

5101:3-41-17

Medicaid home and community-based services program - self-empowered life funding waiver.

(A) Purpose.

- (1) The purpose of this rule is to establish the self-empowered life funding waiver as a component of the medicaid home and community-based services program pursuant to sections 5111.85 and 5111.87 of the Revised Code.
- (2) The self-empowered life funding waiver program provides necessary waiver services to individuals who meet the level of care criteria for an intermediate care facility for individuals with mental retardation and other developmental disabilities as set forth in rule 5101:3-3-07 of the Administrative Code, as well as other eligibility requirements established in this rule.
- (3) The Ohio department of developmental disabilities (DODD), through an interagency agreement with the Ohio department of job and family services (ODJFS), administers the self-empowered life funding waiver program on a daily basis in accordance with section 5111.91 of the Revised Code.
- (4) This waiver will provide services under a participant-directed model to individuals with developmental disabilities in order to avoid or delay institutionalization.

(B) Definitions.

- (1) "Adult" means an individual who is at least twenty-two years old or an individual who is eligible for adult day support, vocational habilitation, supported employment-enclave, or integrated employment.
- (2) "Agency with choice" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (3) "Budget authority" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (4) "Child" means an individual twenty-one years of age or younger who is not eligible for adult day support, vocational habilitation, supported employment-enclave, or integrated employment.
- (5) "Co-employer" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (6) "Common law employer" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (7) "County board of developmental disabilities (CBDD)" means a board established under Chapter 5126. of the Revised Code.

- (8) "Employer authority" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (9) "Financial management services" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (10) "Home and community-based services (HCBS)" means any federally approved medicaid waiver service provided to a waiver enrollee as an alternative to institutional care under Section 1915(c) of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C.1396n, as amended, under which federal reimbursement is provided for designated home and community-based services to eligible individuals.
- (11) "Individual" means a person with mental retardation or other developmental disability who is eligible to receive HCBS as an alternative to placement in an intermediate care facility for the mentally retarded under the applicable HCBS waiver. A guardian or authorized representative may take any action on behalf of the individual, may make choices for an individual or may receive notice on behalf of an individual to the extent permitted by applicable law.
- (12) "Individual Service Plan (ISP)" means a written description of the services, supports, and activities to be provided to an individual in accordance with paragraph (H) of this rule.
- (13) "Participant direction" has the same meaning as defined in rule 5123:2-9-40 of the Administrative Code.
- (14) "Provider" means a person or agency certified or licensed by DODD that has met the provider qualification requirements to provide the specific self-empowered life funding waiver service as specified in paragraph (J)(1) of this rule and holds a valid medicaid provider agreement in accordance with paragraph (J)(2) of this rule.
- (15) "SSA" means a service and support administrator who is certified in accordance with rules adopted by the DODD under Chapter 5123:2-5 of the Administrative Code and who provides the functions of service and support administration.
- (16) "Waiver eligibility span" means the twelve-month period following either an individual's initial enrollment date or a subsequent eligibility re-determination date.
- (C) Application for the self-empowered life funding waiver.

- (1) Individuals seeking to enroll in the self-empowered life funding waiver program

must complete the JFS 02399 "Request for Medicaid Home and Community-Based Services (HCBS) " (rev. 1/2012). Forms shall be available at all CBDD. Forms are also available at the county department of job and family services (CDJFS). Forms are to be used in accordance with rule 5101:1-38-01.2 of the Administrative Code.

(2) The CBDD is responsible for explaining to individuals requesting HCBS the services available through the self-empowered life funding waiver benefit package including the amount, scope and duration of services and any applicable benefit package limitations.

(D) Eligibility criteria for the self-empowered life funding waiver.

(1) The individual applying for the self-empowered life funding waiver program must be determined to require the level of care provided in an ICF/MR and be eligible for ICF/MR services upon initial enrollment and no later than every twelve months thereafter, as specified in rules 5101:3-3-07 and 5123:2-9-01 of the Administrative Code and in accordance with the process set forth in rule 5101:3-3-15.5 of the Administrative Code; and

(2) The individual's medicaid eligibility has been established in accordance with Chapters 5101:1-37 to 5101:1-42 of the Administrative Code; and

(3) The individual's health and welfare needs can be met through the utilization of self-empowered life funding waiver services at or below the federally approved cost limitation and other formal and informal supports regardless of funding source.

