



Center for Medicaid and State Operations

SMD # 09-007

November 19, 2009

Dear State Medicaid Director:

This letter provides additional guidance on the implementation of section 6087 of the Deficit Reduction Act of 2005 (DRA), Public Law Number 109-171. Section 6087, the “Optional Choice of Self-Directed Personal Assistance Services (PAS) (Cash and Counseling),” amended section 1915 of the Social Security Act (the Act) by adding a new subsection (j). Section 1915(j) of the Act allows States to amend their Medicaid State plans to provide individuals with the option to self-direct their PAS, which became effective January 1, 2007. On October 3, 2008, the Centers for Medicare & Medicaid Services (CMS) published a final rule in the *Federal Register* (73 Fed. Reg. 57,854) providing guidance to States that choose to administer self-directed PAS through their State Medicaid plans, as authorized by the DRA. In response to comments to the final rule, we indicated that we would provide additional guidance in certain areas, and this letter serves to provide additional clarification and guidance for section 1915(j)(4)(B)(ii) of the Act, which permits States to allow participants to use their individual budget for “permissible purchases” (i.e., to acquire items that increase independence or substitute for human assistance) to the extent that expenditures would otherwise be made for the human assistance. The guidance in this letter also applies to section 1915(c) Home and Community-Based Services (HCBS) waiver programs in which States elect to offer the self-direction opportunity and to permit participants to purchase “individual directed goods and services.”

Background

An optional feature in self-direction programs under sections 1915(c) and (j) of the Act is the State’s ability to permit participants to “save” or “accumulate” funds from their budgets for the purchase of goods, services, supports, equipment, supplies, or items (“goods and services”) that will increase independence or substitute for human assistance. Experience under the section 1115 and section 1915(c) *Independence Plus* self-direction programs indicated that when participants were given the option to purchase items that increased their independence or substituted for human assistance, they exercised that option prudently and effectively. We also learned that States had various approaches to what they approved and how they approved these purchases consistent with their individually designed self-direction policies and operations.

Medicaid Authorities

In developing instructions to States applying for approval of section 1915(c) waivers, CMS has described the purchase of “individual directed goods and services” in the section 1915(c) waiver application instructions as follows:

[S]ervices, equipment or supplies not otherwise provided through this waiver or through the Medicaid State Plan that address an identified need in the service plan (including improving and maintaining the participant’s opportunities for full membership in the community) and meet the following requirements: the item or service would decrease the need for other Medicaid services; AND/OR, promote inclusion in the community; AND/OR, increase the participant’s safety in the home environment; AND, the participant does not have the funds to purchase the item or service or the item or service is not available through another source. Individual Directed Goods and Services are purchased from the participant-directed budget. Experimental or prohibited treatments are excluded. Individual Directed Goods and Services must be documented in the service plan.

Similarly, section 1915(j)(4)(B)(ii) of the Act allows participants, at the State’s option, to use funds allocated in their budgets to acquire items that “increase their independence or substitute for human assistance, to the extent that expenditures would otherwise be made for that human assistance.” We adopted the statutory provision for “permissible purchases” in our final rule on the self-directed PAS State plan option, and, at 42 CFR section 441.482(a) and (b), we require:

- (a) Participants, or their representatives, if applicable, may, at the State’s option, use their service budgets to pay for items that increase a participant’s independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports, and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

We also require, at 42 CFR section 441.470(d), that the State set forth a procedure that governs how such items are to be included in the service budget:

- (c) The procedure(s) that governs how a person, at the election of the State, may reserve funds to purchase items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance, including additional goods, supports, services or supplies.

Criteria

The following criteria are intended for States’ use in determining the goods and services they will permit to be covered as “individual directed goods and services” under a section 1915(c) HCBS waiver program, or as “permissible purchases” under the section 1915(j) self-directed PAS State plan option. It should be noted that a key criterion is that the purchase be related to a need or goal identified in the participant’s State-approved person-centered service plan. By requiring a link to the person-centered service plan, States ensure that the goods and services

purchased are consistent with a participant’s State-approved service plan and promote the integrity of the Medicaid program.

