

CONSUMER-DIRECTED SERVICES: CONTRACT EXAMPLES

States use a variety of approaches to including consumer-directed options into their MLTSS programs. Tennessee provides an example of a state that requires the MLTSS vendor to contract with a consumer-direction support vendor. For another example of a state that requires its MLTSS contractors to offer both a Fiscal/Employer Agent model and an Agency with Choice model, see provisions of the Texas Star+Plus contract. For an example of a more explicit and directive contract language that includes, for example, a requirement that MLTSS contractors offer and document members' choices about consumer-directed services, see provisions of the Wisconsin contract.

TennCare (CHOICES)

From TennCare, Section 2.9.7.3.

2.9.7.3.1 The CONTRACTOR shall enter into a contract with the FEA specified by TENNCARE to provide assistance to members choosing consumer direction.

2.9.7.3.2 The FEA shall fulfill, at a minimum, the following financial administration and supports brokerage functions, as specified in the CONTRACTOR's contract with the FEA and the FEA's contract with TENNCARE, for all CHOICES members electing consumer direction of HCBS:

- 2.9.7.3.2.1 Assign a supports broker to each CHOICES member electing to participate in consumer direction of HCBS;
- 2.9.7.3.2.2 Assist in identifying and addressing in the risk assessment and plan of care processes any additional risk associated with the member participating in consumer direction;
- 2.9.7.3.2.3 Provide initial and ongoing training to members and their representatives (as applicable) on consumer direction and other relevant issues (see Section 2.9.7.7 of this Agreement);
- 2.9.7.3.2.4 Verify worker qualifications, including, as specified by TENNCARE, conduct background checks on workers, enroll workers into Medicaid, assign provider Medicaid ID numbers, and hold Medicaid provider agreements (see Section 2.9.7.6.1 of this Agreement);
- 2.9.7.3.2.5 Provide initial and ongoing training to workers on consumer direction and other relevant issues (see Section 2.9.7.7 of this Agreement);
- 2.9.7.3.2.6 Assist the member and/or representative in developing and updating service agreements (see Section 2.9.7.6.6);
- 2.9.7.3.2.7 Receive, review and process electronically captured visit information;
- 2.9.7.3.2.8 Resolve discrepancies regarding electronically captured visit information;
- 2.9.7.3.2.9 Obtain documentation from the member and/or representative to ensure that services were provided prior to payment of workers;

- 2.9.7.3.2.10 Withhold, file and pay applicable: federal, state and local income taxes; employment and unemployment taxes; and worker's compensation;
- 2.9.7.3.2.11 Pay workers for authorized services rendered within authorized timeframes;
- 2.9.7.3.2.12 Facilitate resolution of any disputes regarding payment to workers for services rendered;
- 2.9.7.3.2.13 Monitor quality of services provided by workers; and
- 2.9.7.3.2.14 Report to the CONTRACTOR on worker and/or staff identification of, response to, participation in and/or investigation of critical incidents (see Section 2.15.7).

2.9.7.3.3 The FEA shall also fulfill, at a minimum, the following financial administration and supports brokerage functions for CHOICES members electing consumer direction of HCBS on an as needed basis:

- 2.9.7.3.3.1 Assist the member and/or representative in developing job descriptions;
- 2.9.7.3.3.2 Assist the member and/or representative in locating and recruiting workers;
- 2.9.7.3.3.3 Assist the member and/or representative in interviewing workers (developing questions, evaluating responses);
- 2.9.7.3.3.4 Assist the member and/or representative in scheduling workers;
- 2.9.7.3.3.5 Assist the member and/or representative in managing and monitoring payments to workers; and
- 2.9.7.3.3.6 Assist the member and/or representative in monitoring and evaluating the performance of workers.

Texas Star+Plus

From Texas Health & Human Services Commission, Uniform Managed Care Contract Terms & Conditions Attachment B-1 – HHSC Joint Medicaid/CHIP HMO RFP, Section 8.

8.3.5 Personal Attendant Services

There are three options available to STAR+PLUS Members desiring the delivery of Personal Attendant Services (PAS): 1) Self-Directed; 2) Agency Model, Self-Directed; and 3) Agency Model. The HMO must provide information to all eligible Members on the three options and must provide Member orientation in the option selected by the Member. The HMO must provide the information to any STAR+PLUS Member receiving PAS:

- at initial assessment;
- at annual reassessment or annual contact with the STAR+PLUS Member;
- at any time when a STAR+PLUS Member receiving PAS requests the information; and

- in the Member Handbook.

