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State/Territory Name: WI

State Plan Amendment (SPA) #: 22-0016

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Summary Form (with 179-like data)
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

December 2, 2022

Lisa Olson, Medicaid Director
Division of Medicaid Services
Wisconsin Department of Health Services
1 West Wilson Street, Room 350
Madison, WI 53702

RE: WI 22-0016 Adjustment to IRIS Self-Directed Personal Care (SDPC) §1915(j) Home and Community-Based Services (HCBS) State Plan Amendment (SPA)

Dear Ms. Olson:

The Centers for Medicare & Medicaid Services (CMS) is approving the state's request to amend its 1915(j) State Plan Home and Community-Based Services (HCBS) benefit, transmittal number 22-0016. The effective date for this amendment is July 1, 2022. With this amendment, the state is updating the SDPC pages of the State Plan to reflect the current practice of the department, including language and role updates. There are no substantive changes to the program's operations.

Enclosed are the following approved SPA pages that should be incorporated into your approved state plan:

- Attachment 3.1-A, Supplement 2
- Attachment 3.1-B, Supplement 2

It is important to note that CMS approval of this change to the state's 1915(j) HCBS 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, Section 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 also contact Dell Gist at dell.gist@cms.hhs.gov or (312) 886-2568.

Sincerely,

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

Enclosure

cc: Bailey Dvorak, WI DHS
Marlana Thieler, CMS
Wendy Hill Petras, CMS
Cynthia Nanes, CMS
Mai Le-Yuen, CMS

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES		1. TRANSMITTAL NUMBER <u>2 2 — 0 0 1 6</u>	2. STATE <u>WI</u>
TO: CENTER DIRECTOR CENTERS FOR MEDICAID & CHIP SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT <input checked="" type="radio"/> XIX <input type="radio"/> XXI	
5. FEDERAL STATUTE/REGULATION CITATION 42 CFR Part 447 Subpart C		4. PROPOSED EFFECTIVE DATE July 1, 2022	
7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Attachment 3.1-A Supplement 2 Attachment 3.1-B Supplement 2		6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars) a. FFY <u>2022</u> \$ <u>0</u> b. FFY <u>2023</u> \$ <u>0</u>	
9. SUBJECT OF AMENDMENT Self-Directed Personal Assistance Services		8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) Attachment 3.1-A Supplement 2 Attachment 3.1-B Supplement 2	
10. GOVERNOR'S REVIEW (Check One) <input checked="" type="radio"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="radio"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="radio"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL <input type="radio"/> OTHER, AS SPECIFIED:			
11. SIGNATURE OF STATE AGENCY OFFICIAL		15. RETURN TO Bailey Dvorak State Plan Amendment Coordinator Department of Health Services 1 W. Wilson St. P.O. Box 309 Madison, WI 53701-0309	
12. TYPED NAME Lisa Olson			
13. TITLE State Medicaid Director			
14. DATE SUBMITTED 9/30/22			
FOR CMS USE ONLY			
16. DATE RECEIVED 9/30/2022		17. DATE APPROVED 12/02/2022	
PLAN APPROVED - ONE COPY ATTACHED			
18. EFFECTIVE DATE OF APPROVED MATERIAL 7/1/2022		19. SIGNATURE OF APPROVING OFFICIAL  Digitally signed by George P. Failla, Jr.	
20. TYPED NAME OF APPROVING OFFICIAL George P. Failla, Jr.		21. TITLE OF APPROVING OFFICIAL Director, Division of HCBS Operations and Oversight	
22. REMARKS			

State of Wisconsin
1915(j) Self-Directed Personal Assistance Services State Plan Amendment Pre-Print

i. Eligibility

The State determines eligibility for Self-Directed Personal Assistance Services:

- A. X **In the same manner as eligibility is determined for traditional State Plan personal care services, described in Item 24 of the Medicaid State Plan.**
- B. In the same manner as eligibility is determined for services provided through a 1915(c) Home and Community-Based Services Waiver.

ii. Service Package

The State elects to have the following included as Self-Directed Personal Assistance Services:

- A. X **State Plan Personal Care and Related Services, to be self-directed by individuals eligible under the State Plan.**
- B. Services included in the following section 1915(c) Home and Community-Based Services waiver(s) to be self-directed by individuals eligible under the waiver(s). The State assures that all services in the impacted waiver(s) will continue to be provided regardless of service delivery model. Please list waiver names and services to be included.

