

Self-Directed Services
Proposed Implementation Statute

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NOTICE

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SEC. 2. Section 4685.7 is added to the Welfare and Institutions Code, to read:

4685.7 (a) Self-determination services within the 21 regional center catchment areas, and consistent with federal approval of a self-directed waiver, shall expand as set forth in this section. In order to provide opportunities to participate in a self-directed services program, the State Department of Developmental Services shall adopt regulations to implement the procedures in this section.

(b) For purposes of this section, the following definitions shall apply:

(1) “Financial management services” means a service or function that assists the family or individual to manage and direct the distribution of funds contained in the individual budget. This may include the facilitation of the employment of service workers by the family or individual including Federal, State, and local tax withholding/payments, unemployment compensation fees, wage settlements, fiscal accounting, and expenditure reports. Specific qualifications shall be established by the State Department of Developmental Services and required of a financial management services provider.

(2) “Supports brokerage” means a service or function that assists participating families and individuals make informed decisions about the individual budget, locating, accessing and coordinating services consistent with and reflecting his or her individual needs and preferences. The service is available to assist in identifying immediate and long-term needs, developing options to meet those needs, and obtaining identified supports and services.

(3) “Supports broker” means a person who facilitates communication between the individual participant and the self-directed services program, identifying and assisting as needed to assure individuals and their families understand the responsibilities involved with

directing one's own services. The supports broker fulfills the supports brokerage service or function and includes consultation and assistance in the person-centered planning process. Specific qualifications shall be established by the State Department of Developmental Services and required of a supports broker provider.

(4) "Waiver" means a waiver of federal law pursuant to Section 1396n of Title 42 of the United States Code.

(5) "Independence Plus Self-Directed (IPSD) Waiver Program" or "Self-Directed Waiver Program" means a federal waiver to the state's Medicaid plan that provides for a delivery of services program that allows people with developmental disabilities who need or require long-term supports and services, and their families, greater opportunity to control his or her own health by utilization of self-directed services.

(6) "Self-determination services," "self-directed services" or "SDS" means a delivery system of integrated and inclusive services that enhance the ability of an individual or his or her family, as appropriate, to control the decisions and resources required to meet all or some of the objectives in his or her individual program plan. Any references to "self-determination services" shall have the same meaning as self-directed services.

(7) "Individual budget" means the monetary value of services available to the family or individual to support the individual's individual program plan. The individual budget is constructed using a fair, equitable, and transparent methodology.

(8) "Risk pool" means an aggregate account comprised of a portion of each self-directed services participant's yearly individual budget that is allocated for use in addressing unanticipated needs.

(9) “Employer of record” refers to the individual, or legally authorized representative, who controls what tasks self-directed service providers will perform and how the tasks will be performed. The term “employer of record” refers to the legal employer of a worker.

(10) “Congregate setting” means an environment, including living arrangements and service delivery settings, in a distinct geographical area, the makeup of which is defined by the presence of a majority of individuals with disabilities.

(c) The Self-Directed Services Program is hereby established to provide individuals with developmental disabilities greater control to purchase needed services and supports with an individual budget. The methodology for determining individual budgets shall include, but shall not be limited to:

(1) Limit a participant’s individual budget to ninety percent of his or her portion of the SDS Program annual appropriation and be based on historic annual purchase of service costs for consumers with similar characteristics at the regional center establishing the participant’s individual program plan.

(2) Provide that five percent of the overall annual appropriation for the SDS Program shall be allocated to a risk pool for the SDS Program participants’ unanticipated needs as described in subdivision (n).

(3) Provide that five percent of the overall annual appropriation for the SDS Program shall be reflected as savings to the state.

(d) The State Department of Developmental Services may advance funds to a financial management services entity pursuant to SDS Program regulations to facilitate development of an individual’s individual budget and transition into the SDS Program.

(e) The Self-Directed Services Program shall include, but not be limited to, the following eligibility requisites:

(1) In order to participate in the SDS Program, an individual shall be three years of age or older.

(2) An individual receiving services in a licensed residential services facility or other congregate setting shall make satisfactory arrangements for voluntary discharge from such living arrangements upon enrollment and prior to participation in the SDS Program.

(3) The individual shall have a developmental disability as defined in Section 4512.

(4) Upon a determination by the regional center individual program plan planning team that the SDS Program is an appropriate service delivery model for meeting the individual's needs, the individual shall accept all of the following terms and conditions:

(A) The individual shall undergo an in-depth orientation to the SDS Program prior to enrollment.

(B) The individual shall agree to utilize the services and supports available within the SDS Program only when generic services are not available, and except for Medi-Cal state plan benefits when applicable.

(C) An individual who is not Medi-Cal eligible may participate in the SDS Program without IPSD Waiver Program enrollment and receive self-directed services if all other IPSD Waiver Program eligibility requirements are met and a recent history of service needs is evidenced by regional center service utilization.

(D) An individual participating in the SDS Program shall consent to use only services necessary to implement his or her individual program plan and described in the IPSD Waiver Program as an available service in the SDS Program, and shall agree to comply with any and all other terms and conditions for participation in the SDS Program.

(E) The individual shall accept and manage self-directed services within the individual budget amount that has been established by the regional center individual program plan planning team, and described in the individual's individual program plan.

