

Community First Choice Option

Patient Protection and Affordable Care Act H.R.3590

Section 2401 – In non-technical language

Amend Section 1915 of the Social Security Act (42 U.S.C. 1396n).

(1) General Information:

- Available October 2011
- State plan amendment – not a waiver
- Income eligibility: Less than 150% of Federal Poverty Level (FPL) **or**, if greater than 150% FPL, then the income level is applicable to an institutional level of care
- Institutional level of care: hospital, nursing facility (NF), institution for mental disease (IMD), or ICF-MR.

(A) Availability:

State shall make available home and community-based attendant services for activities of daily living (ADLs), instrumental activities of daily living (IADLs), and Health-Related Tasks through hands-on assistance, supervision, or cueing:

- Assessment is based on “FUNCTIONAL NEED” and agreed to in writing by consumer or representative
- In a home or community setting – that does not include NF, ICF-MR or IMD
- Under an agency-provider model or other model
- The furnishing of which:
 - Consumer control! “Selected, managed, and dismissed” by the consumer or Representative
 - Services provided by an individual who is “qualified” to provide such services, including family members – as defined by the Secretary

(B) Included Services and Supports:

In addition to ADL, IADL, and Health-Related Tasks, the attendant services may include:

- The acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish the ADL, IADL, or Health-Related Task
- Back-up mechanisms (e.g. technology)
- Training available for individuals on how to select, manage, and dismiss attendants. (Voluntary option.)

(C) Excluded Services and Supports:

Services/supports that are NOT permitted under CFC:

- Room and board costs
- Special education under IDEA or Voc Rehab
- Assistive technology
- Medical supplies or equipment
- Home-mods

(D) Permissible Services and Supports:

Services/supports that ARE permitted under CFC:

- Expenditures for transition costs, such as:
 - Rent/utilities
 - Bedding
 - Kitchen supplies
 - “Other necessities” required for transition

- Expenditures relating to a need identified in a service plan that increases independence or substitutes for human assistance, such as assistive technology or home modifications that reduces the need for attendant care.

(2) Increased Federal Financial Participation:

States that elect CFC will receive an increase in their federal medical assistance percentage (FMAP) by 6%

(3) States Requirements:

1. Develop and implement a State Plan amendment in collaboration with a “Development and Implementation Council.” The Council must be mostly people with disabilities, seniors, and their surrogates.
2. Must be statewide!
3. Services must be in “most integrated setting appropriate to the individual’s needs”
4. Based on NEEDS without regard to age, disability, severity of disability, or the type of attendant services the individual requires in order to be independent
5. Maintenance of Effort –States must maintain or exceed the level of state Medicaid expenditures for community-based programs that occur during the first full fiscal year in which the State plan amendment is implemented.
6. Establish and maintain a Quality Assurance System that:
 - Includes standards for all service models with respect to training, appeals for denials, reconsideration procedures for services plan, and other factors as determined by the Secretary
 - Incorporates individuals/surrogate feedback
 - Monitors the “health and well-being” of the individual – including process for reporting, investigating, and resolving allegations of abuse
 - Provides info about the provisions of the above three bullets to all individuals regardless of service delivery model
7. Collect and report info (as determined by the Secretary) for the purposes of:
 - Approving the State Plan amendment,
 - Providing Federal oversight, and
 - Conducting an evaluation (see “Evaluation” below) – including data regarding how the State’s home and community-based programs/services, the costs of such programs/services, and how the State provides pwd who qualify for institutional level of care under the State Plan or waivers the choice to select the community-based care.

(4) Compliance with Certain Laws:

States must comply with Fair Labor Standards Act of 1938 and applicable Federal and State laws regarding:

- Fed and State income and payroll taxes
- Unemployment and workers comp insurance
- Liability insurance
- Occupational health and safety

(5) Evaluation, Data Collection, and Reports to Congress

(A) Evaluation:

- The Secretary shall conduct an evaluation of services to determine their effectiveness in supporting individuals to lead independent lives
- Impact on the physical and emotional health of individuals

- Comparative cost analysis of the services provided under the new State Plan amendment and the services provided in an institution

(B) Data Collection:

Each fiscal year, the State shall provide the Secretary:

- The # of individuals who are estimated to receive home and community-based attendant services under this subsection during the fiscal year.
- The # of individuals that received such services during the preceding fiscal year.
- The specific # of individuals served by type of disability, age, gender, education level, and employment status.
- Whether the specific individuals have been previously served under any other home and community-based services program (under the State plan or under a waiver).

(C) Reports:

- Interim Report: 12/31/2013, the Secretary shall submit to Congress (and make available to the public) an Interim Report based on the findings from the “Evaluation.”
- Final Report: 12/31/2015, the Secretary shall submit to Congress (and make available to the public) a Final Report based on the findings from the “Evaluation.”

(6) Definitions:

- **Activities of Daily Living (ADLs)**: tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- **Consumer Controlled**: A method of selecting and providing services and supports that allow the individual/surrogate maximum control of the home and community-based attendant services and supports, regardless of who acts as the employer of record
- **Delivery Models**:
 - **Agency Provider Model**: A method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports – subject to the compliance with certain laws (above).
 - **Other Models**: Other than an agency-provider model, for the provision of consumer controlled services and supports – subject to the compliance with certain laws (above). Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.
- **Health-Related Tasks**: Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant
- **Individual’s Representative**: A parent, family member, guardian, advocate, or other authorized representative of an individual
- **Instrumental Activities of Daily Living (IADLs)**: Includes, but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community