iii. Payment Methodology

- A. X **The State will use the same payment methodology for individuals self-directing their PAS under section 1915(j) as that approved for State plan personal care services or for section 1915(c) Home and Community-Based waiver services.**
- B. The State will use a different payment methodology for individuals self-directing their PAS under section 1915(j) than that approved for State plan personal care services or for section 1915(c) Home and Community-Based waiver services. Amended Attachment 4.19-B page(s) are attached.

iv. Use of Cash

- A. The State elects to disburse cash prospectively to participants self-directing personal assistance services. 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.
- B. X **The State elects not to disburse cash prospectively to participants self-directing personal assistance services.**

v. Voluntary Disenrollment

The State will provide the following safeguards in place to ensure continuity of services and assure participant health and welfare during the period of transition between self-directed and traditional service delivery models. Participants may voluntarily disenroll from the self-directed personal care option at any time. Where necessary, the participant's IRIS Consultant Agency is responsible for assisting the participant by discussing mitigation strategies relating to the decision to disenroll. The Self-Directed Personal Care agency will assist the participant during a transfer of personal care services to traditional agency-based personal care by providing case coordination, which includes the transfer of the personal care screen tool results and coordination of service authorization start/end dates to ensure continuity of care. During a transition from self-directed personal care to traditional agency-based personal care, the Self-Directed Personal Care agency will maintain the participant's current services until the effective date of the transition.

vi. Involuntary Disenrollment

- A. *The circumstances under which a participant may be involuntarily disenrolled from self-directing personal assistance services and returned to the traditional service delivery model are noted below.*
The circumstances under which a participant may be involuntary disenrolled from self-directed

personal care services include: 1) the participant's health and safety is jeopardized; 2) purchasing authority is mismanaged; 3) the participant refuses to report information necessary to adequately monitor the situation; or 4) the participant chooses to move to an ineligible living arrangement.

- B. *The State will provide the following safeguards in place to ensure continuity of services and assure participant health and welfare during the period of transition between self-directed and traditional service delivery models.*

During an involuntary disenrollment, the participant's Self-Directed Personal Care agency and their IRIS Consultant Agency are responsible for providing assistance during the transfer to traditional agency-based personal care. The participant's IRIS Consultant Agency is responsible for assisting the participant by discussing mitigation strategies relating to the disenrollment. The Self-Directed Personal Care agency provides assistance during the transfer by providing case coordination, including the transfer of the personal care screen tool results, as well as coordination of prior authorization start/end dates to ensure continuity of care. During a transition from self-directed personal care to traditional agency-based personal care, the Self-Directed Personal Care agency will maintain the participant's current services until the effective date of the transition.

The decision to involuntarily terminate participation in self-directed personal care services can be appealed through the State Fair Hearing process.

vii. Participant Living Arrangement

Any additional restrictions on participant living arrangements, other than homes or property owned, operated, or controlled by a provider of services, not related by blood or marriage to the participant are noted below. The State will not impose additional restrictions on participant living arrangements.

viii. Geographic Limitations and Comparability

- A. X The State elects to provide self-directed personal assistance services on a statewide basis.
- B. _____ The State elects to provide self-directed personal assistance services on a targeted geographic basis. Please describe:
- C. _____ The State elects to provide self-directed personal assistance services to all eligible populations.
- D. X The State elects to provide self-directed personal assistance services to targeted populations. Please describe:
Only individuals enrolled in Wisconsin's 1915(c) HCBS IRIS (Include, Respect, I Self-Direct) waiver, will be eligible to enroll in the self-directed personal care service under this state plan amendment.
- E. X The State elects to provide self-directed personal assistance services to an unlimited number of participants.
- F. _____ The State elects to provide self-directed personal assistance services to _____ (insert number of) participants, at any given time.

ix. Assurances

- A. The State assures that there are traditional services, comparable in amount, duration, and scope, to self-directed personal assistance services.
- B. The State assures that 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 self-directed personal assistance services.
- C. The State assures that an evaluation will be performed of participants' need for personal assistance services for individuals who meet the following requirements:
- i. Are entitled to medical assistance for personal care services under the Medicaid State Plan; or
 - ii. Are entitled to and are receiving home and community-based services under a section 1915(c) waiver; or
 - iii. May require self-directed personal assistance services; or
 - iv. May be eligible for self-directed personal assistance services.

