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 sections (1), (4), (5), (7), and (10).

PURPOSE: This amendment incorporates changes in the consumer-directed services program required by House Bill 1682, 100th General Assembly, Second Regular Session (2020), 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 the consumer-directed services program required by Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005) ***and House Bill 1682, 100th General Assembly, Second Regular Session (2020)****, to establish the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-directed services administered by the Department of Health and Senior Services.*

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

(A) Have a philosophy that promotes the consumer's ability to live independently in the most integrated setting. This philosophy includes the following independent living services:

1. Advocacy;
2. Independent living skills training;
3. Peer counseling; and
4. Information and referral;

(B) Have a valid written agreement with the Department of Health and Senior Services (DHSS); and

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

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

1. Designated Managers shall be required to complete annually the certified manager training course provided by the State of Missouri.

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

3. Ensure that the designated manager successfully completes (or has completed) a division provider certification course offered (quarterly or as needed) at no charge. Attendees shall be responsible for their own expenses, including but not limited to travel, meal and lodging costs they may incur in attending this course;

4. Be responsible for maintaining documentation of attendance and requiring attendance by new managers within six (6) months of hire; and

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5. Ensure the designated managers annually attend division sponsored training designed to update certified managers.

(2) 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;

(B) Transmitting individual payments to the personal care attendant (attendant) on behalf of the consumer; and

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

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

(4) 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;

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;

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 **which shall take place in the presence of the personal care attendant, to the fullest extent possible**;

2. Preparation of time sheets;

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 Missouri Medicaid Audit and Compliance (MMAC);

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

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

8. The personal care attendant shall report to the department if he or she witnesses significant deterioration of the health of the consumer or if he or she has a belief that the

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consumer is no longer capable of self-directed care. Failure of the personal care attendant to report, may result in funds being recouped from the vendor.

(C) Processing of consumers' and/or attendants' inquiries and problems;

(D) Public information, outreach and education activities to ensure that persons with disabilities are informed of the services available and have maximum opportunity for participation;

(E) Maintaining confidentiality of consumer records, including eligibility information from DHSS, pursuant to applicable federal and state laws and regulations;

(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 including performing monthly case management activities with the consumer and shall assess the quality of care being delivered. Such monitoring shall include at least one annual face-to-face visit in the consumer's home. 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**;

1. Monthly monitoring must be by phone, videoconference, or in-person with the consumer.

(G) Ensuring the consumer has an emergency and/or backup plan;

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

1. Such monitoring shall occur during the annual face-to-face home visit under section 208.918. The vendor shall document whether services are being provided to the consumer as set forth in the plan of care. If the attendant was not providing services as set forth in the plan of care, the vendor shall notify the department and the department may suspend services to the consumer;

A. Complete this visit within 365 days from (re)assessment

B. Documentation shall be maintained in the consumer's case file.

C. Documentation shall include date, time, if consumer present, face to face completed by and what was reviewed.

D. If reporting to DHSS include how and when notification was made.

E. Send to department upon request.

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

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

2. Consumer's original time sheets that contain the following:

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

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

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

6. 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. Any pertinent documentation regarding the consumer;

(J) 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;

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

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

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

(O) 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) Vendors should 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 in the consumer's health or ability to self-direct care**; 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;

(B) Upon a finding that such circumstances exist, DHSS may close or terminate services.

(6) 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 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;

(B) Shall provide written notice to DHSS and the consumer listing specific reasons for requesting closure or termination. All supporting documentation shall be maintained in the consumer's case file. DHSS shall investigate the circumstances reported by the vendor and assist the consumer in accessing appropriate care. Upon a finding that such circumstances exist, DHSS may close or terminate services.

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

(A) No state or federal funds shall be authorized or expended to pay for CDS if the primary benefit of such services is to the household unit, or is a task that members of the consumer's household may reasonably be expected to share or do for one another, unless such service is above and beyond typical activities household members may reasonably provide for another household member without a disability;

(B) No state or federal funds shall be authorized or expended to pay for CDS provided by an attendant who is listed on any of the background check lists in the Family Care Safety Registry, pursuant to applicable state laws and regulations, unless a good cause waiver is first obtained from DHSS in accordance with applicable state laws and regulations;

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

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

E*[(D)]* 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;

F*[(E)]* 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;

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

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

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

J*[(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 upon request; and

K*[(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 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.

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

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

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(9) 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) DHSS 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 by Missouri Medicaid Audit and Compliance (MMAC)**. **The vendor's** principal place of business shall have staff on the premises with access to records as prescribed by the vendor's written agreement with DHSS.

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

(A) Elimination of one (1) or more counties from the vendor's authorized service commitment area and the subsequent transfer of consumers served in those counties to other vendors;

(B) Prospective cessation, temporarily or permanently, of new consumer service authorizations to the vendor, either for specific counties or for all counties served by the vendor;

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

(D) Any remedies calculated to correct or prevent further impairment of the delivery of service by the vendor or the attendant that is substandard, delivered in a substandard manner, or delivered but not documented according to the requirements of this rule.

(12) DHSS 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) DHSS 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]****; and sections 208.909 and 208.918, RSMo Supp. 2020****.* 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. ***

**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.*

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