



Medicaid and CHIP Operations Group

June 29, 2022

Steven Schuh, Medicaid Director
Maryland Department of Health
201 W. Preston Street, 5th Floor
Baltimore, MD 21201

Re: MD 22-0012 §1915(k) Community First Choice State Plan Amendment (SPA)

Dear Mr. Schuh:

The Centers for Medicare and Medicaid Services (CMS) is approving your request to amend the Community First Choice (CFC) state plan benefit submitted under transmittal number MD 22-0012. This amendment updates State Plan language regarding the Community First Choice program to replace references to the attendant care and the LTSS tracking system with personal assistance services and data management. CMS conducted the review of the state's submittal according to statutory requirements in Title XIX of the Social Security Act and relevant federal regulations.

The SPA is approved with a April 1, 2022 effective date. Enclosed are the following pages to be incorporated into your approved state plan:

- Attachment 3.1K, p. 1, (13-0017)
- Attachment 3.1K, p. 5, 9, 11, 14 (16-0012)
- Attachment 3.1K, p. 13, 15, 22 (15-0011)
- Attachment 3.1K, p. 10, 12 (13-0017)

It is important to note that CMS' approval of this change to the state's 1915(k) CFC state plan benefit solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under federal laws including, but not limited to, the Americans with Disabilities Act, §504 of the Rehabilitation Act, or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

If you have any questions concerning this information, please contact me at (410) 786-7561. You may contact Alice Robinson Ross at Alice.RobinsonRoss@cms.hhs.gov or (215) 861-4261.

Sincerely,



George P. Failla Jr., Director
Division of HCBS Operations and Oversight

Enclosure

cc: Tricia Roddy, MDH
Marlena Thieler, CMCS
Talbatha Myatt, CMCS

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER
2 2 — 0 0 1 2

2. STATE
MD

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT
 XIX XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
April 1, 2022

5. FEDERAL STATUTE/REGULATION CITATION
~~42 CFR 441.570~~ 42 CFR 441.570

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2022 \$ 0
b. FFY 2023 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment 3.1K p. 5, 9-15, & 22 (22-0012)
Attachment 3.1K p. 1 (22-0012)

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)
Attachment 3.1K, p. 5, 9, 11, 14 (16-0012)
Attachment 3.1K, p. 13, 15, 22 (15-0011)
Attachment 3.1K, p. 10, 12 (13-0017)
Attachment 3.1K, p. 1(13-0017)

9. SUBJECT OF AMENDMENT

Maryland Medicaid proposes updating State Plan language regarding the Community First Choice program to replace references to the attendant care and the LTSS tracking system with personal assistance services and data management

10. GOVERNOR'S REVIEW (Check One)

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
 OTHER, AS SPECIFIED:

11. SIGNATURE OF STATE AGENCY OFFICIAL

12. TYPED NAME
Tricia Roddy

13. TITLE
Deputy Medicaid Director

14. DATE SUBMITTED
4.20.22

15. RETURN TO
Steven Schuh
Medicaid Director
Maryland Department of Health
201 W. Preston St., 5th Floor
Baltimore, MD 21201

FOR CMS USE ONLY

16. DATE RECEIVED
April 22, 2022

17. DATE APPROVED
June 29, 2022

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
April 1, 2022

19. SIGNATURE OF APPROVING OFFICIAL

20. TYPED NAME OF APPROVING OFFICIAL
George P. Failla Jr.

21. TITLE OF APPROVING OFFICIAL
Director, Division of HCBS Operations and Oversight

22. REMARKS

On 6-9-22 State requested pen & ink change in box 5, to reflect 42 CFR 441.570 and in box 7, to add 3.1K page 1 (being updated with 22-0012). In box 8, to add 3.1K page 1 (superseded TN # 13-0017).

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Notwithstanding anything else in this State plan provision, the coverage will be subject to such other requirements that are promulgated by CMS through interpretive issuance or final regulation.

For purposes of the Community First Choice Plan Option the state uses the term personal assistance to describe attendant services as defined in 42 CFR 441.565.

i. **Eligibility**

- A. The State determines eligibility for Community First Choice (CFC) services in the manner prescribed under 42 CFR §441.510. To receive CFC services and supports under this section, an individual must meet the following requirements:
1. Be eligible for medical assistance under the State Plan;
 2. As determined annually --
 - a. Be in an eligibility group under the State plan that includes nursing facility services; or
 - b. If in an eligibility group under the State plan that does not include such nursing facility services, and which the state has elected to make CFC services available (if not otherwise required), have an income that is at or below 150 percent of the Federal poverty level (FPL); and
 3. Receive a determination, at least annually, that in the absence of the home and community-based personal assistance services and supports, the individual would otherwise require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, if the cost could be reimbursed under the State plan.
 4. Individuals who qualify for medical assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act must meet all section 1915 (c) requirements and receive at least one home and community-based waiver service per month.
 5. Individuals receiving services through CFC will not be precluded from receiving other home and community-based long-term services and supports through other Medicaid State plan, waiver, grant, or demonstration authorities.
- B. During the five-year period that begins January 1, 2014 and extending through September 30, 2023 (or other date as required by law), spousal impoverishment rules are used to determine the eligibility of individuals with a community spouse who seek eligibility for home and community-based services provided under 1915(k).

