

**Title 9--DEPARTMENT OF
MENTAL HEALTH
Division 45--Division of Developmental
Disabilities
Chapter 3—Services and Supports**

PROPOSED RULE

9 CSR 45-3.080 Self ~~and Family~~-Directed Supports

PURPOSE: This rule establishes the scope of and requirements for a service delivery option known as Self ~~and Family~~-Directed Supports available through Home and Community Based waivers approved by the Health and Human Services Centers for Medicare and Medicaid Services under the authority of 1915(c) of the Social Security Act and operated by the Division of Developmental Disabilities.

(1) Definitions.

(A) Agency-based supports—supports provided by a public or private agency under contract with the Department of Mental Health (DMH) and enrolled with MO HealthNet to serve participants of any home and community-based waivers operated by DMH. Agency-based supports includes independent contractors;

(B) Back-up plan--an emergency plan to handle situations when the employee, who is providing essential supports, is unavailable. The individual support plan (ISP) for all individuals receiving self and family directed supports must provide information about the back-up plan;

(C) Budget Authority—the right and responsibility of the individual or their designated representative to exercise control and management of a yearly budget allocation;

(D) Designated Representative (~~DR~~)—a person who is responsible for managing employee(s) and acting in the best interest of the individual. If the individual has a guardian appointed by a court, the legal guardian may also identify a designated representative;

(E) Division—~~Department of Mental Health~~ Division of Developmental Disabilities (~~Division of DMH~~ DD);

(F) Employer—individual with a disability who receives services through the DMH DD. In the case of a minor child, the employer is the parent/guardian or designee of the individual receiving services. The employer has the Federal Employer Identification Number (FEIN) and will employ persons to provide services to the individual;

~~(FG)~~ Employment authority—the right and responsibility of the individual or their designated representative to recruit, hire, train, manage, supervise, fire, and establish the wages for employees within the limits described in section (18) of this rule;

~~(GH)~~ Family member—a parent, step parent, sibling, child, grandchild, or grandparent by blood, adoption, or marriage; or a spouse;

~~(HI)~~ Financial management service (FMS)—a service to assist the individual or designated representative with payroll-related functions. The FMS ensures the Self ~~and family~~-directed supports (SDS) program meets federal, state and local employment tax, labor and workers' compensation insurance rules and other requirements that apply when the participant functions as the employer of workers. The FMS makes financial transactions on behalf of the participant;

(~~H~~) Home and community-based waivers—also referred to as home and community-based services (HCBS) in this rule; a set of long term community-based supports and services authorized by the Centers for Medicare and Medicaid Services which are provided as an alternative to care in institutions such as nursing facilities and intermediate care facilities for individuals with intellectual disabilities;

(K) Improvement plan—a corrective action plan to address issues of non-compliance with program requirements. The goal of the improvement plan is to focus on needed supports to ensure the employer/DR succeeds when using the self-directed supports (SDS) option for service delivery;

(L) Individual—person receiving supports through a home and community-based waiver, sometimes also referred to as a participant;

~~(JM) Individual Support Plan (ISP) —a document that results from the person centered planning process, which identifies the strengths, capacities, preferences, needs and personal outcomes of the individual. The ISP includes a personalized mix of paid and non-paid services and supports that will assist the person to achieve personally defined outcomes—a document developed by the individual, with assistance as needed from a representative, in collaboration with a team.—The ISP identifies strengths, capacities, preferences, needs and desired outcomes of the individual. The ISP shall encompass personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes.— Training, supports, therapies, treatments and/or other services to be provided for the individual become part of the ISP. ISP is also referred to as a person-centered service plan;~~

~~(KN) ISP team— the individual, the individual’s designated representative (if applicable), the support coordinator and representatives of services required or desired by the individual;~~

~~(LO) Natural supports—unpaid support provided through relationships that occur in everyday life. Natural supports typically involve family members, friends, co-workers, neighbors, acquaintances, and community resources;~~

~~(MP) Participant—individual who is receiving services through a home and community-based waiver; and~~

~~(NQ) Self and family directed supports (SDS)—an program option for persons with intellectual and developmental disabilities and/or their designated representative who wish to exercise more choice, control and authority over their supports. SDS is not a direct service but is a method of service delivery.~~

(2) Every participant/guardian or designated representative who is willing and able to assume both budget and employer responsibilities while receiving Home and Community Based waiver services from the division shall have the opportunity to self-direct, excluding any individual or designated representative meeting the criteria stated in Section ~~12~~ (13) of this rule.

(A) The participant/guardian or their designated representative is the employer and must manage the employees’ day to day activities ensuring supports are provided as written in the ISP.