- D. The State assures that individuals are informed of all options for receiving self-directed and/or traditional State Plan personal care services or personal assistance services provided under a section 1915(c) waiver, including information about self-direction opportunities that is sufficient to inform decision-making about the election of self-direction and provided on a timely basis to individuals or their representatives.
- E. The State assures that individuals will be provided with a support system meeting the following criteria:
 - i. Appropriately assesses and counsels individuals prior to enrollment;
 - ii. Provides appropriate counseling, information, training, and assistance to ensure that participants are able to manage their services and budgets;
 - iii. Offers additional counseling, information, training, or assistance, including financial management services:
 - 1. At the request of the participant for any reason; or
 - 2. When the State has determined the participant is not effectively managing their services identified in their service plans or budgets.
- F. The State assures that an annual report will be provided to CMS on the number of individuals served through this State Plan Option and total expenditures on their behalf, in the aggregate.
- G. The State assures that an evaluation will be provided to CMS every 3 years, describing the overall impact of this State Plan Option on the health and welfare of participating individuals, compared to individuals not self-directing their personal assistance services.
- H. The State assures that the provisions of section 1902(a)(27) of the Social Security Act, and Federal regulations 42 CFR 431.107, governing provider agreements, are met.
- I. The State assures that a service plan and service budget will be developed for each individual receiving self-directed PAS. These are developed based on the assessment of needs.
- J. The State assures that the methodology used to establish service budgets will meet the following criteria:
 - i. Objective and evidence based, utilizing valid, reliable cost data.
 - ii. Applied consistently to participants.
 - iii. Open for public inspection.
 - iv. Includes a calculation of the expected cost of the self-directed PAS and supports if those services and supports were not self-directed.
 - v. Includes a process for any limits placed on self-directed services and supports and the basis/bases for the limits.
 - vi. Includes any adjustments that will be allowed and the basis/bases for the adjustments.
 - vii. Includes procedures to safeguard participants when the amount of the limit on services is insufficient to meet a participant's needs.
 - viii. Includes a method of notifying participants of the amount of any limit that applies to a participant's self-directed PAS and supports.
 - ix. Does not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

x. Service Plan

The State has the following safeguards in place, to permit entities providing other Medicaid State Plan services to be responsible for developing the self-directed personal assistance services service plan, to assure that the service provider's influence on the planning process is fully disclosed to the participant and that procedures are in place to mitigate that influence.

The Self-Directed Personal Care agency is responsible for assisting the participant to develop the service plan for their self-directed personal care services and will not provide any additional Medicaid State Plan services to the participant.

xi. Quality Assurance and Improvement Plan

The State's quality assurance and improvement plan is described below, including:

- i. *How it will conduct activities of discovery, remediation, and quality improvement in order to ascertain whether the program meets assurances, corrects shortcomings, and pursues opportunities for improvement; and*
- ii. *The system performance measures, outcome measures, and satisfaction measures that the State will monitor and evaluate.*

The Quality Management System will use discovery activities to determine if the self-directed personal care services program is operating as intended, meeting assurances and achieving desired outcomes for participants. The State Medicaid agency will use information gathered from the Self-Directed Personal Care agency, IRIS Consultant Agencies, and Fiscal Employer Agents in its discovery strategies for self-directed personal care services quality. Discovery will be accomplished through a record/document review process.

Discovery data will be aggregated, verified, analyzed and reported to the State Medicaid Agency. Any issues identified in the discovery process will be remediated by the self-directed personal care oversight agency. The Self-Directed Personal Care agency will follow-up with the State Medicaid Agency, which includes verification of the remediation performed by the Self-Directed Personal Care agency, as well as confirmation that any related quality issues have been addressed.

Based on these discovery and remediation activities, program assurance compliance will be evaluated, and the program will correct shortcomings and prioritize areas for improvement. To prevent or reduce future occurrences of quality issues, the State Medicaid Agency will work internally and with the Self-Directed Personal Care agency to implement timely improvements to the system.

The measures being evaluated by the State Medicaid Agency include:

1. Potentially eligible participants are informed of their options for personal care services through either self-directed personal care services or traditional agency-based personal care services.
2. Participants receive the support they need to effectively manage their services.
3. Each participant has a personal care plan based on an assessment of needs.
4. Participants are satisfied with supports they receive through the self-directed personal care option and the services they receive from their personal care providers.