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- ii. There is a one unit maximum per installation and there is a one unit maximum per month for PERS maintenance/monitoring. Units for each type of service are identified separately in the participant's plan of service; units submitted for payment may not exceed what is approved in the participant's POS. There is no lifetime limit on the number of installation fees, but each additional installation will need to be approved in the participant's Plan of Service.
The State will claim the enhanced match on this service.

3. Voluntary training on how to select, manage, and dismiss personal assistance providers.

- a. The State will develop materials and technical assistance to support planners who provide training to participants.
 - i. Supports planners must meet minimum qualifications established through a solicitation process. Current standards can be found on the Department's website.
- b. This training will be provided to participants when requested. The Supports Planner will advise the participant of their training options. Even when an individual chooses to waive supports planning, they will still be assigned a supports planner in the data management system in the event they need assistance or would like to request training.
- c. The State will develop and maintain a training manual and other materials which can be presented in many formats including: individually, in groups, and by webinar if requested.
- d. Manuals for the training will be provided to participants upon delivery of training and will also be posted on the Department's website.
- e. Participants can choose to be referred for training multiple times to enhance their skills.

4. Support System Activities

- a. Under CFC, the Area Agencies on Aging and supports planning providers identified through a competitive solicitation will engage participants in a person-centered planning process that identifies the goals, strengths, risks, and preferences of the participant. Supports Planners shall coordinate community services and supports from various programs and payment sources to aid applicants and participants in developing a comprehensive plan for community

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iv. Use of Direct Cash Payments

- A. 1. The State elects to disburse cash prospectively to CFC participants. The State assures that all Internal Revenue Service (IRS) requirements regarding payroll/tax filing functions will be followed, including when participants perform the payroll/tax filing functions themselves.
2. X The State elects not to disburse cash prospectively to CFC participants.

v. Assurances

- (A) The State assures that any individual meeting the eligibility criteria for CFC will receive CFC services.
- (B) The State assures there are necessary safeguards in place to protect the health and welfare of individuals provided services under this State Plan Option, and to assure financial accountability for funds expended for CFC services.
- (C) The State assures the provision of consumer controlled home and community-based personal assistance services and supports to individuals on a statewide basis, in a manner that provides such services and supports in the most integrated setting appropriate to the individual's needs, and without regard to the individual's age, type or nature of disability, severity of disability, or the form of home and community-based personal assistance services and supports that the individual requires in order to lead an independent life.
- (D) With respect to expenditures during the first twelve-month period in which the State Plan amendment is implemented, the State will maintain or exceed the level of State expenditures for home and community-based personal assistance services and supports provided under section 1905(a), section 1915, section 1115, or otherwise to individuals with disabilities or elderly individuals attributable to the preceding fiscal year.

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- (E) The State assures the establishment and maintenance of a comprehensive, continuous quality assurance system with respect to community-based personal assistance services and supports.**
- (F) The State shall provide the Secretary with the following information regarding the provision of home and community-based personal assistance services and supports under this subsection for each fiscal year for which such services and supports are provided:**
- (i) The number of individuals who are estimated to receive home and community-based personal assistance services and supports under this option during the fiscal year.**
 - (ii) The number of individuals that received such services and supports during the preceding fiscal year.**
 - (iii) The specific number of individuals served by type of disability, age, gender, education level, and employment status.**
 - (iv) Data regarding how the State provides Community First Choice and other home and community-based services.**
 - (v) The cost of providing Community First Choice and other home and community-based services and supports.**
 - (vi) The specific number of individuals that have been previously served under any other home and community-based services program under the State Plan or under a waiver.**
 - (vii) Data regarding the impact of Community First Choice services and supports on the physical and emotional health of individuals.**
 - (viii) Data regarding how the State provides individuals with disabilities who otherwise qualify for institutional care under the State Plan or under a waiver the choice to receive home and community-based services in lieu of institutional care.**
- (G) The State assures that home and community-based personal assistance services and supports are provided in accordance with the requirements of the Fair Labor Standards Act of 1938 and applicable Federal and State laws and all applicable provisions of Federal and State laws as described in 42 CFR 441.570(d) regarding the following:**

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- (i) **Withholding and payment of Federal and State income and payroll taxes**
- (ii) **The provision of unemployment and workers compensation insurance**
- (iii) **Maintenance of general liability insurance.**
- (iv) **Occupational health and safety.**
- (v) **Any other employment or tax related requirements.**

(H) The State assures it established a Development and Implementation Council prior to submitting a State Plan Amendment in accordance with section 1915(k)(3)(A). The council is primarily comprised of consumers who are individuals with disabilities, elderly individuals and their representatives.