(4) The individual must require, at a minimum, one waiver service as described in paragraph (F) of this rule, to be considered eligible for this waiver.

(E) Self-empowered life funding waiver enrollment, continued enrollment, and disenrollment.

(1) Individuals who meet the eligibility criteria in paragraph (D) of this rule, or their legal representative, shall be informed of the following:

(a) All services available on this self-empowered life funding waiver, as delineated in paragraph (F) of this rule, and any choices that the individual may make regarding those services;

(b) Any feasible alternative to the waiver; and

(c) The right to choose either institutional or home and community-based services.

(2) DODD shall allocate waiver slots to the county board in accordance with

section 5111.872 of the Revised Code.

- (3) DODD shall reserve capacity under the self-empowered life funding waiver for children with intensive behavioral needs as federally approved.
- (4) The CBDD shall offer available self-empowered life funding waiver slots to eligible individuals in accordance with applicable waiting list category requirements set forth in rules 5101:3-41-05 and 5123:2-1-08 of the Administrative Code.
- (5) An individual's continued enrollment in the self-empowered life funding waiver program shall be redetermined no less frequently than every twelve months beginning with the individual's initial enrollment date or subsequent redetermination date. Individuals must continue to meet the eligibility criteria specified in paragraph (D) of this rule to continue enrollment in the waiver program.
- (6) The maximum number of individuals that can be enrolled in the self-empowered life funding waiver program statewide shall not exceed the allowable number specified as federally approved.
- (7) The individual must require at least one waiver service monthly, or, if less than monthly, require monthly monitoring of the individual's health and welfare. If no services are planned to be delivered in a month, monthly monitoring of the individual's health and welfare must be required in the ISP, as designated in paragraph (H) of this rule, and must include at least periodic face-to-face monitoring.
- (8) While enrolled in the self-empowered life funding waiver program, if the enrollee does not receive any waiver services as listed in paragraph (F) of this rule for one month, the county board shall, within fifteen days after the end of the calendar month, assess the enrollee's current need for waiver services, and discuss these needs with the enrollee and their representative. As a result of the assessment and discussion, if no waiver services are needed, the enrollee shall be recommended for disenrollment from the waiver program and shall be given notification of hearing rights as established in paragraph (M) of this rule.

(F) Self-empowered life funding waiver program benefit package, as included in the federally approved waiver document:

The self-empowered life funding waiver program benefit package is limited to the following services:

(1) Support broker;

(2) Community inclusion- personal assistance;

(3) Community inclusion- transportation;

(4) Participant-directed goods and services;

(5) Participant family stability assistance;

(6) Functional behavioral assessment;

(7) Clinical therapeutic intervention;

(8) Community respite;

(9) Residential respite;

(10) Remote monitoring;

(11) Remote monitoring equipment;

(12) Integrated employment;

(13) Adult day supports;

(14) Vocational habilitation;

(15) Supported employment-enclave;

(16) Non-medical transportation.

(G) Limits on self-empowered life funding waiver services.

(1) Self-empowered life funding waiver benefit limitations shall be in accordance with the benefit limitations as established in rule 5123:2-9-40 of the Administrative Code.

(2) Adults receiving services under the self-empowered life funding waiver are subject to a benefit limitation not to exceed forty thousand dollars per waiver eligibility span.

(3) Children receiving services under the self-empowered life funding waiver are subject to a benefit limitation not to exceed twenty-five thousand dollars per waiver eligibility span.

(H) Self-empowered life funding service plan requirements.

(1) All services shall be provided to an individual enrolled in the self-empowered life funding waiver program pursuant to a written ISP.

(2) The ISP shall be developed by qualified persons with input from the self-empowered life funding waiver enrollee and the SSA in accordance with section 5126.15 of the Revised Code. Providers shall participate in the ISP meetings when a request for their participation is made by the individual enrollee.

(a) The ISP shall list the self-empowered life funding waiver services and the non-waiver services, regardless of funding source, that are necessary to ensure the enrollee's health and welfare; and

(b) The ISP shall contain the following medicaid required elements:

(i) Type of service to be provided; and

(ii) Amount of service to be provided; and

(iii) Frequency and duration of each service to be provided; and

(iv) Type of provider to furnish each service.

