size
  - People with disabilities are real members of the community.
  - People with disabilities have choice and control.
  - People with disabilities have dignity and respect.

## Waiver Rules and Limitations: The Community Rule

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### Impact on Self-Direction:

- DDS must be able to assure CMS that funding is spent on services and settings that comply with the Community Rule.
- The use of any self-directed funding needs to meet the outcomes of the Community Rule.
- This includes the requirement that services are provided in settings that are integrated and support full access to the greater community.

## Waiver Rules and Limitations: Family Members Providing Waiver Services

### Family Members Providing Waiver Services:

- The state makes payments to relatives but not to legal guardians, spouses, or legal representatives for furnishing certain waiver services.
- Relatives must be qualified and either the relative is employed by a provider agency or the participant is self-directing his\her services.
- Payment rates to a relative must be consistent with DDS's established rates.
- Payment is made only when the service is not a function that a family member would normally provides for the participant.

## Waiver Rules and Limitations: Family Members Providing Waiver Services

- When a participant is self-directing their services the circumstances under which a relative may be paid are:
  - the lack of a qualified provider in the geographic area;
  - the lack of a qualified provider who can furnish services at necessary times and places;
  - the unique ability of the relative to meet the needs of the participant;
  - there is a cost-benefit to having the relative provide the service, such as transportation

## Waiver Rules and Limitations: Family Members Providing Waiver Services

- Relatives may not be employed as participant-directed providers for the following services:
  - live-in caregiver,
  - behavioral supports and consultation,
  - family training,
  - individual goods and services,
  - assistive technology,
  - peer support
  - transitional assistance services.

## Waiver Rules and Limitations: Waiver Service Limitations

### Waiver Service Limitations:

- Appendix C of the waiver outlines the definition, provider specifications, and limits for each waiver service.
- All waiver services must adhere to these guidelines regardless of whether services are delivered via the traditional model or self-directed.
- Waiver services cannot be provided at the same time as any services that duplicate or provide the same type of support. This includes both waiver services and MassHealth-funded services.
  - For example, In-Home Supports cannot be provided at the same time Personal Care Attendant Services (PCA) because both services include care and supervision.



# THE WAIVERS AND SELF-DIRECTION

## The Waivers and Self Direction

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- Massachusetts has three waivers for Adults with Intellectual disabilities.
  - Adult Supports Waiver
  - Community Living Waiver
  - Intensive Supports Waiver
- Participants of these waivers have a choice of three types of service delivery models:
  - Traditional
  - Agency with Choice
  - Participant Directed Program
- Waiver participants may utilize a combination of these service delivery methods to receive their services.

## The Waivers and Self Direction

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- Participants who cannot independently self-direct services may receive assistance from a legal representative, family member, or a non-legal representative chosen by the participant.
- However, the waiver requires that:
  - The representative of the participant is not paid for directing the services.
  - Participants can be safely served with self-directed supports.
  - Participants demonstrate an ability and desire to participate in self-direction.

## The following waiver services can be self-directed:

- Adult Companion
- Assistive Technology
- Behavioral Supports and Consultation
- Chore
- Family Training
- Home Modification and Adaptations
- Individual Goods and Services
- Individualized Day Supports
- Individual Supported Employment
- Individualized Home Supports
- Respite
- Specialized Medical Equipment and Supplies
- Peer Support
- Transportation
- Vehicle Modification
- Live-In Caregiver (Community Living and Intensive Waivers only)
- Transitional Assistance Services (Intensive Waiver only)

## Self Direction: Employee vs. Budget Authority

- Certain waiver services allow Employer Authority, Budget Authority, or both.
- These two authorities are often used in combination to promote full-featured participant direction of waiver services.

Waiver Service	Employer Authority	Budget Authority
Transitional Assistance Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Home Modifications and Adaptations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Peer Support	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Individual Supported Employment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Adult Companion	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Individual Goods and Services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Vehicle Modification	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Respite	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Specialized Medical Equipment and Supplies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Assistive Technology	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Behavioral Supports and Consultation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Live-In Caregiver	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Family Training	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Individualized Home Supports	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Individualized Day Supports	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Chore	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

## Self Direction: Employee vs. Budget Authority

### Employer Authority:

- The participant is supported to recruit, hire, supervise and direct the workers who furnish supports.
- The participant functions as the common law employer or the co-employer of these workers.
- The participant rather than a waiver provider agency carries out employer responsibilities for workers.

### Budget Authority:

- Participants have the authority and accept the responsibility to manage a participant-directed budget.
- Participants can make decisions about the acquisition of waiver goods and services that are authorized in the waiver and to manage the dollars included in a participant-directed budget.

## Self Direction: Employee vs. Budget Authority

### **Employer and Budget Authority Requirements:**

- Staff qualifications must adhere with the what's specified in the waiver.
- Staff duties must be consistent with the waiver service definition.
- Services must be provided in a manner consistent with the waiver service definition.
- Staff wages and benefits as well as the amount paid for services are subject to DDS limits.

# CONCLUSION



## Conclusion

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- The Waivers generate federal revenue which allow DDS to provide an array of community-based services.
- In order to receive reimbursement for these services, DDS must demonstrate to CMS that it adheres to the many requirements of the waiver.
- These requirements are derived from federal policy.
- Failure to adhere to the rules can result in a loss of revenue or the repayment of revenue to the federal government.