

**Title 19—DEPARTMENT OF
HEALTH AND SENIOR SERVICES
Division 15—Division of Senior and Disability Services
Chapter 8—Consumer-Directed Services**

PROPOSED AMENDMENT

19 CSR 15-8.400 Vendors. The department is amending the purpose statement and sections (1) – (14).

PURPOSE: This amendment incorporates changes in the consumer-directed services program required by House Bill 1682, 100th General Assembly, Second Regular Session (2020) and Senate Bill 710, 100th General Assembly, Second Regular Session (2022), which updates the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-directed services administered by the Department of Health and Senior Services.

PURPOSE: This rule [incorporates changes in consumer-directed services program required by Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), to] establishes the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-director services administered by the Department of Health and Senior Services.

(1) All vendors of the consumer-directed services (CDS) program shall:

(B) Have a valid written agreement with the *[Department of Health and Senior Services (DHSS)] Missouri Medicaid and Compliance (MMAC); [and]*

(C) Have a valid Medicaid participation agreement pursuant to federal and state laws and regulations[.];

(D) Designate to MMAC the manager who will be responsible for the vendor’s day-to-day operation. This manager shall be a policy maker and supervise the vendor’s record keeping, service delivery verification, training, and orientation of consumers in skills needed to recruit, employ, instruct, supervise, and maintain the services of attendants; and

(E) Implement a quality assurance and supervision process that ensures program compliance and accuracy of records, including, but not limited to:

1. CDS managers shall be required to successfully complete (or have completed) the CDS certified manager orientation and test offered (quarterly or as needed) by MMAC at no charge. Completion of the test for all new managers is required within six (6) months of hire;

2. CDS managers shall annually attend MMAC sponsored training update CDS meeting; and

3. CDS vendors and managers shall maintain documentation of attendance for all training, testing, and meetings.

(2) Vendors shall have a written pandemic preparedness policy to be followed when service delivery must be interrupted due to a pandemic. Vendors shall distribute this policy to all consumers annually. Vendors shall train all consumers on this policy at least annually. All attendants shall be trained on this policy at least annually.

[(2)](3) Vendors shall perform, directly or by contract, payroll and fringe benefit accounting functions for consumers, including but not limited to:

(A) Collecting *[timesheets and certifying their accuracy]* **Electronic Visit Verification (EVV) records and verifying accuracy;**

(C) Ensuring all payroll, employment, and other taxes are paid timely.

1. The vendor shall be liable to the consumer for any garnishment action occurring as a result of the vendor's failure to timely pay payroll, employment, or other taxes on behalf of the consumer.

2. The vendor shall notify the consumer of any communications or correspondence from any federal, state, or local tax authority of any overdue or unpaid tax obligation, as well as any notice of an impending garnishment.

3. The vendor may be subject to a one thousand (\$1,000) dollar penalty per occurrence of the vendor's failure to timely pay payroll, employment, or other taxes on behalf of the consumer.

[(3)](4) Vendors shall, directly or by contract, file claims for Medicaid reimbursement.

[(4)](5) In addition to the above requirements, vendors shall be responsible, directly or by contract, for the following:

(A) Maintaining a list of eligible attendants:

1. Ensuring that each attendant is registered, screened, and employable pursuant to the Family Care Safety Registry (FCSR) and the Employee Disqualification List (EDL) maintained by DHSS, and applicable state laws and regulations **prior to beginning service delivery;**

2. Notifying the attendant of his or her responsibility to comply with applicable state laws and regulations regarding reports of abuse or neglect;

3. Attendants must meet the following qualifications:

A. Be at least eighteen (18) years of age;

B. Be able to meet the physical and mental demands required to perform specific tasks required by a particular consumer;

C. Agree to maintain confidentiality;

D. Be emotionally mature and dependable;

E. Be able to handle emergency type situations; *[and]*

F. *[Not be the consumer's spouse]* **Be a person other than the consumer's spouse or guardian;**

G. Not be a consumer; and

H. Have not been involved in Medicaid fraud previously.

4. The attendant is an employee of the consumer only for the time period subsidized with CDS funds, but is never the employee of the vendor, DHSS, or the state of Missouri;

(B) Training and orientation of consumers in the skills needed to recruit, employ, instruct, supervise and maintain the services of attendants including, but not limited to:

1. Assisting consumers in the general orientation of attendants as requested by the consumer^[/;]. **To the fullest extent possible, this shall take place in the presence of the attendant.**

2. *[Preparation of time sheets]* **Federal and state requirements regarding the mandatory use of EVV;**

3. Identification of issues that would be considered fraud of the program;

4. Allowable and non-allowable tasks;

5. Notifying consumers that falsification of attendant visit verification records shall be considered fraud and shall be reported to MMAC;

[5]6. Rights and responsibilities of the attendant; [and]

[6]7. Identification of abuse, neglect, and/or exploitation; and

8. The attendant shall report to DHSS and/or the vendor if he or she witnesses significant deterioration of the health of the consumer or if he or she has a belief that the consumer is no longer capable of self-directed care. Failure of the attendant to report this information should be reported by the vendor to DHSS.

