DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations

Dear State Medicaid Director:

This letter is one of a series that provides guidance on the implementation of section 6087 of the Deficit Reduction Act of 2005, Public Law Number 109-171. Section 6087, Optional Self-Direction Personal Assistance Services (PAS) Program (Cash and Counseling), amends section 1915 of the Social Security Act (the Act) to add 1915(j) as a new subsection. Under section 1915(j), States have the option to amend their State plan to provide self-directed PAS to beneficiaries, without regard to the Medicaid requirements of comparability or statewideness. This provision is effective January 1, 2007. A Draft State plan amendment (SPA) Template is enclosed with this letter to assist you in submitting an amendment until a final SPA pre-print has been approved by the Office of Management and Budget.

Scope of Coverage

Prior to enactment of this legislation, when a State elected to provide self-directed PAS, they could pursue 1) a SPA to add some limited self-direction under the traditional personal care services optional benefit, 2) a section 1915(c) Home and Community-Based Services waiver or, 3) a section 1115 demonstration program. Many States currently offer some degree of self-directed personal care through these options. This legislation permits States the flexibility to amend their State plans to offer a more comprehensive self-directed PAS program than under the traditional personal care services option and also relieves States of the administrative burden of submitting a waiver or demonstration proposal.

Self-directed PAS is a service delivery model that States may offer as an alternative to traditional agency-delivered services. Under section 1915(j) of the Act, PAS include personal care and related services provided under the State plan, or Home and Community-Based Services provided under a section 1915(c) waiver. States have the discretion to determine whether to include State plan personal care services and/or section 1915(c) Home and Community-Based Services in the self-direction PAS SPA. The election of this service delivery model does not affect an individual's Medicaid eligibility, including that of an individual whose Medicaid eligibility is attained through receipt of section 1915(c) waiver services.

Prior to electing the self-directed PAS State plan option, States must have in place traditional personal care services through the State plan, or be operating a section 1915(c) Home and Community-Based Services waiver that includes the services to be self-directed under this State plan option. In this way, States that choose to amend their State plans to add the self-directed PAS service delivery option will have the traditional PAS delivery option available in the event that individuals voluntarily disenroll from, or are involuntarily disenrolled from, the self-directed PAS State plan option.

The self-directed PAS State plan option permits individuals to hire, fire, supervise, and manage employees of their own choosing, including, at the State's option, legally liable relatives, and to direct a budget from which they purchase their PAS.

Payment Methodology Requirements
Section 1915(j) provides for a change in the PAS delivery model. States may choose to calculate payments for self-directed PAS using the methodology for setting payment rates described in the section 1915(c) Home and Community-Based Services waiver(s), for waiver beneficiaries, or in Attachment 4.19-B of the State plan, for beneficiaries eligible for State plan personal care services. If a State indicates that they will use the approved methodology, no reimbursement pages need be submitted with the section 1915(j) SPA. However, if payment rates for the section 1915(j) self-directed PAS will be set using a different methodology than that approved for State plan personal care services or section 1915(c) Home and Community-Based Services, the State must amend section 4.19-B of the State plan to describe the new section 1915(j) reimbursement methodology.

Assurances
The CMS requires States to assure that necessary safeguards have been taken to protect health and welfare of Medicaid beneficiaries served under this State plan option and to assure the financial accountability for funds expended for self-directed services. Minimally, we require that participants have sufficient supports available to them to manage their workers and budgets and an individualized backup plan to address critical contingencies or incidents that would pose a risk of harm to the participant's health or welfare.

We require that States perform an evaluation of the need for personal care under the State plan or a section 1915(c) Home and Community-Based Services waiver. Individuals who are interested in the self-directed State plan option must be appropriately counseled and informed of the option and feasible alternatives to the self-directed PAS State plan option, prior to enrollment.