(B) For the provision of personal assistant, the participant/guardian or designated representative can choose to hire anyone eligible over the age of eighteen (18) with a high school diploma or General Education Diploma (GED).

(C) The following individuals ~~may are~~ not eligible to provide support to a waiver participant under this service delivery option:

1. a spouse;

2. a parent of an individual under age eighteen (18);
3. a legal guardian;
4. a designated representative;
5. a person with a disqualifying criminal offense under section 630.170.1 or 2, RSMo. For reference purposes, DMH maintains an updated list of disqualifying crimes under section 630.170, RSMo, at <http://dmh.mo.gov/about/employee-disqualification/>; or
6. a person who is listed on the DMH disqualification registry under section 630.170, RSMo, for a substantiated finding of abuse, neglect or misuse of funds, or a person who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, RSMo.

(3) Any individual who is eighteen (18) years or older may identify a designated representative. Designated representatives must demonstrate a history of knowledge of the participant's preferences, values, needs, and other relevant information. The participant and his or her planning team is responsible to ensure that this representative is able to perform all the employer-related responsibilities and complies with requirements associated with representing the participant in directing services and supports

(4) The following individuals may be designated as a representative:

- (A) Spouse, unless a formal legal action for divorce is pending;
- (B) An adult child of the individual;
- (C) A parent;
- (D) An adult brother or sister;
- (E) Another adult relative of the individual;
- (F) A legal guardian; and
- (F) Any other adult chosen by the individual with approval of the ISP team.

(5) Employers'/designated representatives' (DR) responsibilities

(A) Complete all forms required by the state's FMS contractor, including Internal Revenue Service (IRS) and Missouri state tax forms;

(B) Obtain a Federal Employer Identification Number (FEIN) in the name of the individual (or parent/guardian if the individual is under the age of eighteen (18), with the assistance of the FMS;

(C) Follow all federal and state employment laws and regulations including

1. Recruiting, interviewing, checking references, hiring, training, scheduling work, managing, and terminating employee(s). This includes directing the day-to-day care of the individual and addressing conflicts between employees;

2. Submitting all new employee paperwork to the FMS prior to the initiation of service. All required documents must be completed, submitted and approved as a complete packet in order for them to be processed timely. Incomplete documents may delay an employee's start date;

3. Providing equal employment opportunities to all employees and interested employees without discrimination as to race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, or any other legally protected status in all employment decisions, including recruitment, hiring, changing schedules and number of hours worked, layoffs, and terminations, and all other terms and conditions of employment. The employer/DR accepts

full and specific responsibility for following Equal Opportunity laws and requirements regarding employees. Each employee is to be treated fairly and consistently. For example, if the employer/DR decides to check references on one employee, it must be done for all employees;

5. An employee may not provide services while the individual is hospitalized or receiving any other direct care service reimbursed through MO HealthNet;

6. Reviewing and approving time worked, which authorizes billing;

7. Submitting documentation of time worked in a timely manner in accordance with the FMS payroll schedule. The employer/DR and employee signatures on/approval of the time sheet validates the information submitted is accurate and true. If the employer/DR signs/approves and the hours have not been worked, the employer/DR will be held financially liable for payment for the time reported but not worked;

8. The employer/DR is responsible for monitoring the monthly spending summary report provided by the FMS and for keeping all expenditures within the individual budget allocation as specified in the ISP. The employer/DR agrees to reimburse the FMS for any payment of wages and expenses in excess of the amount in the individual budget allocation. Payment to the employee is limited to services actually delivered by the employee.

9. If the employer/DR authorizes use of all funds/hours before the end of the period, the employer/DR is responsible for other service arrangements; for example use of non-paid natural supports. The employer/DR is responsible for the payment of any wages and expenses in excess of the individual budget allocation. Employees must be paid for all hours worked;

10. Informing the FMS within one working day of any changes in the individual's status, including name, address, telephone number, hospitalization, and termination of program eligibility; and

11. Informing the FMS of the employee pay rate (wages), including timely notification of changes to the pay rate. Changes in pay rates must occur at the beginning of a pay period.

