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(b) The State must have both traditional service delivery and the self-directed PAS service delivery option available in the event that an individual voluntarily disenrolls or is involuntarily disenrolled, from the self-directed PAS service delivery option.

(c) The State's assessment of an individual's needs must form the basis of the level of services for which the individual is eligible.

(d) Nothing in this subpart will be construed as affecting an individual's Medicaid eligibility, including that of an individual whose Medicaid eligibility is attained through receipt of section 1915(c) waiver services.

§ 441.454 Use of cash.

(a) States have the option of disbursing cash prospectively to participants, or their representatives, as applicable, self-directing their PAS.

(b) States that choose to offer the cash option must ensure compliance with all applicable requirements of the Internal Revenue Service, including, but not limited to, retaining required forms and payment of FICA, FUTA and State unemployment taxes.

(c) States must permit participants, or their representatives, as applicable, using the cash option to choose to use the financial management entity for some or all of the functions described in § 441.484(c).

(d) States must make available a financial management entity to a participant, or the participant's representative, if applicable, who has demonstrated, after additional counseling, information, training, or assistance, that the participant cannot effectively manage the cash option described in paragraph (a) of this section.

§ 441.456 Voluntary disenrollment.

(a) States must permit a participant to voluntarily disenroll from the self-directed PAS option at any time and return to a traditional service delivery system.

(b) The State must specify in a section 1915(j) State plan amendment the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

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§ 441.458 Involuntary disenrollment.

(a) States must specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option.

(b) CMS must approve the State's conditions under which a participant may be involuntarily disenrolled.

(c) The State must specify in the section 1915(j) State plan amendment the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

§ 441.460 Participant living arrangements.

(a) Self-directed PAS are not available to an individual who resides in a home or property that is owned, operated, or controlled by a PAS provider who is not related to the individual by blood or marriage.

(b) States may specify additional restrictions on a participant's living arrangements if they have been approved by CMS.

§ 441.462 Statewideness, comparability and limitations on number served.

A State may do the following:

(a) Provide self-directed PAS without regard to the requirements of statewideness.

(b) Limit the population eligible to receive these services without regard to comparability of amount, duration, and scope of services.

(c) Limit the number of persons served without regard to comparability of amount, duration, and scope of services.

§ 441.464 State assurances.

A State must assure that the following requirements are met:

(a) *Necessary safeguards.* Necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.

(1) Safeguards must prevent the premature depletion of the participant directed budget as well as identify potential service delivery problems that might be associated with budget underutilization.

(2) These safeguards may include the following:

(i) Requiring a case manager, support broker or other person to monitor the participant's expenditures.

(ii) Requiring the financial management entity to flag significant budget variances (over and under expenditures) and bring them to the attention of the participant, the participant's representative, if applicable, case manager, or support broker.

(iii) Allocating the budget on a monthly or quarterly basis.

(iv) Other appropriate safeguards as determined by the State.

(3) Safeguards must be designed so that budget problems are identified on a timely basis so that corrective action may be taken, if necessary.

(b) *Evaluation of need.* The State must perform an evaluation of the need for personal care under the State Plan or services under a section 1915(c) waiver program for individuals who meet the following requirements:

(1) Are entitled to medical assistance for personal care services under the State plan or receiving home and community based services under a section 1915(c) waiver program.

(2) May require self-directed PAS.

(3) May be eligible for self-directed PAS.

(c) *Notification of feasible alternatives.* Individuals who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program are informed of the feasible alternatives, if available, under the State's self-directed PAS State plan option, at the choice of these individuals, to the provision of personal care services under the State plan, or PAS under a section 1915(c) home and community-based services waiver program. Information on feasible alternatives must be communicated to the individual in a manner and language understandable by the individual. Such information includes, but is not limited to, the following:

(1) Information about self-direction opportunities that is sufficient to inform decision-making about the election of self-direction and provided on a timely basis to an individual or the

representative which minimally includes the following:

(i) Elements of self-direction compared to non-self-directed PAS.