(F) [Performing case management activities with the consumer at least monthly to provide ongoing monitoring of the provision of services in the plan of care and other services as needed to live independently] **The vendor shall perform ongoing monitoring of the provision of services in the plan of care and shall assess the quality of care being delivered. Such monitoring shall include:**

1. At least one annual face-to-face visit as outlined in section 208.918. Face-to-face is defined as an interaction that occurs in person and does not include interactions that occur through telecommunication or electronic technologies. Face-to-face visits shall be completed within three hundred sixty-five (365) days from original authorized care plan, and annually thereafter. Documentation of each face-to-face visit must contain at a minimum, the name of the monitoring individual, those present at the time of the visit, service delivery evaluation summary, the quality of care being delivered, and date and time of the visit. All documentation must be maintained in the consumer's case file and shall be available to send to DHSS upon request. The vendor shall report to DHSS if services are not being provided to the consumer as authorized in the plan of care, which may result in suspension of services to the consumer.

2. Monthly case management activities which must be completed by phone, videoconference, or in-person with the consumer.

3. Other monitoring may include electronic monitoring, telephone checks, written case notes, or other department-approved methods. The ongoing monitoring shall not preclude the vendor's responsibility of ongoing diligence of case management activity oversight;

[(H) Monitoring utilization of units by the consumer at least monthly;]

[(I)](H) Ensuring that the consumer's case file contains, at a minimum, the following:

1. Employer Identification Number and Missouri Tax ID;

[1]2. Written plan of care and service authorization that document the type of services and quantity of units to be provided;

[2]3. Consumer's original time sheets that contain the following] **Documentation of use of EVV in accordance with 13 CSR 70-3.320;**

[A. Attendant's name;

B. Consumer's name

C. Dates and times of services delivery;

D. Types of activities performed at each visit

E. Attendant's signature for each visit; and

F. Consumer's signature verifying service delivery for each visit;]

[3]4. Copies of all correspondence with DHSS, the consumer's physician, other service providers, and other administrative agencies;

[4]5. Documentation of training provided to the consumer in the skills needed to understand and perform the essential functions of an employer;

[5]6. Documentation of the consumer's emergency and/or backup plans;

[6]7. Signed documentation that the consumer has been informed of their rights concerning hearings and consumer responsibilities;

A. Such forms must comply with Medicaid and/or DHSS' requirements; and

[7]8. Any pertinent documentation regarding the consumer;

[(J)](I) Demonstrating positive impact on consumer outcomes regarding the provision of CDS through the submission of quarterly service reports and an annual service report to [DHSS]MMAC;

[(K)](J) Operating programs, services, and/or activities in such a manner as to be readily accessible to and usable by persons with disabilities;

[(L)](K) Providing information necessary to conduct state and/or federal audits, as requested by [DHSS]MMAC;

[(M)](L) Complying with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975;

[(N)](M) Complying with applicable statutes and regulations regarding reports of abuse or neglect; and

[(O)](N) Complying with applicable statutes and regulations regarding reports of misappropriation of a consumer's property or funds or the falsification of documents verifying CDS delivery.

[(5)](6) Vendors [should] **shall** refer the following situations **upon discovery** to DHSS for investigation:

(A) Circumstances that may require closure or termination of services, including but not limited to:

1. Death;

2. Admission into a long-term care facility;

3. The consumer no longer needing services;

4. The inability of the consumer to self-direct **and/or significant changes which would result in the need of a change in the authorized care plan for the consumer**; and/or

5. An inability to continue to meet the maintenance needs of the consumer because the plan of care hours needed to ensure the health and safety of the consumer exceed availability;

[(6)](7) Vendors, after notice to DHSS:

(A) May suspend services to consumers in the following circumstances:

1. The inability of the consumer to self-direct;

2. Falsification of records, **falsification of condition**, or fraud;

3. Persistent actions by the consumer of noncompliance with the plan of care;

4. The consumer or a member of the consumer's household threatens or abuses the attendant and/or vendor; and/or

5. The attendant is not providing services as set forth in the plan of care and attempts to remedy the situation have been unsuccessful;

[(7)](8) Vendors shall comply, either directly or by contract, with the following fiscal requirements:

(C) No state or federal funds shall be authorized or expended to pay for personal care assistance services if any direct employee of the CDS vendor conducts the face-to-face home visit of a consumer for whom such employee is also the attendant, unless such person provides services solely on a temporary basis on no more than three (3) days in a thirty-day (30) period. The certified manager shall maintain records and provide to MMAC upon request.

