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MEDICAID: Self-Empowered Life Funding (SELF) Waiver

The Self-Empowered Life Funding (SELF) waiver is a new cost-capped Medicaid home and community-based services waiver for Ohioans with intellectual or developmental disabilities. Although the SELF waiver provides an enrollee the ability to direct and manage his or her own services (known as “participant direction”), restrictions do exist. Other significant limitations include a strict cap on the amount of funding available to each enrollee and the small number of waivers which will actually be available. The SELF waiver is administered by the Ohio Department of Developmental Disabilities.

The SELF waiver may meet the needs and be a good choice for some people. For example, the SELF waiver provides several services which are not available under the Individual Options (IO) waiver. And it may be an option for those not receiving waiver services at all. But for those currently receiving services through an IO waiver or for those with extensive needs, the IO waiver may be the better option.

Disability Rights Ohio offers this Frequently Asked Questions (FAQ) document to help people understand the highly complex and confusing administrative rules implementing this new Medicaid waiver so they can make an informed decision on whether the SELF waiver is right for their needs. Read through this document to learn more about the services available under the SELF waiver, eligibility requirements, funding limitations, and other detailed information.

What services are available under the SELF waiver?

The services available under the SELF waiver, several of which are not available under the IO waiver, include the following:

- adult day support,
- clinical/therapeutic intervention,
- community inclusion,
- community respite,

- functional behavioral assessment,
- integrated employment,
- non-medical transportation,
- participant-directed goods and services,
- participant/family stability assistance,
- remote monitoring,
- remote monitoring equipment,
- residential respite,
- support brokerage,
- supported employment-enclave, and
- vocational habilitation.

One important component of the SELF waiver is the encouragement of integrated or supported employment in the community rather than segregated adult day support or vocational habilitation services. Indeed, when the latter is identified in the individual service plan, it must include a justification explaining why these services are more appropriate than supported or integrated employment.

What are the eligibility requirements for enrollment on the SELF waiver?

First, to be eligible for enrollment on the SELF waiver, a person's eligibility for Medicaid must be established.

Furthermore, one must initially (and at least every 12 months thereafter) be determined to have an ICF/DD (intermediate care facility for the developmentally disabled) level of care, which generally means that an individual has at least one diagnosed condition (other than mental illness) that was manifested before he or she turned age 22, that is likely to continue indefinitely, and that currently results in substantial functional limitations in three or more of the following major life areas: capacity for independent living, communication, learning, mobility, personal care, self-direction, and (for those age sixteen and older) economic self-sufficiency. The individual must also be able to benefit from habilitative services. There are different requirements for individuals who are under the age of six.

Moreover, an individual must require at least one service available under the SELF waiver, and he or she (or his or her guardian or designee) must be willing and able to exercise participant direction (see What does "participant direction" mean?) for at least one service under the SELF waiver. Finally, to be considered eligible for the SELF waiver, a person's health and welfare needs must be met through services under the SELF waiver at or below the applicable funding cap (see What limitations of funding exist?) and through other formal and informal supports, regardless of the funding source.

How does one maintain enrollment on the SELF waiver?

An individual's continued enrollment on the waiver will be determined no less than every 12 months. The enrollee must continue to meet the eligibility requirements under the SELF waiver, and the individual must require at least one waiver service monthly or, if less than monthly as described in the individual service plan, require monthly monitoring of his or her health and welfare (and at least periodic face-to-face monitoring) to maintain his or her enrollment on the SELF waiver.

What limitations on funding exist?

The SELF waiver contains a cap on the amount of funding available to enrollees. For an adult, defined as an individual who is at least 22 years old or who is under 22 years old but eligible for adult day support, integrated employment, supported employment-enclave, or vocational habilitation, the cap is \$40,000 for every waiver eligibility span (which is a twelve-month period). For a child, defined as an individual who is under 22 years old and who is not eligible for adult day support, integrated employment, supported employment-enclave, or vocational habilitation, the cap is \$25,000 for every waiver eligibility span.

Also, some services have specific funding limitations:

- The cost of community inclusion, community respite, remote monitoring, remote monitoring equipment, and residential respite, either alone or in any combination, cannot exceed \$25,000 per waiver eligibility span.
- The cost of support brokerage cannot exceed \$8,000 per waiver eligibility span.
- An individual is entitled to only one functional behavioral assessment per waiver eligibility span, and its cost cannot exceed \$1,500.
- Benefit limitations for adult day support, non-medical transportation, supported employment-enclave, and vocational habilitation are calculated for each individual.

Is it a good idea to transfer from the IO waiver to the SELF waiver?