The HMO must contract with providers who are able to offer PAS and must also educate/train the HMO Network Providers regarding the three PAS options. To participate as a PAS Network Provider, the Provider must have a contract with DADS for the delivery of PAS. The HMO must assure compliance with the Texas Administrative Code in Title 40, Part 1, Chapter 41, Sections 41.101, 41.103, and 41.105. The HMO must include the requirements in the Provider Manual and in the STAR+PLUS Provider training.

8.3.5.1 Self-Directed Model

In the Self-Directed Model, the Member or the Member's legal guardian is the employer of record and retains control over the hiring, management, and termination of an individual providing Personal Attendant Services and/or In-Home or Out-of Home Respite. The Member is responsible for assuring that the employee meets the requirements for Personal Attendant Services and/or In-Home or Out-of Home Respite, including the criminal history check. The Member uses a Home and Community Support Services (HCSS) agency to handle the employer- related administrative functions such as payroll, substitute (back-up), and filing tax-related reports of Personal Attendant Services and/or In-Home or Out-of Home Respite.

8.3.5.2 Agency Model, Self-Directed

In the Agency Model, Self-Directed, the Member or the Member's legal guardian chooses a Home and Community Support Services (HCSS) agency in the HMO Provider Network who is the employer of record. In this model, the Member selects the personal attendant from the HCSS agency's personal attendant employees. The personal attendant's schedule is set up based on the Member input, and the Member manages the Personal Attendant Services and/or In-Home or Out-of Home Respite. The Member retains the right to supervise and train the personal attendant. The Member may request a different personal attendant and the HCSS agency would be expected to honor the request. The HCSS agency establishes the payment rate, benefits, and provides all administrative functions such as payroll, substitute (back-up), and filing tax-related reports of personal attendant services and/or In-Home or Out-of Home Respite.

8.3.5.3 Agency Model

In the Agency Model, the Member chooses a Home and Community Support Services (HCSS) agency to hire, manage, and terminate the individual providing Personal Attendant Services and/or In-Home or Out-of Home Respite. The HCSS agency is selected by the Member from the HCSS agencies in the HMO Provider Network. The Service Coordinator and Member develop the schedule and send it to the HCSS agency. The Member retains the right to supervise and train the personal attendant. The Member may request a different personal attendant and the HCSS agency would be expected to honor the request. The HCSS agency establishes the payment rate, benefits, and provides all administrative functions such as payroll, substitute (back-up), and filing tax-related reports of personal attendant services and/or In-Home or Out-of Home Respite.

Wisconsin Family Care

From Wisconsin Department of Health Services, Division of Long Term Care, Section VI, Self Direct Supports.

A. Option to Self-Direct

Under Self Directed Supports (SDS) a member may purchase long term care benefits listed in Addendum XII, Sections A, Home and Community Based Waiver Services (except for residential care services) and B., Medicaid State Plan Services – Family Care Benefit Package, page 256, if they are identified by the IDT as consistent with the member’s outcomes.

B. MCO Requirements

The MCO must present SDS as a choice to all members as specified in s DHS 10.44(6) Wis. Admin. Code. Specific responsibilities of the MCO are to:

1. Ensure that SDS funds are not used to purchase residential services that are included as part of a bundled residential services rate in a long term care facility. Members who live in residential settings can self-direct services that are not part of the residential rate. The cost of residential services may be used in establishing the member’s SDS budget if the MCO would have authorized residential services for the member if the member were not participating in SDS.
2. Continue to expand the variety of choices and supports available within SDS.
3. Ensure that all IDT staff understand SDS, how to create a budget with a member and how to monitor SDS with a member and their support team, or ensure team staff have access to someone within the MCO who has expertise in SDS to assist with setting budgets and monitoring for quality and safety.
4. Collaborate with the Department in its efforts to develop systems for evaluating the quality of SDS, including members’ experiences with SDS.
5. Develop and implement a Department-approved policy and procedure describing conditions under which the MCO may restrict the level of self-management exercised by a member where the team finds any of the following:
 - a. The health and safety of the member or another person is threatened.
 - b. The member’s expenditures are inconsistent with the established plan and budget.
 - c. The conflicting interests of another person are taking precedence over the outcomes and preferences of the member.
 - d. Funds have been used for illegal purposes.
 - e. Additional criteria for restricting the level of self-management exercised by a member may be approved by the Department in relation to other situations that the MCO has identified as having negative consequences. The MCO’s policy and procedure for limiting SDS shall be submitted to the Department for approval prior to implementation, whenever a change occurs, and upon request. The MCO

shall share SDS materials with the resource centers in their service areas that will allow the resource centers to provide appropriate options counseling about the SDS option to potential enrollees.