(I) The State assures that service budgets follow the requirements of 42 CFR 441.560.

iv. Assessment and Service Plan

Describe the assessment process or processes the state will use to obtain information concerning the individual's needs, strengths, preferences, goals, and other factors relevant to the need for services:

- A. The participant has an initial and an annual assessment done by the local health department or contractor using a standardized assessment of need.
 - 1. The assessment will be performed face-to-face by a nurse and/or social worker. The assessment is entered in the data management system.
 - 2. The POS will be completed by a Supports Planner chosen by the applicant/participant.
 - 3. The state establishes conflict of interest standards for the assessments of functional need and the person-centered service plan development process in accordance with 42CFR 441.555(c).

The State will not claim an enhanced match for these services.

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Indicate who is responsible for completing the assessment prior to developing the Community First Choice person-centered service plan. Please provide the frequency the assessment of need will be conducted.

- B. The initial and annual assessments will be conducted by the Local Health Departments or a State contractor. Assessments will be completed upon application to the program to determine initial eligibility and annually to maintain eligibility. A standardized assessment is used to determine service needs.

Describe the reassessment process the State will use when there is a change in the individual's needs or the individual requests a reassessment. Indicate if this process is conducted in the same manner and by the same entity as the initial assessment process or if different procedures are followed:

- C. A reassessment based on a change in the individual's needs will be conducted in the same manner and by the same entity as the initial and annual assessment. An assessment for significant change can be requested at any time during a participant's enrolled status in CFC. Per 42 CFR 441.535(c) and 441.540(c), the participant may also request an assessment at any time.

Person-Centered Service Plan Development Process: Describe the process that is used to develop the person-centered service plan, including: Indicate how the service plan development process ensures that the person-centered service plan addresses the individual's goals, needs (including health care needs), and preferences, by offering choices regarding the services and supports they receive and from whom.

- D. Several entities are involved in the development of the POS with the applicant or participant, including the supports planner and the local health department (LHD) evaluators. After receiving a referral, LHD staff schedule an on-site visit with the applicant to conduct a comprehensive evaluation, including the completion of the standardized assessment instrument. Recommendations in the form of a Recommended Plan of Care are made based on the comprehensive evaluation/assessment.
- E. Per 42 CFR 441.540(a)(1), a participant may select from any available supports planner in the jurisdiction. All applicants for Community First Choice will be mailed a package with brochures of available supports planning agencies for their jurisdiction. The applicant or participant will be able to call the Department, the supports planning agency or the local health department to select, which can then be indicated in the data management

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system. The Supports Planner then schedules and completes a face-to-face meeting with the applicant/participant and their identified representatives to explore the applicant/participant's needs, preferences, strengths, risks, and goals through a person-centered planning process. This will be done by a supports planning agency that has demonstrated the ability to be culturally sensitive in all business practices and effectively relates to the cultural/ethnic diversity of participants. The person-centered planning process shall include people chosen by the individual applicant or participant. The participant can choose a new supports planning agency in the event that they are unsatisfied with their current selection.

- F. The Supports Planner will use the data management system and have access to the clinical assessors' Recommended Plans of Care. With that information along with input from the participant, a Supports Planner will help create a proposed plan of service. Supports Planners will assist the participant in identifying enrolled providers and make referrals for voluntary training on self-direction, when needed.
- G. Supports Planners shall coordinate community services and supports from various programs and payment sources to aid applicants and participants in developing a comprehensive plan for community living. Person-Centered Planning is essential to assure that the participant's personal strengths, goals, risks, and preferences are incorporated into service planning and reflected on the POS. Supports Planners engage every applicant and participant in a person-centered planning process designed to offer the participant choice and control over the process and resulting plan.
- H. Risk mitigation strategies, including back-up plans that are based on the unique needs of the individual must ensure health and safety while affording an individual the dignity of risk. Individualized risk mitigation strategies are incorporated directly into the POS and are done in a manner sensitive to the individual's preferences. The POS will need to contain a reasonably designed back-up system for emergencies, including situations in which a scheduled provider does not show up to provide services. Strategies may include individual, family, and staff training, assistive technology, back-up staffing, etc. The proposed POS becomes effective upon approval by the Department.
- I. Per 42 CFR 441.530(a)(1)(ii) the setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.

All actions of the aforementioned person-centered planning process will comport with 42CFR 441.540(b).