(D) The following must be reported immediately:

1. Any possible fraud, including MO HealthNet fraud to the FMS;

2. Abuse, neglect, misuse of property or funds, health risk, or other reportable event to the appropriate authorities. Reports of abuse, neglect or exploitation of adults shall be made to the Department of Health and Senior Services; to the DMH-DD, or to the individual's support coordinator; and

3. Employee changes, including name, address, contact number, and/or employment status.

(E) Appointment of a temporary representative if the employer/DR is not capable or available to manage employees and contact the support coordinator to evaluation if a new representative must be appointed;

(F) Establishing a work schedule for their employees. Time worked by employees in excess of forty (40) hours per week cannot be billed to MO HealthNet. Hours worked over forty (40) hours per week are the responsibility of the employer/DR and must be paid through the FMS to ensure employee taxes are withheld;

(G) The employer/DR shall not supplement wages to the employee outside of the agreed upon wage;

(H) In accordance with the approved HCB waivers, payment for personal assistance services is not allowed for employee sleep time. If an employer schedules an employee to work a period of twenty four (24) consecutive hours or more, the employer and employee may agree to

exclude from hours worked up to eight (8) hours of sleep time when both of the following conditions are met

1. The employer furnishes sleeping facilities; and
2. The employee can usually sleep uninterrupted.

(56) A waiver participant may receive a combination of supports through SDS and agency-based supports as long as services from one program do not duplicate services from the other.

(67) Employees providing personal assistance services must meet the same qualifications required for personal assistants employed by provider agencies. Employees providing personal assistance shall be provided the following information and training:

- (A) Training in procedures and expectations related to the personal assistant in regards to following and implementing the ISP;
- (B) Training on the rights and responsibilities of the employee and the individual, procedures for billing and payment, reporting and documentation requirements, procedures for arranging backup when needed, and who to contact within the regional office or local provider of targeted case management entity;
- (C) Information about the specific condition and needs of the person to be served, including his or her physical, psychological or behavioral challenges, his or her capabilities, and his or her support needs and preferences related to that support;
- (D) Training in abuse/neglect, event reporting, and confidentiality;
- (E) Training in cardio-pulmonary resuscitation and first aid;
- (F) Training in medication administration;
- (G) Training on behavioral intervention, if needed due to challenging behavior experienced by the individual. Training shall include behavioral intervention techniques such as NCI (Nonviolent Crisis Intervention), MANDT, or others approved by the ~~D~~ivision ~~of DD~~;
- (H) Training in communications skills; in understanding and respecting individual choice and direction; in cultural and ethnic diversity; in personal property and familial and social relationships; in handling conflict and complaints; and
- (I) Training in assisting with activities of daily living and instrumental activities of daily living, as needed by the individual to be served and identified by the team.

(78) The individual or their designated representative may exempt training listed in section (7) subsections (A) through (I) of this rule for personal assistants under the following circumstances. The reasons for all training exemptions and safeguards must be documented in the ISP.

- (A) Duties of the personal assistant will not require skills to be attained from the training requirement; or
- (B) The personal assistant has adequate knowledge or experience as determined by the individual or the designated representative.

(89) Qualified family member(s) may only provide personal assistance ~~under the SDS program~~. When a family member provides support, the ISP must reflect:

- (A) The individual is not opposed to a family member providing the service;
- (B) The services to be provided are solely to support the individual and not household tasks expected to be shared with people living in the family unit;

(C) The ISP team determines the paid family member will best meet the needs of the individual;
and

(D) The family member cannot be paid for over forty (40) hours per week. Support in excess of forty (40) hours per week provided by a family member is considered a natural (unpaid) support.

(910) Services that may be self ~~or family~~-directed are specified in each home and community-based waiver for people with developmental disabilities operated by the Division of DD and approved by the Centers for Medicare and Medicaid Services. Services included in the participant's ISP that may not be self ~~or family~~-directed will be delivered through agency-based supports by a provider chosen by the participant/guardian.

~~(4011)~~ Participants who receive services under the consumer-directed personal assistance program authorized in 19 CSR 15 Chapter 8 and administered by the Department of Health and Senior Services (DHSS) shall not also self ~~or family~~-direct services under any home and community-based waiver operated by the Division of DD. Participants eligible to self-direct supports under both the DHSS consumer-directed personal assistance program and under a home and community-based waiver operated by the Division of DD must choose which program to direct supports under and choose a qualified provider of agency-based supports for the other.

~~(4112)~~ Voluntary Termination: If a participant voluntarily requests to terminate self direction in order to receive services through an agency, the support coordinator will work with the participant/guardian or designated representative to select a provider agency and transition services to agency-based supports by changing prior authorizations based on the participant's needs. When the self directed services are voluntarily terminated, the same level of service is offered to the individual through agency-based supports.

