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5101:X-XX-XX **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 (ICF/MR) 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) Waiver enrollees exercise employer authority and/or budget authority under the self-empowered life funding waiver program.

(B) Definitions

- (1) “Adult” means an individual who is at least 21 years old or an individual who is under 21 years old and eligible for adult day support, vocational habilitation, supported employment – enclave, or integrated employment.
- (2) “Agency with choice” means an agency provider that acts as a co-employer with an individual and assumes responsibility for:
 - (a) Employing and paying staff who have been selected by the individual;
 - (b) Reimbursing allowable services;
 - (c) Withholding, filing and paying federal, state and local income and employment taxes; and
 - (d) Providing other supports to the individual as described in the ISP.

Under this arrangement, the individual acts as the “managing employer” and is responsible for hiring, managing, and dismissing staff. The agency with choice enables the individual to exercise choice and control over services while relieving him or her of the burden of carrying out financial matters and other legal responsibilities associated

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with the employment of workers. Under this arrangement, the agency with choice is considered the common law employer of staff who are selected/hired by the individual.

- (3) “Budget authority” means the individual has the authority and responsibility to manage his or her budget. This authority permits the individual to make decisions about the acquisition of waiver services that are authorized in the ISP and to manage the dollars included in his or her budget.
- (4) “Child” means an individual who is under 21 years old and is not eligible for adult day support, vocational habilitation, supported employment – enclave, or integrated employment.
- (5) “Co-employer” means either an agency with choice or a financial management services entity under contract with the state that functions as the common law employer of staff recruited by the individual. The individual directs the staff and is considered their co-employer (a.k.a. “managing employer”). The co-employer conducts all necessary payroll functions and is legally responsible for discharging the employment-related functions and duties for individual-selected staff with the individual based on the roles and responsibilities identified in the ISP for the two co-employers. The co-employer may function solely to support the individual’s employment of workers or it may provide other employer-related supports to the individual, including providing traditional agency-based staff.
- (6) “Common law employer” means the individual is the legally responsible and liable employer of staff selected by the individual. The individual hires, supervises and discharges staff. The individual is liable for the performance of necessary employment-related tasks and uses a financial management services entity under contract with the state to perform necessary payroll and other employment related functions as the individual’s agent in order to ensure that the employer-related legal obligations are fulfilled.
- (7) “County board of developmental disabilities” (CBDD) means a board established under Chapter 5126. of the Revised Code.
- (8) “Employer authority” means the individual has the authority to recruit, hire, supervise and direct the staff who furnish supports. The individual functions as the common law employer or the co-employer of these staff.
- (9) “Financial management services” means services provided to an individual who directs some or all of his or her waiver services. When used in conjunction with budget authority, financial management services includes, but is not limited to, paying invoices for waiver goods and services and tracking expenditures against the individual’s budget. When used in conjunction with employer authority, financial management services includes, but is not limited to, operating a payroll service for individual-employed staff and making required payroll withholdings. Financial management services also

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includes acting as the common law employer of staff on behalf of an individual under the co-employer model of employer authority.

- (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.A. 1396n (as in effect on March 31, 2006) under which federal reimbursement is provided for designated home and community-based services to eligible individuals.
- (11) “Individual” means a person with a 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 non-legal 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.
- (13) “Non-legal representative” means a person who is freely chosen and designated in writing by an adult individual and who unless otherwise limited by the individual, has direction over the ISP, the budget, selection of residence and providers, and negotiation of payment rates for services. If the individual objects to a decision made by the non-legal representative, the individual’s decision prevails. The individual may revoke the designation at any time, and the revocation must be in writing. The representative may not be employed by a CBDD, or a provider, or a contractor of either. The representative also may not be a paid provider. The ISP process, along with the involvement of the SSA and support broker, will provide the mechanism for ensuring decisions are made in the best interests of the individual.
- (14) “Provider” means either of the following:
 - (a) A person or agency certified by DODD that has met the provider qualification requirements to provide the specific self-empowered life funding waiver service as specified in paragraph (M)(1) of this rule and holds a valid medicaid provider agreement in accordance with paragraph (M)(2) of this rule; or
 - (b) A person or agency that has contracted with a financial management services entity under contract with the state, if the following requirements are met:
 - (i) The financial management services entity operates as an organized health care delivery system;
 - (ii) The contract between the person or agency and the financial management services entity requires the entity to submit claims for waiver services on the person’s or agency’s behalf; and

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- (iii) The person or agency has met the applicable provider qualification requirements to provide the specific self-empowered life funding waiver service as specified in division 5123:2 of the Administrative Code.

(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 the subsequent eligibility re-determination date.

(C) Financial management services entity

The state shall contract with one or more entities to provide financial management services to waiver enrollees. The state may designate the financial management services entity as an organized health care delivery system.

(D) 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. 1/2006). 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.

(E) 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 (H) of this rule, to be considered eligible for this waiver.

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- (5) The individual or the individual's guardian or non-legal representative must be willing and able to perform the duties associated with participant-direction.

(F) Eligibility criteria for reserved capacity for children with intensive behavioral needs

DODD shall reserve capacity under the self-empowered life funding waiver for children with intensive behavioral needs who qualify based on a DODD-approved assessment.