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A description of the timing of the person-centered service plan to assure the individual has access to services as quickly as possible, frequency of review, how and when it is updated, mechanisms to address changing circumstances and needs or at the request of the individual.

- J. The first day of the process begins when an applicant expresses interest in the CFC program. The referral to the local health department occurs and within 15 calendar days the assessment and Recommended Plan of Care are completed.
- K. Supports Planner selection begins when the medical and financial eligibility processes have been completed. A Supports Planning selection packet will be mailed to the applicant at the same time that the referral for medical assessment is made. A person has 21 calendar days to select a Supports Planner or one will be automatically assigned via the data management system. The participant may choose at any time to switch to a different available supports planning agency. They can do this by calling the Department, the existing supports planning agency, the supports planning agency of their choice, or the local health department. The Supports Planner has 20 days to submit the POS.
- L. Supports Planners and participants will have access to the POS and will have the ability to update and request changes based on significant change or upon request of the individual at any time.

A description of the strategies used for resolving conflict or disagreement within the process, including the conflict of interest standards for assessment of need and the person-centered service plan development process that apply to all individuals and entities, public or private.

- M. The process begins with the nurse and/or social worker performing a standardized assessment. The development of the POS is then done by another entity, the Area Agency on Aging or other provider identified through a competitive solicitation. There is a separation of duties such that the same entity will not be performing the assessments and completing the plan of service with the participant.
- N. Supports planning entities that have responsibility for service plan development may not provide other direct services to the participant unless there are administrative separations in place to prevent and monitor potential conflicts of interest.
- O. Plans of service are reviewed by the Department prior to implementation to assure that there are no conflicts of interest.

vii. Home and Community-based Settings

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CFC services will be provided in a home or community setting, which does not include a nursing facility, institution for mental diseases, an intermediate care facility for individuals with intellectual disabilities, a hospital providing long-term care services, or any other locations that have qualities of an institutional setting.

Please specify the settings CFC services will be provided.

- A. CFC services are available and provided to individuals residing in settings that meet the federal regulatory requirements for a home and community-based setting and include, but are not limited to, single family homes, duplexes, apartments, and congregate settings serving three or fewer unrelated individuals. Settings criteria will meet the requirements of 42 CFR 441.530. CFC participants may receive services in the workplace or other community settings.

viii. Qualifications of Providers of CFC Services

- A. In accordance with 42 CFR 441.565 (a)(1)-(3):
1. An individual retains the right to train personal assistance providers in the specific areas of personal assistance services needed by the individual, and to have the personal assistance provider perform the needed assistance in a manner that comports with the individual's personal, cultural, and/or religious preferences.
 2. An individual retains the right to establish additional staff qualifications based on the individual's needs and preferences.
 3. Individuals also have the right to access other training provided by or through the State so that their personal assistance provider(s) can meet any additional qualifications required or desired by individuals.
- B. Provider qualifications have been designed to ensure necessary safeguards to protect the health and welfare of participants. Personal Assistance agencies may include providers certified by the Office of Health Care Quality as a residential services agency (RSA).
1. Agency-based personal assistants are required to be certified in the performance of CPR.

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- Q. Participants and/or their representatives may request assistance applying for a Fair Hearing from a provider, supports planner or other individual of their choosing. Information sent with the adverse action notice also includes contact information related to Legal Aid and the Maryland Disability Law Center, the State's Protection and Advocacy Agency.
- **Describe the quality assurance system's methods that maximize consumer independence and control and provide information about the provisions of quality improvement and assurance to each individual receiving such services and supports.**
- R. Voluntary training on self-direction will be offered to participants through their supports planners using materials and guidance from the Maryland Department of Disabilities. This training will be available when a participant requests assistance.
- S. Supports Planning will also educate participants about consumer independence and control and provide information about the provisions of quality improvement and assurance as described above in *iii. Service Package, A.4 Support System*. Supports Planners will assist the participants in accessing training on self-direction, selecting providers of consumer training services, and in learning how to navigate the Consumer portal of the data management system. Participants may monitor provider time keeping, view reports, and access and update their POS through the data management system.
- T. In-Home Supports Assurance System (ISAS)-A telephonic time keeping system that will track personal assistance hours and use a landline phone or one-time password device to ensure that a provider is in the participant's home when clocking in and out. Participants may view and monitor the time keeping of their providers in this system.
- U. The CFC Implementation Council will remain to be a consumer majority committee that will advise the State Medicaid Agency on ongoing issues and procedures of the CFC program.
- **Describe how the State will elicit feedback from key stakeholders to improve the quality of the community-based personal assistance services and supports benefit.**
- V. The State will continue to have a consumer-majority advisory council. The council will have the opportunity to meet at least quarterly. The State welcomes other stakeholders and advocates to attend these meetings either in person or via conference call/webinar format.