xii. Risk Management

- A. *The risk assessment methods used to identify potential risks to participants are described below.* As a part of eligibility criteria for self-directed personal care, participants must also be enrolled in the State's 1915(c) HCBS IRIS Waiver. The HCBS waiver addresses risk through various methods, including assessments of need, participant vulnerability, inherent risks of self-direction, as well as the reporting of incidents and the referral of health and safety concerns to the self-directed oversight agency. Additionally, once the participant is referred to self-directed personal care, they will undergo a personal care screen, which utilizes the established screening tool to identify needs. This process later assists in the identification of potential risks. With the assistance of their Self-Directed Personal Care agency, the participant utilizes the needs identified on the screening tool to create a personal care plan, which includes a comprehensive self- assessment. As a part of this process, the Self-Directed Personal Care agency will note any risks in the person's environment or plan. In addition, the Fiscal Employer Agents will conduct a background check of all providers of self-directed personal care services and disclose any concerns to the participant.
- B. *The tools or instruments used to mitigate identified risks are described below.* In the event a risk is identified, the self-directed personal care agency and the IRIS Consultant Agency will assist the participant to complete a Participant Risk Agreement. The risk agreement describes the identified risks and their potential negative outcomes. It also documents the participant's understanding of those identified risks, describes potential alternatives that could be employed to reduce potential negative outcomes, and details the finalized risk agreement. The risk agreement will be evaluated as detailed in the agreement, or when there is a related change in condition or circumstance. Also, as part of the participant's personal care plan, they must have a current back-up plan that addresses potential risk to the participant as a result of unavailable services, supports, or providers. The Self-Directed Personal Care agency will review the participant's back-up plan with the participant during the initial and annual personal care planning process, as well as during all

oversight visits with the participant to determine that it is current, adequate, and that it continues to address any identified risks.

- C. *The State's process for ensuring that each service plan reflects the risks that an individual is willing and able to assume, and the plan for how identified risks will be mitigated, is described below. The State Medicaid Agency will have processes in place to screen personal care plans for unidentified risk and to ensure that identified risks have been addressed adequately in the participant's personal care plan or in a Participant Risk Agreement. Any previously unidentified risk that is uncovered in this review will be remediated by the Self-Directed Personal Care agency.*
- D. *The State's process for ensuring that the risk management plan is the result of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance, is described below. The Participant Risk Agreement process directly involves the participant, and/or their legal representative(s), any appointed representative, their Self-Directed Personal Care agency, the IRIS Consultant Agency, and providers, as necessary. The Self-Directed Personal Care agency and IRIS Consultant Agency document discussions, negotiations, and agreements around the participant's risk agreement to ensure all parties are present and involved.*

xiii. Qualifications of Providers of Personal Assistance

- A. X The State elects to permit participants to hire legally liable relatives, as paid providers of the personal assistance services identified in the service plan and budget.
- B. The State elects not to permit participants to hire legally liable relatives, as paid providers of the personal assistance services identified in the service plan and budget.

xiv. Use of a Representative

- A. X The State elects to permit participants to appoint a representative to direct the provision of self-directed personal assistance services on their behalf.
- i. The State elects to include, as a type of representative, a State-mandated representative. Please indicate the criteria to be applied.
- B. The State elects not to permit participants to appoint a representative to direct the provision of self-directed personal assistance services on their behalf.

xv. Permissible Purchases

- A. X The State elects to permit participants to use their service budgets to pay for items that increase a participant's independence or substitute for a participant's dependence on human assistance.
- B. The State elects not to permit participants to use their service budgets to pay for items that increase a participant's independence or substitute for a participant's dependence on human assistance.

xvi. Financial Management Services

- A. X The State elects to employ a Financial Management Entity to provide financial management services to participants self-directing personal assistance services, with the exception of those participants utilizing the cash option and performing those functions themselves.
- i. The State elects to provide financial management services through a reporting or subagent through its fiscal intermediary in accordance with section 3504 of the IRS Code and Revenue Procedure 80-4 and Notice 2003-70; or
- ii. X The State elects to provide financial management services through vendor organizations that have the capabilities to perform the required tasks in accordance with section 3504 of the IRS Code and Revenue Procedure 70-6. (When private entities furnish financial management services, the procurement method must meet the requirements set forth Federal regulations in 45 CFR section 74.40 – section 74.48.)
- iii. The State elects to provide financial management services using “agency with choice” organizations that have the capabilities to perform the required tasks in

accordance with the principles of self-direction and with Federal and State Medicaid rules.

- B. _____ The State elects to directly perform financial management services on behalf of participants self-directing personal assistance services, with the exception of those participants utilizing the cash option and performing those functions themselves.

Electronic Visit Verification System. The state will comply with the Electronic Visit Verification System (EVV) requirements for home health services by January 1, 2023 in accordance with section 12006 of the 21st Century CURES Act.