(ii) Individual responsibilities and potential liabilities under the self-direction service delivery model.

(iii) The choice to receive PAS through a waiver program administered under section 1915(c) of the Act, regardless of delivery system, if applicable.

(iv) The option, if available, to receive and manage the cash amount of their individual budget allocation.

(2) When and how this information is provided.

(d) *Support system.* States must provide, or arrange for the provision of, a support system that meets the following conditions:

(1) Appropriately assesses and counsels an individual, or the individual's representative, if applicable, before enrollment, including information about disenrollment.

(2) Provides appropriate information, counseling, training, and assistance to ensure that a participant is able to manage the services and budgets. Such information must be communicated to the participant in a manner and language understandable by the participant. The support activities must include at least the following:

(i) Person-centered planning and how it is applied.

(ii) Information about the services available for self-direction.

(iii) Range and scope of individual choices and options.

(iv) Process for changing the service plan and service budget.

(v) Grievance process.

(vi) Risks and responsibilities of self-direction.

(vii) The ability to freely choose from available PAS providers.

(viii) Individual rights.

(ix) Reassessment and review schedules.

(x) Defining goals, needs, and preferences.

(xi) Identifying and accessing services, supports, and resources.

(xii) Development of risk management agreements.

(xiii) Development of an individualized backup plan.

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(xiv) Recognizing and reporting critical events.

(xv) Information about an advocate or advocacy systems available in the State and how a participant, or a participant's representative, if applicable, can access the advocate or advocacy systems.

(3) Offers additional information, counseling, training, or assistance, including financial management services under either of the following conditions:

(i) At the request of the participant, or participant's representative, if applicable, for any reason.

(ii) When the State has determined the participant, or participant's representative, if applicable, is not effectively managing the services identified in the service plan or budget.

(4) The State may mandate the use of additional assistance, including the use of a financial management entity, or may initiate an involuntary disenrollment in accordance with § 441.458, if, after additional information, counseling, training or assistance is provided to a participant (or participant's representative, if applicable), the participant (or participant's representative, if applicable) has continued to demonstrate an inability to effectively manage the services and budget.

(e) *Annual report.* The State must provide to CMS an annual report on the number of individuals served and the total expenditures on their behalf in the aggregate.

(f) *Three-year evaluation.* The State must provide to CMS an evaluation of the overall impact of the self-directed PAS option on the health and welfare of participating individuals compared to non-participants every 3 years.

§ 441.466 Assessment of need.

States must conduct an assessment of the participant's needs, strengths, and preferences in accordance with the following:

(a) States may use one or more processes and techniques to obtain information about an individual, including health condition, personal goals and preferences for the provision of services, functional limitations, age, school, employment, household, and

other factors that are relevant to the need for and authorization and provision of services.

(b) Assessment information supports the determination that an individual requires PAS and also supports the development of the service plan and budget.

§ 441.468 Service plan elements.

(a) The service plan must include at least the following:

(1) The scope, amount, frequency, and duration of each service.

(2) The type of provider to furnish each service.

(3) Location of the service provision.

(4) The identification of risks that may pose harm to the participant along with a written individualized backup plan for mitigating those risks.

(b) A State must develop a service plan for each program participant using a person-centered and directed planning process to ensure the following:

(1) The identification of each program participant's preferences, choices, and abilities, and strategies to address those preferences, choices, and abilities.

(2) The option for the program participant, or participant's representative, if applicable, to exercise choice and control over services and supports discussed in the plan.

(3) Assessment of, and planning for avoiding, risks that may pose harm to a participant.

(c) All of the State's applicable policies and procedures associated with service plan development must be carried out and include, but are not limited to, the following:

(1) Allow the participant, or participant's representative, if applicable, the opportunity to engage in, and direct, the process to the extent desired.

(2) Allow the participant, or participant's representative, if applicable, the opportunity to involve family, friends, and professionals (as desired or required) in the development and implementation of the service plan.

(3) Ensure the planning process is timely.

(4) Ensure the participant's needs are assessed and that the services meet the participant's needs.