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

- (1) Individuals who meet the eligibility criteria in paragraph (E) of this rule, or their guardian or non-legal representative, as applicable, shall be informed of the following:
 - (a) All services available on this self-empowered life funding waiver, as delineated in paragraph (H) 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 CBDD in accordance with section 5111.872 of the Revised Code.
- (3) The CBDD shall offer available self-empowered life funding waiver slots to eligible individuals in accordance with applicable waiting list requirements set forth in rules 5101:3-41-05 and 5123:2-1-08 of the Administrative Code.
- (4) 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 (E) of this rule to continue enrollment in the waiver program.
- (5) 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 in the federally approved waiver document.
- (6) The individual must require at least one waiver service monthly, or, if less than monthly as described in the ISP, 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 (K) of this rule, and must include at least periodic face-to-face monitoring.

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- (7) Individuals enrolled in the self-empowered life funding waiver program who are recommended for disenrollment from the waiver program shall be given notification of hearing rights as established in paragraph (P) of this rule.
- (H) 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 brokerage in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (2) Community inclusion in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (3) Participant-directed goods and services in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (4) Participant/family stability assistance in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (5) Functional behavioral assessment in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (6) Clinical/therapeutic intervention in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (7) Residential respite in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (8) Community respite in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (9) Informal respite in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (10) Remote monitoring in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (11) Remote monitoring equipment in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (12) Adult day support in accordance with rules 5123:2-9-17 and 5123:2-9-19 of the Administrative Code;
- (13) Vocational habilitation in accordance with rules 5123:2-9-17 and 5123:2-9-19 of the Administrative Code;

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- (14) Integrated employment in accordance with rule 5123:2-XX-XX of the Administrative Code;
- (15) Supported employment-enclave in accordance with rules 5123:2-9-16 and 5123:2-9-19 of the Administrative Code;
- (16) Non-medical transportation in accordance with rules 5123:2-9-18 and 5123:2-9-19 of the Administrative Code.

(I) Participant-direction

- (1) The self-empowered life funding waiver program is designed to support individuals who want to direct their services.

(a) Waiver enrollees may exercise employer authority for:

- (i) Support brokerage;
- (ii) Community inclusion;
- (iii) Participant-directed goods and services;
- (iv) Participant/family stability assistance;
- (v) Integrated employment; and
- (vi) Informal respite.

(b) Waiver enrollees may exercise budget authority for:

- (i) Support brokerage;
- (ii) Community inclusion;
- (iii) Participant-directed goods and services;
- (iv) Participant/family stability assistance;
- (v) Integrated employment;
- (vi) Functional behavioral assessment;
- (vii) Clinical/therapeutic intervention;
- (viii) Residential respite;
- (ix) Community respite;
- (x) Informal respite;
- (xi) Remote monitoring; and
- (xii) Remote monitoring equipment.

(c) Waiver enrollees may not exercise either employer authority or budget authority for:

- (i) Adult day support;
- (ii) Vocational habilitation;
- (iii) Supported employment-enclave; and
- (iv) Non-medical transportation.

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(J) Benefit limitations

- (1) The cost of services available under the self-empowered life funding waiver program shall not exceed the following overall benefit limitations:
 - (a) Adult -- \$40,000 per waiver eligibility span.
 - (b) Child -- \$25,000 per waiver eligibility span.
- (2) The following services are subject to specific benefit limitations:
 - (a) The cost of community inclusion, residential respite, community respite, informal respite, and remote monitoring, either alone or in any combination, shall not exceed \$25,000 per waiver eligibility span.
 - (b) The cost of support brokerage shall not exceed \$8,000 per waiver eligibility span.
 - (c) An individual may receive only one functional behavioral assessment per waiver eligibility span, the cost of which shall not exceed \$1,500.
- (3) The benefit limitations in rule 5123:2-9-19 of the Administrative Code apply to adult day support, vocational habilitation, and supported employment – enclave provided under the self-empowered life funding waiver program.

(K) Self-empowered life funding waiver 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 the SSA together with the individual and support broker 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.
 - (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; and

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- (c) The ISP shall be developed on at least an annual basis consistent with the individual's redetermination as indicated in paragraph (G)(4) 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. When combined with other non-waiver services, waiver services must ensure the health and welfare for the individual for whom the ISP is developed; 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.

(L) 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. Providers are qualified if they meet the standards established in paragraph (M) or (B)(14)(b) of this rule.

(M) Provision of self-empowered life funding waiver services

- (1) Except as provided in paragraph (B)(14)(b) of this rule, self-empowered life funding waiver services shall be provided by persons or agencies who have certification in accordance with section 5123.161 of the Revised Code and division 5123:2 of the Administrative Code; and
- (2) Except as provided in paragraph (B)(14)(b) of this rule, 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 waiver services shall be provided only to individuals who have met the eligibility requirements in paragraph (E) 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 (K) of this rule; and

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- (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 (B)(14)(b) or (M)(2) of this rule. Only those subcontracts specified in Chapter 5123:2-9 of the Administrative Code are permissible.

(N) Provider payment standards

Individuals enrolled in the self-empowered life funding waiver program shall be subject to the payment standards set forth in rules promulgated by DODD.

(O) 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. A financial management services entity under contract with the state, self-empowered life funding waiver providers, 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, DODD, CBDD, CMS, and the medicaid fraud control unit or their designee.

(P) 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.

Effective:

R.C. 119.032 review dates:

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