(c) The ISP shall be developed on at least an annual basis consistent with the individual's redetermination as indicated in paragraph (E) of this rule or as the individual's needs change and in accordance with division 5123:2 of the Administrative Code; and

(d) The ISP shall be developed to include only waiver services which are consistent with efficiency, economy and quality of care; and

(e) The ISP is subject to approval by ODJFS and DODD pursuant to section 5111.871 of the Revised Code. Notwithstanding the procedures set forth in this rule, ODJFS may in its sole discretion, and in accordance with section 5111.852 of the Revised Code direct the CBDD or DODD to amend ISPs for individuals if ODJFS determines that such services are medically necessary and the procedures set forth in division 5101:3 of the Administrative Code would not accommodate a request for such medically necessary services.

(I) Free choice of provider.

Individuals enrolled in the self-empowered life funding waiver program shall be given a free choice of qualified self-empowered life funding waiver providers in accordance with Chapters 5101:3-41 and 5123:2-9 of the Administrative Code. A provider is qualified if they meet the standards established in paragraph (J)(2) of this rule. DODD shall create and maintain an internet-based list of those providers who are qualified to provide self-empowered life funding waiver services in accordance with section 5126.046 of the Revised Code. This list will be accessible

to county boards and individuals applying for or receiving services. The CBDD shall provide information about the internet-based provider list to applicants and enrollees and shall assist an individual to access this list to assure the individual's free choice of qualified providers.

(J) Provision of self-empowered life funding waiver services.

- (1) Self-empowered life funding waiver services shall be provided by persons or agencies who have certification or licensure in accordance with section 5123.045 of the Revised Code and division 5123:2 of the Administrative Code; and
- (2) Self-empowered life funding waiver services shall be provided by persons or agencies who have a valid medicaid provider agreement in accordance with rule 5101:3-1-17.2 of the Administrative Code; and
- (3) Self-empowered life funding services shall be provided only to individuals who have met the eligibility requirements in paragraph (D) of this rule and are enrolled in the self-empowered life funding waiver program at the time of service delivery; and
- (4) Self-empowered life funding waiver services shall be provided in accordance with each enrollee's ISP as specified in paragraph (G) of this rule; and
- (5) No provider of self-empowered life funding waiver services shall enter into or maintain any contract for the provision of waiver services except as noted in paragraph (J)(2) of this rule.

(K) Provider payment standards.

Provider payment standards for the self-empowered life funding waiver are established in rule 5101:3-41-20 and Chapter 5123:2-9 of the Administrative Code.

(L) Monitoring, compliance, and sanctions.

ODJFS shall conduct periodic monitoring and compliance reviews related to the self-empowered life funding waiver program in accordance with Chapter 5111. of the Revised Code. Reviews may consist of, but are not limited to, physical inspections of records and sites where services are provided, interviews of providers, recipients, and administrators of waiver services. Certified self-empowered life funding waiver providers, in accordance with the medicaid provider agreement, DODD, and CBDD shall furnish to ODJFS, the center for medicare and medicaid services (CMS), and the medicaid fraud control unit or their designees any records related to the administration and/or provision of self-empowered life funding waiver services. Individuals enrolled in the self-empowered life funding waiver program shall cooperate with all monitoring,

compliance, and quality assurance reviews conducted by ODJFS, CMS, and the medicaid fraud control unit or their designee.

(M) Due process.

- (1) Whenever an applicant for or enrollee of the self-empowered life funding waiver program is affected by any action proposed or taken by DODD and/or ODJFS, or when action is recommended by the CBDD, the entity recommending or taking the action will provide medicaid due process in accordance with section 5101.35 of the Revised Code through the state fair hearing process, and as specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code. Such actions may include, but are not limited to, the approval, denial, or termination of enrollment or a denial or change in the level, and/or type of waiver services delivered to a self-empowered life funding waiver enrollee.
- (2) If an applicant or enrollee requests a hearing, as specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code, the participation of DODD and the CBDD is required during the hearing proceedings to justify the decision under appeal.

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Certification

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