Ohio law states that an individual currently enrolled on either the IO waiver or the Level One waiver may transfer to the SELF waiver, although this is subject to the county's waiting list. If the individual's needs can be more appropriately met by the SELF waiver, all eligibility criteria are met, and the individual and county board of developmental disabilities both request transfer to the SELF waiver, then the Ohio Department of Developmental Disabilities may transfer him or her to the SELF waiver. Within 180 days of the individual's enrollment on the SELF waiver, at the individual's request, the county board of developmental disabilities must request that he or she be re-enrolled in the waiver from which he or she transferred.

While some individuals already enrolled on the IO waiver may find certain aspects of the SELF waiver to be attractive, such as the ability to self-direct his or her services and the availability of services that are not under the IO waiver, a decision to transfer to the SELF waiver should not be made without an awareness of the risks involved. As discussed before, the SELF waiver has specified caps on the amounts of funding

available for services, unlike the IO waiver, which has no such caps. Under the IO waiver, a person has the ability to request prior authorization for services which exceed the individual's funding range, but there is no similar opportunity under the SELF waiver to request prior authorization for additional funding beyond its caps.

Therefore, even though a person's needs may presently fit within the funding caps of the SELF waiver, his or her needs could possibly change in the future (after the expiration of the 180 period described before) and exceed the funding cap, in which case the individual would be in a truly precarious situation and could be at serious risk of institutionalization. In this situation, because of the length and slow pace of waiting lists for the IO waiver in counties throughout Ohio, re-enrollment on the IO waiver would be difficult, unless an emergency can be demonstrated, which is frequently a prolonged struggle. Also, county boards of developmental disabilities are ordinarily hesitant in providing local funding to supplement funding for waiver services.

Furthermore, in contrast to the IO waiver (which separates funding for a person's personal needs from vocational costs), vocational costs under the SELF waiver are counted toward the individual's total budget, thereby reducing the amount of funding available for other services under the cost-capped SELF waiver.

Is it a good idea to transfer from the Level One waiver to the SELF waiver?

Transferring from the Level One waiver to the SELF waiver involves much different considerations. The Level One waiver, like the SELF waiver, contains specific funding limitations. Under the Level One waiver, payment for homemaker personal care, institutional respite, informal respite, and transportation, either alone or in combination, cannot exceed \$5,000 for each waiver eligibility span; payment for personal emergency response systems, specialized medical equipment and supplies, and environmental accessibility adaptations cannot exceed \$6,000 in a three-year period; and finally emergency assistance cannot exceed \$8,000 in a three-year period.

Thus, while the SELF waiver's overall caps are higher than the caps under the Level One waiver, a person should decide which waiver is more appropriate based on the services available under each waiver, the desirability of self-directing their own services, and other factors.

When will enrollment on the SELF waiver first be available?

Enrollment on the SELF waiver began July 1, 2012. All eligibility requirements must be met prior to enrollment and there must be a slot available in the applicant's county. There are only a limited number of SELF waiver slots available initially and many people are likely to encounter long waiting lists.

How does a person get a SELF waiver?

An individual interested in enrollment on the SELF waiver should contact his or her county board of developmental disabilities and request an Ohio Department of Job

and Family Services 02399 form entitled “Request for Medicaid Home and Community-Based Services.” There are various other forms associated with enrollment on the SELF waiver, including a pre-screen and participant-direction tool, a checklist for children with intensive behavioral needs, participant-directed goods and services guidelines, and an “employment first” form.

Again, all eligibility requirements must be met prior to enrollment and a waiver slot must be available in the individual’s county.

How many SELF waivers will be available?

There will only be a limited number of SELF waiver slots available. According to the Ohio Department of Developmental Disabilities and its plan submitted to the Centers for Medicare & Medicaid Services, 500 SELF waiver slots will be available statewide to eligible individuals in the first year. Then 1,000 SELF waiver slots will be available in the second year and 2,000 in the third year.

Thus, an individual who wishes to enroll on the SELF waiver is likely to encounter waiting lists in his or her county. Such waiting lists often contain hundreds or even thousands of others and move at an extremely slow pace. According to the Ohio Department of Developmental Disabilities, if a person is already on a waiting list for a home and community-based services waiver, then his or her original date of request will dictate his or her placement on the waiting list for the SELF waiver.

Will there be any SELF waiver slots available for children with intensive behavioral needs?

Yes. According to the Ohio Department of Developmental Disabilities, 100 SELF waiver slots will be reserved for children with intensive behavioral needs. Each of Ohio’s 88 counties will receive at least one of these waiver slots.

What does “participant direction” mean?

“Participant direction” means the individual has authority to make decisions about some or all of his or her waiver services and accepts responsibility for taking a direct role in managing the services. Participant direction includes both “budget authority” and “employer authority.”

Budget authority means the individual has the authority and responsibility to manage his or her budget under the SELF waiver. Thus, he or she determines the budgeted dollar amount for each waiver service provided to him or her and makes decisions about how the waiver services authorized in the individual service plan will be acquired (for example, negotiating payment rates to providers). Nevertheless, because the total budgeted dollar amount is determined through the individual service plan process and because of the funding caps described above, the individual’s discretion is restricted.