The CMS further requires that States provide a support system to individuals prior to enrollment, and as requested throughout the period of an individual's enrollment, or when the State has determined that the individual is not effectively managing their services identified in their service plans or budgets. The support system is intended to inform, counsel, train, and assist participants with their employer-related responsibilities, including managing their workers and budgets and performing their fiscal and tax responsibilities. Individuals have discretion whether and to what extent they will avail themselves of these supports, although individuals not participating in the cash option will be utilizing financial management services.

In accordance with the statute, we require that States submit an annual report to CMS reflecting the number of individuals served under the State plan option and total expenditures on their behalf.

States also are required to conduct an evaluation every 3 years of the overall impact of the self-directed State plan option on participants' health and welfare as compared to non-participants. CMS has not yet defined the requirements of the evaluation, but will issue further guidance and offer technical assistance on a case-by-case basis to States that submit a State plan amendment for this option.

Beneficiaries Subject to the Provision
Self-directed PAS under this State plan option are not subject to the statewideness and comparability requirements; i.e., services may be provided in some but not all geographic regions of the State. States also may limit the population eligible to self-direct and the number of individuals self-directing.

Self-directed State plan PAS are not available to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services not related to the individuals by blood or marriage. For example, if PAS is provided as part of a living arrangement (e.g., in an assisted living arrangement, the State plan PAS would not be available).

Enrollment and Disenrollment

The decision whether to enroll in the self-directed PAS State plan option must be voluntary and informed. With the implementation of this new State plan option, there could be multiple programs offering beneficiaries different vehicles through which to receive their services. It is important that beneficiaries be made aware of feasible alternatives, prior to electing this new self-directed State plan option. Furthermore, participants may elect to voluntarily disenroll from the self-directed State plan option. Finally, we are permitting States to determine the conditions under which an individual may be involuntarily disenrolled from the self-directed PAS State plan option. For all disenrollments, we require that the traditional delivery system for PAS be offered to the individuals provided they still qualify for those services. We also require that States specify the safeguards that will be in place to ensure continuity of services during the transition to the traditional service delivery system, in order to assure health and welfare.

Options

The State may elect to permit individuals to choose to receive cash disbursements, on a prospective basis, with which to purchase the self-directed PAS identified in their self-directed service plan. If this option is made available by the State, individuals selecting the cash option are not required to utilize a fiscal management entity. Individuals must be given flexibility to determine the functions, if any, to be performed on their behalf by the fiscal management entity. For example, some individuals may want the fiscal management entity to perform all employer-related tax functions, while they retain responsibility for paying their providers of PAS.

Also, the State may elect to permit individuals to use their funds to acquire items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

Compliance with the Law

States will be required to continue to comply with all other provisions of the Act in the administration of the State plan under title XIX. We especially note that section 1915(j) will not change or impact an individual's eligibility for Medicaid benefits in the State, including eligibility for a section 1915(c) Home and Community-Based Services waiver. We further note that other provisions of the Act that include self-direction as a service delivery option are not impacted by this provision. States operating self-directed programs under the personal care services State plan option may continue to do so, under the parameters of existing guidance. States may also continue to offer self-directed home and community based services through the section 1915(c) waiver authority. States wishing to offer self-directed PAS beyond these traditional models may do so through the enclosed Draft State plan Template.

Submission Procedures

As previously mentioned, this provision is effective January 1, 2007. State plans submitted by June 30, 2007, may be approved retroactively to the first day of the quarter (i.e., April 1, 2007), and would be subject to the traditional State plan review process. Please submit your SPA electronically in a "pdf" file format to your regional office in order to implement these provisions.

The CMS contact for this new legislation is Ms. Gale Arden, Director, Disabled and Elderly Health Programs Group, who may be reached at 410-786-6810.

Sincerely,

Dennis G. Smith
Director

Enclosure

cc:
CMS Regional Administrators

CMS Associate Regional Administrators,
Division of Medicaid and Children's Health

Martha Roherty
Director, Health Policy Unit
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Jacalyn Bryan Garden
Director of Policy and Programs
Association of State and Territorial Health Officials

Christie Raniszewski Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council

Lynne Flynn
Director for Health Policy
Council of State Governments