[(C)](D) The general assembly shall set the statewide reimbursement rate to be paid for CDS;

[(D)](E) The total monthly payment for CDS made on behalf of a consumer shall not exceed one hundred percent (100%) of the average statewide monthly cost for care in a nursing facility as defined in applicable state laws and regulations;

[(E)](F) Assure that federal funds shall not be used to replace funds from nonfederal sources and that the vendor shall continue or initiate efforts to obtain support from private sources or other public organizations;

[(F)](G) Be responsible for repayment of any federal or state funds that are deferred and/or ultimately disallowed;

[(G)](H) **CDS Quarterly** *[(f)]* **Financial and Service** *[(r)]* **Reports** shall be submitted to *[(DHSS)]* **MMAC** thirty (30) days after the end of each calendar quarter;

[(H)] *Quarterly service reports shall be submitted to DHSS thirty (30) days after the end of each calendar quarter;]*

(I) Maintain CDS financial records separately from any other financial records and make all consumer and CDS financial records, documents, reports and data available to *[(DHSS)]* **MMAC** upon request; and

(J) Submit an annual audit **or review** by a properly licensed independent practitioner (certified public accountant licensed in the state of Missouri) pursuant to applicable federal and state laws and regulations, including any audit parameters as established by DHSS.

1. Audit Requirements for Vendors:

A. An annual financial statement audit is required if the vendor's annual gross revenue is two hundred thousand dollars or more.

B. An annual financial statement audit or annual financial statement review is required if the vendor's annual gross revenue is less than two hundred thousand dollars.

[(1)] **2.** The audit report must be submitted to *[(DHSS)]* **MMAC** within one hundred fifty (150) days after the end of the vendor's fiscal year.

[(8)](9) *[(DHSS)]* **MMAC** may withhold funding if the vendor does not submit required documentation pursuant to this rule.

[(9)](10) The vendor shall maintain, at a minimum, all case files and records of its activities pursuant to applicable state laws and regulations in a central location for six (6) years. Records must be provided to DHSS or its designee upon request and must be maintained in a manner that will ensure they are readily available for monitoring or inspection. Such records shall include, but not be limited to, records verifying the delivery of services.

[(10)](11) *[(DHSS)]* **MMAC** or its designee shall conduct on-site visits, which may be announced or unannounced, for the purpose of program and/or fiscal monitoring of the vendor. **The vendor shall provide proof of maintaining a business location which shall comply with any and all**

applicable city, county, state, and federal requirements upon request of MMAC. The vendor's principal place of business shall have staff on the premises with access to records **during business hours** as prescribed by the vendor's written agreement with *[DHSS]* MMAC.

[(11)](12) [DHSS] MMAC may invoke sanctions, upon written notice to the vendor, when it has cause to do so, including but not limited to the following:

(C) Demand that the vendor make certain assurances, including but not limited to, audits or financial assurances to satisfy *[DHSS]* MMAC; and/or

[(12)](13) [DHSS] MMAC may take immediate action to protect consumers from vendors who are found to be out of compliance with this rule and/or any other statute and/or rule applicable to the CDS program, when such noncompliance creates a risk of injury or harm to the consumer.

[(13)](14) [DHSS] MMAC may suspend or terminate the written agreement of any vendor found to be out of compliance with the written agreement and with the provisions of this rule and/or the requirements of applicable state laws and regulations.

AUTHORITY: sections 208.900, 208.903, 208.906, [208.909], 208.912, 208.915, [208.918,] 208.921, 208.927 and 208.930, RSMo 2016 [Supp. 2005]; section 208.918, RSMo Supp. 2020; and section 208.909 RSMo Supp. 2022. This rule originally filed as 5 CSR 90-7.200. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.400, effective Aug. 29, 2005. Emergency rescission and rule filed Dec. 15, 2005, effective Dec. 25, 2005, expired June 23, 2006, Rescinded and readopted: Filed Dec. 15, 2005, effective July 30, 2006. Amended: Filed Sept. 1, 2023.*

**Original authority: 208.900, RSMo 2005; 208.903, RSMo 2005; 208.906, RSMo 2005; 208.909, RSMo 2005; 208.912, RSMo 2005; 208.915, RSMo 2005; 208.918, RSMo 2005; 208.921, RSMo 2005; 208.927, RSMo 2005; and 208.930, RSMo 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities eight million eight hundred sixty-eight thousand nine hundred thirty-one dollars and eight cents (\$8,868,931.08) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Health and Senior Services, Division of Senior and Disability Services, Melanie Highland, Division Director, PO Box 570, Jefferson City, MO 65102-0570 or by email at LTSS@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*