Enrollees on the SELF waiver can exercise budget authority for the following services:

- clinical/therapeutic intervention,
- community inclusion,
- community respite,
- functional behavioral assessment,
- integrated employment,
- participant-directed goods and services,
- participant/family stability assistance,
- remote monitoring,
- remote monitoring equipment,
- residential respite, and
- support brokerage.

Employer authority means the individual has the authority to recruit, hire, supervise, and direct the staff which provides services and support to him or her. The individual acts as either a common law employer or the co-employer of these staff. Enrollees on the SELF waiver can exercise employer authority only for the following services:

- community inclusion,
- integrated employment,
- participant-directed goods and services,
- participant/family stability assistance, and
- support brokerage.

However, enrollees on the SELF waiver cannot exercise either budget authority or employer authority for any of the following services:

- Adult day support,
- Non-medical transportation,
- Supported employment-enclave, and
- Vocational habilitation.

When exercising employer authority, must a person be responsible for all aspects of his or her relationship with staff, including financial and legal responsibilities?

No. An individual enrolled on the SELF waiver may choose to utilize a “financial management services” entity, with which the state of Ohio will contract and which will operate a payroll service for staff employed by an individual, make required payroll withholdings, and perform other employment-related functions. An individual who chooses this option is a “common law employer.”

An individual also may utilize an agency provider, also known as an “agency with choice,” to act as a “co-employer” with him or her. In this situation, the individual acts as the “managing employer” and retains the authority to hire, manage, and dismiss

staff but is relieved of the financial and legal responsibilities associated with the employment of staff. The agency with choice is considered the employer of staff whom the individual selects, hires, and trains and has the following responsibilities:

- employing and paying staff who have been selected by the individual;
- reimbursing allowable services;
- withholding, filing, and paying federal, state, and local income and employment taxes; and
- providing other supports to the individual as described in the individual service plan.

It appears that use of the financial management services entity or an agency with choice is an administrative expense and therefore does not count toward the individual's budget under the SELF waiver.

When exercising budget authority, must a person be responsible for paying for goods and services and monitoring his or her expenditures and individual budget?

No. The financial management services entity with which the state of Ohio will contract may assist the individual in, among other things, paying invoices for waiver goods and services and tracking expenditures against the individual's budget.

What is a common law employer?

In contrast to a co-employer, a "common law employer" is an individual who is the legally responsible and liable employer of staff selected by him or her. This individual hires, supervises, and discharges staff and is liable for the performance of necessary employment-related tasks and uses a financial management services entity to perform necessary payroll and other employment-related functions as the individual's agent to ensure that the employer-related legal obligations are fulfilled.

There is the possibility, however remote, that an enrollee on the SELF waiver could be held legally liable as any other employer for negligent hiring, wrongful termination, and so forth, although this may be limited merely to "common law employers."

May an enrollee on the SELF waiver choose another person to advocate, provide advice and assistance, and represent him or her in coordinating services?

Yes. An enrollee on the SELF waiver may choose a "support broker," which is defined as a person responsible, on a continuing basis, for providing him or her with representation, advocacy, advice, and assistance in the day-to-day coordination of services under the SELF waiver. The support broker may assist the individual with his or her responsibilities in exercising participation direction, including understanding employer authority and budget authority; locating and selecting providers; negotiating payment rates; and ensuring that services are delivered consistently with his or

her desired outcomes. The support broker, working with the individual's service and support administrator, may also assist the individual with creating the individual service plan, developing a budget for waiver services, and monitoring the provision of services.

A support broker can be an expensive option, however, which would count toward a person's budget and would therefore, because of the funding cap, reduce the amount of funding available for other services. Instead, an enrollee on the SELF waiver may designate another person (other than an employee of the county board of developmental disabilities or a provider) on an unpaid basis to assist him or her with development of the individual service plan and budget, selection of residence and providers, negotiation of payment rates for services, and so forth. Moreover, the individual's service and support administrator, although not an advocate or representative for the individual, must ensure that the individual service plan is developed with the active participation of the individual, his or her guardian, and other persons designated by the individual.

Is there an appeals process available for applicants or enrollees on the SELF waiver?

Yes. Any applicant or enrollee on the SELF waiver may utilize the Medicaid hearing process through the Ohio Department of Job and Family Services, Bureau of State Hearings, to challenge a determination that he or she is ineligible for the SELF waiver, a proposed disenrollment or a proposed reduction in services under the SELF waiver, or denial of a request for increased services or funding under the SELF waiver. LRS may be able to provide legal representation for an individual's state hearing in certain cases, so long as they fit within our priorities. Contact the LRS Intake Department for more information.