C. IDT Staff Responsibilities

It is the responsibility of the IDT staff to:

1. Provide information regarding the philosophy of SDS and the choices available to members within SDS. The information provided to members must include:
 - a. A clear explanation that participation in SDS is voluntary, and the extent to which members would like to self-direct is the members' choice;
 - b. A clear explanation of the choices available within SDS;
 - c. An overview of the supports and resources available to assist members to participate to the extent desired in SDS; and,
 - d. An overview of the conditions in which the MCO may limit the level of self-management by members, the actions that would result in the removal of the limitation, and the members' right to participate in the grievance process, as specified in Article XI, Grievances and Appeals, page 135.
2. On a yearly basis, obtain a dated signature from the member or member's authorized representative on a form, or section of an existing form, where the member must do the following:
 - a. Affirm the statement below:
"My interdisciplinary team has explained the self-directed supports option to me. I understand that under this option I can choose which services and supports I want to self-direct. I understand that this includes the option to accept a fixed budget that I can use to authorize the purchase of services or support items from any qualified provider."
 - b. Affirm one of the two statements below:
 - i. "I accept the offer of self-directed supports and the interdisciplinary team is helping me explore that option."
 - ii. "I decline self-directed supports at this time but understand I can choose this option at any time in the future by asking my interdisciplinary team."
3. Maintain the signed form required in paragraph 2 above as part of the member's file.
4. Work jointly with members during the comprehensive assessment and member-centered planning process to ensure all key SDS components are addressed, including:
 - a. What specific service/support do members want to self-direct;
 - b. To what extent does the member want to participate in SDS in this service area;
 - c. Are there areas within the comprehensive assessment that indicate that members may need assistance/support to participate in SDS to the extent they desire;
 - d. Identification of resources available to support members as needed, including a thorough investigation of natural supports, as well as identifying the members' preferences regarding how/by whom these supports are provided;

- e. Identification of potential health and safety issues related to SDS and specific action plans to address these;
 - f. Development of a budget for the support members have chosen to selfdirect, and a plan that clearly articulates to what extent members would like to participate in the budgeting/payment process;
 - g. Identification of what mechanism members have chosen to assure compliance with requirements for the deduction of payroll taxes and legally mandated fringe benefits for those employed by members; and,
 - h. For members with guardians, the identification of the need for guardian training in the area of identification of member preferences, and member self-advocacy training.
5. Ensure all key SDS components are included in the member-centered plan, including:
 - a. Desired outcomes related to SDS;
 - b. Supports/resources that will be utilized to ensure members' participation in SDS to the extent they desire; and,
 - c. Identification of potential health and safety issues, and a plan of action to address them.
6. Ensure mechanisms are in place for ongoing check-in and support regarding the members' participation in SDS, including:
 - a. Systems for ensuring member's expenditures are consistent with the agreed upon budget;
 - b. Identification of any changes needed in the SDS budget or identified supports/resources;
 - c. Check-in regarding potential health and safety issues and the action plans developed to address them; and,
 - d. Check-in regarding potential conflicts of interest – other persons' views taking precedence over the members' outcomes and preferences.
2. On a yearly basis, obtain a dated signature from the member or member's authorized representative on a form, or section of an existing form, where the member must do the following:
 - a. Affirm the statement below:

“My interdisciplinary team has explained the self-directed supports option to me. I understand that under this option I can choose which services and supports I want to self-direct. I understand that this includes the option to accept a fixed budget that I can use to authorize the purchase of services or support items from any qualified provider.”
 - b. Affirm one of the two statements below:
 - i. “I accept the offer of self-directed supports and the interdisciplinary team is helping me explore that option.”
 - ii. “I decline self-directed supports at this time but understand I can choose this option at any time in the future by asking my interdisciplinary team.”
3. Maintain the signed form required in paragraph 2 above as part of the member's file.