**State of Wisconsin
1915(j) Self-Directed Personal Assistance Services State Plan Amendment Pre-Print**

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4. Participants are satisfied with supports they receive through the self-directed personal care option and the services they receive from their personal care providers.

xii. Risk Management

- A. *The risk assessment methods used to identify potential risks to participants are described below.* As a part of eligibility criteria for self-directed personal care, participants must also be enrolled in the State's 1915(c) HCBS IRIS Waiver. The HCBS waiver addresses risk through various methods, including assessments of need, participant vulnerability, inherent risks of self-direction, as well as the reporting of incidents and the referral of health and safety concerns to the self-directed oversight agency. Additionally, once the participant is referred to self-directed personal care, they will undergo a personal care screen, which utilizes the established screening tool to identify needs. This process later assists in the identification of potential risks. With the assistance of their Self-Directed Personal Care agency, the participant utilizes the needs identified on the screening tool to create a personal care plan, which includes a comprehensive self- assessment. As a part of this process, the Self-Directed Personal Care agency will note any risks in the person's environment or plan. In addition, the Fiscal Employer Agent will conduct a background check of all providers of self-directed personal care services and disclose any concerns to the participant.
- B. *The tools or instruments used to mitigate identified risks are described below.* In the event a risk is identified, the self-directed personal care agency and the IRIS Consultant Agency will assist the participant to complete a Participant Risk Agreement. The risk agreement describes the identified risks and their potential negative outcomes. It also documents the participant's understanding of those identified risks, describes potential alternatives that could be employed to reduce potential negative outcomes, and details the finalized risk agreement. The risk agreement will be evaluated as detailed in the agreement, or when there is a related change in condition or circumstance. Also, as part of the participant's personal care plan, they must have a current back-up plan that addresses potential risk to the participant as a result of unavailable services, supports, or providers. The Self-Directed Personal Care agency will review the participant's back-up plan with the participant during the initial and annual personal care planning process, as well as during all

oversight visits with the participant to determine that it is current, adequate, and that it continues to address any identified risks.

- C. *The State's process for ensuring that each service plan reflects the risks that an individual is willing and able to assume, and the plan for how identified risks will be mitigated, is described below.*
The State Medicaid Agency will have processes in place to screen personal care plans for unidentified risk and to ensure that identified risks have been addressed adequately in the participant's personal care plan or in a Participant Risk Agreement. Any previously unidentified risk that is uncovered in this review will be remediated by the Self-Directed Personal Care agency.
- D. *The State's process for ensuring that the risk management plan is the result of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance, is described below.*
The Participant Risk Agreement process directly involves the participant, and/or their legal representative(s), any appointed representative, their Self-Directed Personal Care agency, the IRIS Consultant Agency, and providers, as necessary. The Self-Directed Personal Care agency and the IRIS Consultant Agency document discussions, negotiations, and agreements around the participant's risk agreement to ensure all parties are present and involved.

xiii. Qualifications of Providers of Personal Assistance

- A. X The State elects to permit participants to hire legally liable relatives, as paid providers of the personal assistance services identified in the service plan and budget.
- B. _____ The State elects not to permit participants to hire legally liable relatives, as paid providers of the personal assistance services identified in the service plan and budget.

xiv. Use of a Representative

- A. X The State elects to permit participants to appoint a representative to direct the provision of self-directed personal assistance services on their behalf.
- i. _____ The State elects to include, as a type of representative, a State-mandated representative. Please indicate the criteria to be applied.
- B. _____ The State elects not to permit participants to appoint a representative to direct the provision of self-directed personal assistance services on their behalf.

xv. Permissible Purchases

- A. X The State elects to permit participants to use their service budgets to pay for items that increase a participant's independence or substitute for a participant's dependence on human assistance.
- B. _____ The State elects not to permit participants to use their service budgets to pay for items that increase a participant's independence or substitute for a participant's dependence on human assistance.

xvi. Financial Management Services

- A. X The State elects to employ a Financial Management Entity to provide financial management services to participants self-directing personal assistance services, with the exception of those participants utilizing the cash option and performing those functions themselves.
- i. _____ The State elects to provide financial management services through a reporting or subagent through its fiscal intermediary in accordance with section 3504 of the IRS Code and Revenue Procedure 80-4 and Notice 2003-70; or
- ii. X The State elects to provide financial management services through vendor organizations that have the capabilities to perform the required tasks in accordance with section 3504 of the IRS Code and Revenue Procedure 70-6. (When private entities furnish financial management services, the procurement method must meet the requirements set forth Federal regulations in 45 CFR section 74.40 – section 74.48.)
- iii. _____ The State elects to provide financial management services using "agency with choice" organizations that have the capabilities to perform the required tasks in

accordance with the principles of self-direction and with Federal and State Medicaid rules.

- B. _____ The State elects to directly perform financial management services on behalf of participants self-directing personal assistance services, with the exception of those participants utilizing the cash option and performing those functions themselves.

Electronic Visit Verification System. The state will comply with the Electronic Visit Verification System (EVV) requirements for home health services by January 1, 2023 in accordance with section 12006 of the 21st Century CURES Act.