~~(4213)~~ The option of self or family direction may be denied or terminated under any of the following conditions:

(A) The ISP team determines the health and safety of the individual is at risk;

(B) The participant/guardian or designated representative is unable or unwilling to ensure employee records are accurately kept;

(C) The participant/guardian or designated representative is unable or unwilling to supervise employees to receive services according to the plan;

(D) The participant/guardian or designated representative is unable or unwilling to use adequate supports or unable or unwilling to stay within the budget allocation; or

(E) The participant/guardian or designated representative has been the subject of a Medicaid audit resulting in sanctions for false or fraudulent claims under 13 CSR 70-3.030 Conditions of Provider Participation, Reimbursement, and Procedures of General Applicability, Sanctions for False or Fraudulent Claims for MO HealthNet.

(14) Improvement plans:

(A) When an employer/DR is found to be out of compliance with program requirements, an improvement plan shall be established. The improvement plan shall be jointly developed by the individual, employer/DR, support broker, support coordinator and other Regional Office staff, as needed.

(B) The plan shall include the specific issues of concern and shall include specific strategies and time frames for improvement.

(C) Failure to successfully meet the terms of the improvement plan within the established time frames shall result in termination of the option to use self directed supports.

~~(4315)~~ Except under circumstances described in section (13) of this rule, before terminating self-direction options, the support coordinator or appropriate staff of the regional office will first counsel the participant/guardian or designated representative to assist the participant or legal representative in understanding the issues, inform the participant or legal representative what corrective action is needed, and offer assistance in making changes. Counseling shall include the establishment of an improvement plan. If the individual/guardian or designated representative refuses to cooperate, including failure to successfully carry out the terms of the improvement plan, the option of self directed ~~ing~~ supports ~~may~~ shall be terminated.

(A) A letter shall be sent notifying the employer/DR that the option of self directed supports will be terminated and a choice of agency-based providers offered;

(B) A choice of agency-based provider(s) must be made within fifteen (15) days;

(C) The participant/guardian or designated representative may request a meeting with the regional director to discuss the unsuccessful completion of the improvement plan. The request for a meeting must be made within five (5) business days of the written notification that the option of self directed supports will be terminated;

(D) The regional director must schedule the meeting with ten (10) business days of the request;

(E) The regional director shall make a final decision within three (3) business days of the meeting. The decision of the regional director shall be final.

~~(4416)~~ When there is evidence of fraud or repeated patterns or trends of non-compliance with program requirements, ~~and~~ counseling has been provided to the participant/guardian or designated representative, an improvement plan has been established but has not been successfully completed within the agreed upon time frames, the regional director ~~may~~ shall immediately terminate SDS and shall authorize agency-based services from a provider agency chosen by the participant/guardian or designated representative.

(A) The Regional Office shall request repayment from the employer/DR for any recoupments by the Department of Social Services Missouri Medicaid Audit and Compliance office from the DMH Division of DD.

~~(4517)~~ When the option for self ~~and family~~ directed supports is terminated, the same level of services must be made available to the participant through a qualified waiver provider. The participant/guardian or designated representative shall have a choice of provider.

~~(4618)~~ Individual budgets allocation, employee rates wages, and reimbursement.

(A) The SDS individual budget allocation shall be based on the total number of hours needed for the span dates of the ISP multiplied by the statewide average hourly cost base rate for comparable agency-based supports;

(B) The SDS individual budget allocation shall be equal to but shall not exceed the level of support the individual would receive from a provider agency;

- (C) Supports included in the SDS individual budget allocation to be paid through the HCBS waiver shall not supplant or duplicate natural supports available to the participant;
- (D) The Department of Social Services MO HealthNet Division shall establish maximum allowable rates as recommended by DMH for all HCB supports; and
- (E) Once the participant/guardian or designated representatives receives their SDS individual budget allocation, the employer/DR is responsible to set the wages of their employees. may pay a wage Wages shall not be less than minimum wage and not in excess of the MO HealthNet maximum allowable rate. The wage includes the net pay to the employee plus all payroll taxes, worker's compensation and other insurance, if applicable.

(179) Fiscal management services (FMS).

- (A) DMH shall select a FMS contractor through a competitive bid process.
- (B) The FMS shall perform the following functions:
 1. Managing and directing the distribution of funds contained in the individual budget allocation;
 2. Facilitating the employment of staff by the family or participant the individual/DR by performing as the participant's individual/designated representative's agent such employer responsibilities as processing payroll, withholding and filing federal state, and local taxes, and making tax payments to appropriate tax authorities;
 3. Performing fiscal accounting and making expenditure reports to the participant and/or family and state authorities;
 4. Collecting provider qualifications and training information;
 5. Conducting background screens of potential employee candidates;
 6. Collecting documentation of services provided; and
 7. Collecting and processing employees' time sheets.

*AUTHORITY: sections 630.050, RSMo Supp. (2013) and 630.655, RSMo (2000).**

**Original authority 1980*