(F) The individual budget amount shall be calculated no more than once in a 12-month period.

(G) The individual shall utilize the services of a financial management services entity for the purposes of payroll, disbursement of funds, and related duties pursuant to the individual's approval. A financial management services provider may either be hired or designated by the participant. A designated financial management services provider shall perform services on a non-paid basis. An individual or a parent of an individual in the SDS Program shall provide financial management services only as a designated provider and only if the capacity to fulfill the roles and responsibilities as described in the financial management services provider qualifications can be demonstrated to the regional center.

(H) The individual shall utilize the services of a supports broker for the purpose of providing services and functions as described in paragraphs (2) and (3) of subdivision (b). A supports broker may either be hired or designated by the participant. A designated supports broker shall perform support brokerage services on a non-paid basis. An individual or a parent of an individual in the SDS Program shall provide supports brokerage services, or his or her designated representative shall provide the services only as a designated provider and only if the capacity to fulfill the role and responsibilities as described in the supports broker provider qualifications can be demonstrated to the financial management services entity.

(5) The individual, except when the individual is a minor, will implement his or her self-directed services. In the case of a minor, a parent, legal guardian, or conservator will implement the participant's individual program plan. In the event that an adult individual in the SDS Program is unable to fully implement his or her identified individual program plan

services, there shall be an authorized representative who may be a family member, friend, legal guardian, or other legally appointed representative to effect the implementation. The representative shall meet all of the following requirements:

(A) He or she shall demonstrate knowledge and understanding of the individual's needs and preferences.

(B) He or she shall be willing and able to comply with SDS Program requirements.

(C) He or she shall be at least 18 years of age.

(D) He or she shall be approved by the individual to act in the capacity of a representative.

(f) If at any time during participation in the SDS Program a regional center determines that an individual is no longer eligible to continue based on the criteria described in subdivision (e), the regional center shall inform the individual of his or her ineligibility and shall provide for the individual's transition from the SDS Program to other services and supports. This shall include the development of a new individual program plan that reflects the services and supports necessary to meet the individual's needs. Upon determination of ineligibility pursuant to this subdivision, the individual or, where appropriate, his or her representative, shall be sent written notice of the fair hearing rights, as required by Section 4701.

(g) An individual determined ineligible as described in subdivision (f), or who voluntarily exits the SDS Program shall be permitted to return to the SDS Program upon meeting all applicable eligibility criteria and after a minimum of 12 months time has elapsed.

(h) Self-Directed Services Program participants may appeal an error in the calculation of his or her individual budget to the executive director of the regional center within 30-days of the completion of the individual program plan. A participant may appeal to the Director of the State Department of Developmental Services, or his or her designee, any decision made by the regional center executive director pursuant to this subdivision within 15 days of receipt of the written decision of the executive director.

(i) Only a financial management services provider is required to apply for vendorization in accordance with Section 54300 et seq. of Subchapter 2 of Chapter 3 of Title 17 of the California Code of Regulations, for the SDS Program. All other service providers shall have applicable state licenses, certifications, or other state required documentation, but are exempt from the vendorization requirements set forth in Title 17 of the California Code

of Regulations. The financial management services entity shall ensure and document that all service providers are qualified for any service that may be delivered to any participant in the SDS Program and that all requirements described in the IPSD Waiver Program related to service providers are met.

(j) Participants in the SDS Program may request criminal history records (background) checks for persons seeking employment as a service provider and providing direct care services to the individual.

(1) Criminal history records checks pursuant to this subdivision shall be performed and administered as described in Section 4689.2, subdivisions (b) and (d) through (h), inclusive, and Sections 4689.4 through 4689.6, inclusive, and as same apply to vendorization of providers and hiring of employees to provide services for family home agencies and family homes.

(2) The State Department of Developmental Services may enter into a written agreement with the Department of Justice to implement this subdivision.

(k) Participants enrolled in the SDS Program pursuant to this section and utilizing an individual budget for services and supports are exempt from Section 4783 and from the Family Cost Participation Program.

(l) The State Department of Developmental Services may develop, revise, and maintain regulations implementing the requirements of this section. The adoption of any emergency regulations to implement this section that are filed with the Office of Administrative Law on or before January 1, 2007, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(m) Notwithstanding any provision of law, an individual receiving services and supports pursuant to Section 4685.5 may elect to either participate in the SDS Program or continue to receive self-directed services within his or her current scope and existing procedures and parameters. Selection of continued receipt of self-directed services within current scope and existing procedures and parameters shall cease effectiveness upon a participant's voluntary election and qualification to receive services under another delivery system or on July 1, 2009, whichever is earlier. Individuals no longer receiving services pursuant to this subdivision after June 30, 2009 shall be enrolled in another service delivery system.

(n) Individuals participating in the SDS Program shall be included in the SDS risk pool. The risk pool shall be allocated by the State Department of Developmental Services to the regional centers through a process specified by the State Department of Developmental Services. Funds in the risk pool may be accessed more than once in a lifetime by a participant and shall be used only in the event of substantial change in the individual's service and support needs that were unanticipated at the time the individual budget was set; or relocation of individual residence; or catastrophic injury or illness.

(o) The regional centers shall be responsible for implementing the SDS Program.