Criteria for Covered “Individual Directed Goods and Services” and “Permissible Purchases”:

States should determine that all of the following criteria are satisfied. The goods, services, supports, equipment, supplies, or items:

- Are related to a need or goal identified in the State-approved person-centered service plan;
- Are for the purpose of increasing independence or substituting for human assistance, to the extent the expenditures would otherwise be made for that human assistance;
- Promote opportunities for community living and inclusion;
- Are able to be accommodated within the participant’s budget without compromising the participant’s health or safety; and
- Are provided to, or directed exclusively toward, the benefit of the participant.

Examples of “Individual Directed Goods and Services” and “Permissible Purchases” that have been purchased when a State allows the “goods and services” option include: small kitchen appliances such as microwave ovens; accessibility ramps/home modifications; transportation; laundry service; durable medical equipment; and pharmaceutical supplies. This list of examples is not intended to be exhaustive, and States may consider other goods and services based on a participant’s person-centered service plan and individualized budget plan.

Examples of “Individual Directed Goods and Services” and “Permissible Purchases” not covered when a State allows the “goods and services” option include: services covered by third parties or services that are the responsibility of a non-Medicaid program or service; room and board, including rent and mortgage payments; experimental treatments; social or recreational purchases that are not related to a need or goal identified in the person-centered service plan; or, vacation expenses (except for the cost of services the participant may need while on vacation).

Support and Monitoring

Requirements in the Act and regulations govern the support system that must be available and the assurances and oversight that must be provided by State Medicaid agencies. Consistent with those requirements, we expect States that offer self-directed programs or State plan options to have in place a support system that consists of appropriate information, counseling, training, and assistance, as needed or desired by participants, to enable participants to effectively direct the service planning and budget planning process, develop their service plans and individualized budget plans, and manage and direct their service and budget plans. To implement this support system effectively, we expect that States also have available supports brokers/consultants that will assist participants, as needed or desired, from the time they express interest in self-directing section 1915(c) HCBS or section 1915(j) PAS, and throughout the time that they are enrolled in the self-directed section 1915(c) HCBS program or section 1915(j) PAS State plan option.

We further expect that supports brokers/consultants would possess an understanding of the philosophy of self-direction, person-centered and directed planning, the ability to facilitate participant’s independence and preferences, the ability to develop budget plans and ensure appropriate documentation, and knowledge of the resources available in the participant’s community and how to access them. Accordingly, we expect that States will furnish participants who are self-directing section 1915(c) HCBS or section 1915(j) PAS with a supports broker/consultant and sufficient information, counseling, and/or training about the criteria for covered “individual directed goods and services” and “permissible purchases.” the procedure for how they will be able to access these goods and services if the State elects this option, the State’s approval process for the purchase of goods and services, and any assistance needed or desired in adjusting their budget plans to reflect the amount to be saved and the purchase intended to be made with the savings.

We also expect that State Medicaid agencies ensure oversight for proper implementation of the criteria by designing procedures that will effectively govern how participants will reserve funds for the purchase of goods and services, if elected by the State. We expect these procedures to include that the annual reassessment of participants by the State Medicaid agency takes into account purchases of goods and services that substitute for human assistance and any adjustments for the need for human assistance.

Compliance with the Guidance

We note that other provisions of the Act that permit the opportunity to self-direct services are not impacted by this guidance. CMS staff are available to furnish technical assistance on our requirements for supports brokers/consultants and support systems.

The CMS contact for this guidance is Ms. Terry Pratt, Acting Director, Disabled and Elderly Health Programs Group, who may be reached at 410-786-9499.

Sincerely,

/s/

Cindy Mann
Director

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children’s Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Page 5 – State Medicaid Directors

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

Christine Evans, M.P.H.
Director, Government Relations
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy