

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-1002

NOTICE OF RULEMAKING - PROPOSED RULE

NOT OFFICIAL TEXT

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, and 56-250 through 257, Idaho Code.

PUBLIC HEARING SCHEDULE: Three public hearings concerning this rulemaking will be held as follows:

Wednesday, September 15, 2010 6:00 p.m. PDT	Wednesday, September 15, 2010 6:00 p.m. MDT	Wednesday, September 15, 2010 6:00 p.m. MDT
Dept. of Health & Welfare-Reg. 1 1120 Ironwood Drive, Suite 102 Lower Level Large Conf. Rm. Coeur d'Alene, ID	Dept. of Health & Welfare-Reg. 4 1720 Westgate Drive Suite A, Room 131 Boise, ID	Dept. Health & Welfare-Reg. 7 150 Shoup Avenue 2nd Floor, Large Conf. Rm. Idaho Falls, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These proposed rules for the redesign of children's developmental disabilities benefits include a Family-Directed Services (FDS) option as part of Home and Community Based Services (HCBS) waivers for children and a related State Plan option. This option is very similar to the Consumer-Directed (CD) option available under the Adult DD Waiver program. Changes are being made to this chapter to incorporate the new FDS option and to update the definitions section.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The anticipated fiscal impact for this rulemaking is cost neutral, because the individualized budgets and limitations for participants are being based on historical costs of developmental disabilities agency (DDA) services for children.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010. The notice for this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, p. 27.](#)

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules under this docket.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lauren Ertz at (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 11th day of August, 2010.

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0313-1002

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.03.13, "Consumer-Directed Services." (3-29-10)

02. Scope. ~~Self~~Consumer-Directed Community Supports (~~SCDCS~~) is a flexible program option for participants eligible for the Children's Home and Community Based Services –~~Developmental Disabilities~~ (HCBS-~~DD~~) State Plan Option, and Adult and Children's Developmental Disabilities (DD) waivers. CDCS is not a covered option for participants enrolled in the Children's Act Early Waiver. The ~~SCDCS~~ option allows the eligible participant to: choose the type and frequency of supports he wants, negotiate the rate of payment, and hire the person or agency he prefers to provide those supports. (3-30-07)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Circle of Supports. People who encourage and care about the participant and provide unpaid supports. (3-30-07)

02. Community Support Worker. An individual, agency, or vendor selected and paid by the participant to provide community support worker services. (3-30-07)

03. Community Support Worker Services. Community support worker services are those identified supports listed in Section 110 of these rules. (3-30-07)

04. Consumer-Directed Community Supports (CDCS). For the purposes of this chapter, consumer-directed supports include Self-Directed Community Supports (SDCS) and Family-Directed Community Supports (FDCS). (____)

05. Family-Directed Community Supports (FDCS). A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver and the Children's Home and Community Based Services State Plan Option described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (____)

046. Financial Management Services (FMS). Services provided by a fiscal employer agent that include: (3-29-10)

a. Financial guidance and support to the participant by tracking individual expenditures and monitoring overall budgets; (3-30-07)

b. Performing payroll services; and (3-30-07)

c. Handling billing and employment related documentation responsibilities. (3-30-07)

057. Fiscal Employer Agent (FEA). An agency that provides financial management services to participants who have chosen the SCDCS option. The fiscal employer agent (FEA) is selected by the participant. The duties of the FEA are defined under Section 3504 of the Internal Revenue Code (26 USC 3504). (~~3-29-10~~)()

068. Goods. Tangible products or merchandise that are authorized on the support and spending plan. (3-30-07)

079. Guiding Principles for the SCDCS Option. ~~Self~~Consumer-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles: (~~3-30-07~~)()

a. Freedom for the participant to make choices and plan his own life; (3-30-07)

b. Authority for the participant to control resources allocated to him to acquire needed supports; (3-30-07)

c. Opportunity for the participant to choose his own supports; (3-30-07)

d. Responsibility for the participant to make choices and take responsibility for the result of those choices; and (3-30-07)

e. Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community. (3-30-07)

10. Participant. For the Family-Directed Community Supports option, “participant” refers to both the participant and his parent or legal guardian. ()

0811. Readiness Review. A review conducted by the Department to ensure that each fiscal employer agent is prepared to enter into and comply with the requirements of the provider agreement and this chapter of rules. (3-29-10)

12. Self-Directed Community Supports (SDCS). A program option for adults eligible for the Adult Home and Community-Based Services Developmental Disabilities (HCBS-DD) Waiver described in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ()

0913. Support and Spending Plan. A support and spending plan is a document that functions as a participant’s plan of care when the participant is eligible for and has chosen a ~~self~~consumer-directed service option. This document identifies the goods or services, or both, selected by a participant and the cost of each of the identified goods and services. The participant uses this document to manage his individualized budget. (~~3-29-10~~)()

104. Supports. Services provided for a participant, or a person who provides a support service. A support service may be a paid service provided by a community support worker, or an unpaid service provided by a natural support, such as a family member, a friend, neighbor, or other volunteer. A person who provides a support service for pay is a paid support. A person who provides a volunteer support service is a natural support. (3-30-07)

145. Support Broker. An individual who advocates on behalf of the participant and who is hired by the participant to provide support broker Services. (3-30-07)

126. Support Broker Services. Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (3-30-07)

137. Traditional HCBS Adult DD Waiver Services. A program option for participants eligible for the ~~Home and Community-Based Services~~ Adult’s Developmental Disabilities (HCBS-DD) Waiver consisting of the

specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsections 703.01 through 703.12. ~~(3-29-10)~~()

18. Traditional Children's DD Waiver Services. A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 683. ()

19. Traditional Children's HCBS State Plan Option Services. A program option for children eligible for the Children's Home and Community-Based Services (HCBS) State Plan Option consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 663. ()

~~120.~~ **20. Waiver Services.** A collective term that refers to services provided under a Medicaid Waiver program. (3-29-10)

011. -- 099. (RESERVED).

100. ~~SELF~~CONSUMER-DIRECTED COMMUNITY SUPPORTS (SCDCS) OPTION.

The SCDCS option requires the participant to have a support broker to assist the participant to make informed choices, participate in a person-centered planning process, and become skilled at managing his own supports. The participant must use a fiscal employer agent to provide Financial Management Services (FMS) for payroll and reporting functions. ~~(3-30-07)~~()

101. ELIGIBILITY.

01. Determination of Medicaid and Home and Community Based Services - DD Requirements. In order to choose the SCDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing ~~(HCBS-DD)~~ waiver programs or HCBS State Plan Option requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-30-07)~~()

02. Participant Agreement Form. The participant, and his legal representative, if one exists, must agree in writing using a Department-approved form to the following: (3-30-07)

- a. Accept the guiding principles for the SCDCS option, as defined in Section 010 of these rules; ~~(3-30-07)~~()
- b. Agree to meet the participant responsibilities outlined in Section 120 of these rules; (3-30-07)
- c. Take responsibility for and accept potential risks, and any resulting consequences, for their support choices. (3-30-07)

03. Legal Representative Agreement. The participant's legal representative, if one exists, must agree in writing to honor the choices of the participant as required by the guiding principles for the SCDCS option. ~~(3-30-07)~~()

102. -- 109. (RESERVED).

110. ~~PAID SELF~~CONSUMER-DIRECTED COMMUNITY SUPPORTS.

The participant must purchase Financial Management Services (FMS) and support broker services to participate in the SCDCS option, except for under the family-directed services option where the qualified parent or legal guardian may act as an unpaid support broker. The participant must purchase goods and community supports through the fiscal employer agent who is providing the FMS. ~~(3-29-10)~~()

01. Financial Management Services. The Department will enter into a provider agreement with a qualified fiscal employer agent, as defined in Section 010 of these rules, to provide financial management services to a participant who chooses the ~~self~~consumer-directed option. ~~(3-29-10)~~()

- 02. Support Broker.** Support broker services are provided by a qualified support broker. (3-30-07)
- 03. Community Support Worker.** The community support worker provides identified supports to the participant. If the identified support requires specific licensing or certification within the state of Idaho, the identified community support worker must obtain the applicable license or certification. Identified supports include activities that address the participant's preference for: (3-30-07)
- a.** Job support to help the participant secure and maintain employment or attain job advancement; (3-30-07)
 - b.** Personal support to help the participant maintain health, safety, and basic quality of life; (3-30-07)
 - c.** Relationship support to help the participant establish and maintain positive relationships with immediate family members, friends, spouse, or others in order to build a natural support network and community; (3-30-07)
 - d.** Emotional support to help the participant learn and practice behaviors consistent with his goals and wishes while minimizing interfering behaviors; (3-30-07)
 - e.** Learning support to help the participant learn new skills or improve existing skills that relate to his identified goals; (3-30-07)
 - f.** Transportation support to help the participant accomplish his identified goals; (3-30-07)
 - g.** Adaptive equipment identified in the participant's plan that meets a medical or accessibility need and promotes his increased independence; and (3-30-07)
 - h.** Skilled nursing support identified in the participant's plan that is within the scope of the Nurse Practice Act and is provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (3-30-07)

111. -- 119. (RESERVED).

120. PARTICIPANT RESPONSIBILITIES.

With the assistance of the support broker and the legal representative, if one exists, the participant is responsible for the following: (3-30-07)

- 01. Guiding Principles.** Accepting and honoring the guiding principles for the ~~SCDCS~~ option found in Section 010 of these rules. (~~3-30-07~~)(____)
- 02. Person-Centered Planning.** Participating in the person-centered planning process in order to identify and document support and service needs, wants, and preferences. (3-30-07)
- 03. Rates.** Negotiating payment rates for all paid community supports he wants to purchase, ensuring rates negotiated for supports and services do not exceed the prevailing market rate, and including the details in the employment agreements. (3-30-07)
- 04. Agreements.** Completing and implementing agreements for the fiscal employer agent, the support broker and community support workers and submitting the agreements to the fiscal employer agent. These agreements must be submitted on Department-approved forms. (3-30-07)
- 05. Agreement Detail.** Ensuring that employment agreements specifically identify the type of support being purchased, the rate negotiated for the support, and the frequency and duration of the scheduled support or service. The participant is responsible for ensuring that each employment agreement: clearly identifies the qualifications needed to provide the support or service; includes a statement signed by the hired worker that he possesses the needed skills; and the signature of the participant that verifies the same. Additionally, each employment agreement will include statements that: the participant is the employer even though payment comes from a third

party; employees are under the direction and control of the participant; and no employer-related claims will be filed against the Department. (3-30-07)

06. Plan. Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (3-30-07)

07. Time Sheets and Invoices. Reviewing and verifying that supports being billed were provided and indicating that he approves of the bill by signing the timesheet or invoice. (3-29-10)

08. Quality Assurance and Improvement. Providing feedback to the best of his ability regarding his satisfaction with the supports he receives and the performance of his workers. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

131. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES.

The fiscal employer agent performs Financial Management Services for each participant. Prior to providing Financial Management Services the participant and the fiscal employer agent must enter into a written agreement. Financial Management Services include: (3-30-07)

01. Payroll and Accounting. Providing payroll and accounting supports to participants that have chosen the ~~Self~~Consumer-Directed Community Supports option; (~~3-30-07~~)(____)

02. Financial Reporting. Performing financial reporting for employees of each participant. (3-30-07)

03. Information Packet. Preparing and distributing a packet of information, including Department-approved forms for agreements, for the participant hiring his own staff. (3-30-07)

04. Time Sheets and Invoices. Processing and paying time sheets for community support workers and support brokers, as authorized by the participant, according to the participant's Department-authorized support and spending plan. (3-30-07)

05. Taxes. Managing and processing payment of required state and federal employment taxes for the participant's community support worker and support broker. (3-30-07)

06. Payments for Goods and Services. Processing and paying invoices for goods and services, as authorized by the participant, according to the participant's support and spending plan. (3-30-07)

07. Spending Information. Providing each participant with reporting information that will assist the participant with managing the individualized budget. (3-30-07)

08. Quality Assurance and Improvement. Participating in Department quality assurance activities. (3-30-07)

132. -- 134. (RESERVED).

135. SUPPORT BROKER REQUIREMENTS AND LIMITATIONS.

01. Initial Application to Become a Support Broker. Individuals interested in becoming a support broker must complete the Department-approved application to document that he: (3-30-07)

a. Is eighteen (18) years of age or older; (3-30-07)

b. Has skills and knowledge typically gained by completing college courses or community classes or workshops that count toward a degree in the human services field; and (3-30-07)

c. Has at least two (2) years verifiable experience with the target population and knowledge of services and resources in the developmental disabilities field. (3-30-07)

02. Application Exam. Applicants that meet the minimum requirements outlined in this section will receive training materials and resources to prepare for the application exam. Under Family-Directed Community Supports (FDCS), children's support brokers must attend the initial training. Applicants must earn a score of seventy percent (70%) or higher to pass. Applicants may take the exam up to three (3) times. After the third time, the applicant will not be allowed to retest for twelve (12) months from the date of the last exam. Applicants who pass the exam, and meet all other requirements outlined in these rules, will be eligible to enter into a provider agreement with the Department. (~~3-30-07~~)(____)

03. Required Ongoing Training. All support brokers must document a minimum of twelve (12) hours per year of ongoing, relevant training in the provision of support broker services. Up to six (6) hours of the required twelve (12) hours may be obtained through independent self-study. The remaining hours must consist of classroom training. (3-30-07)

04. Termination. The Department may terminate the provider agreement when the support broker: (3-30-07)

a. Is no longer able to pass a criminal history background check as outlined in Section 009 of these rules. (3-30-07)

b. Puts the health or safety of the participant at risk by failing to perform job duties as outlined in the employment agreement. (3-30-07)

c. Does not receive and document the required ongoing training. (3-30-07)

05. Limitations. The support broker must not: (3-30-07)

a. Provide or be employed by an agency that provides paid community supports under Section 150 of these rules to the same participant; and (3-30-07)

b. For Self-Directed Community Supports (SDCS), ~~be~~ the guardian, parent, spouse, payee, or conservator of the participant, or have direct control over the participant's choices. Additionally, the support broker must not be in a position to both influence a participant's decision making and receive undue financial benefit from the participant's decisions. (~~3-30-07~~)(____)

136. SUPPORT BROKER DUTIES AND RESPONSIBILITIES.

01. Support Broker Initial Documentation. Prior to beginning employment for the participant, the support broker must complete the packet of information provided by the fiscal employer agent and submit it to the fiscal employer agent. This packet must include documentation of: (3-30-07)

a. Support broker application approval by the Department; (3-30-07)

b. A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-30-07)

c. A completed employment agreement with the participant that identifies the specific tasks and services that are required of the support broker. The employment agreement must include the negotiated hourly rate for the support broker, and the type, frequency, and duration of services. The negotiated rate must not exceed the maximum hourly rate for support broker services established by the Department. (3-30-07)

02. Required Support Broker Duties. Support broker services may include only a few required tasks or may be provided as a comprehensive service package depending on the participant's needs and preferences. At a minimum, the support broker must: (3-30-07)

- a. Participate in the person-centered planning process; (3-30-07)
- b. Develop a written support and spending plan with the participant that includes the supports that the participant needs and wants, related risks identified with the participant's wants and preferences, and a comprehensive risk plan for each potential risk that includes at least three (3) backup plans should a support fail. This plan must be authorized by the Department; (3-30-07)
- c. Assist the participant to monitor and review his budget; (3-30-07)
- d. Submit documentation regarding the participant's satisfaction with identified supports as requested by the Department; (3-30-07)
- e. Participate with Department quality assurance measures, as requested; (3-30-07)
- f. Assist the participant to complete the annual re-determination process as needed, including updating the support and spending plan and submitting it to the Department for authorization; (3-30-07)
- g. Assist the participant, as needed, to meet the participant responsibilities outlined in Section 120 of these rules and assist the participant, as needed, to protect his own health and safety; ~~and~~ (~~3-30-07~~)(____)
- h. Complete the Department-approved criminal history check waiver form when a participant chooses to waive the criminal history check requirement for a community support worker. Completion of this form requires that the support broker provide education and counseling to the participant and his circle of support regarding the risks of waiving a criminal history check and assist with detailing the rationale for waiving the criminal history check and how health and safety will be protected.; and (~~3-30-07~~)(____)
- i. Assist children enrolled in the Family-Directed Community Supports (FDCS) Option as they transition to adult DD services. (____)

03. Additional Support Broker Duties. In addition to the required support broker duties, each support broker must be able to provide the following services when requested by the participant: (3-30-07)

- a. Assist the participant to develop and maintain a circle of support; (3-30-07)
- b. Help the participant learn and implement the skills needed to recruit, hire, and monitor community supports; (3-30-07)
- c. Assist the participant to negotiate rates for paid community support workers; (3-30-07)
- d. Maintain documentation of supports provided by each community support worker and participant's satisfaction with these supports; (3-30-07)
- e. Assist the participant to monitor community supports; (3-30-07)
- f. Assist the participant to resolve employment-related problems; and (3-30-07)
- g. Assist the participant to identify and develop community resources to meet specific needs. (3-30-07)

04. Termination of Support Broker Services. If a support broker decides to end services with a participant, he must give the participant at least thirty (30) days' written notice prior to terminating services. The support broker must assist the participant to identify a new support broker and provide the participant and new support broker with a written service transition plan by the date of termination. The transition plan must include an updated support and spending plan that reflects current supports being received, details about the existing community support workers, and unmet needs. (3-30-07)

137. -- 139. (RESERVED).

140. COMMUNITY SUPPORT WORKER LIMITATIONS.

A paid community support worker must not be the spouse of the participant, ~~and, for FDCS, must not be the parent or legal guardian of the participant,~~ and must not have direct control over the participant's choices, must avoid any conflict of interest, and must not receive undue financial benefit from the participant's choices. ~~A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following:~~

(3-30-07)()

01. Self-Directed Community Supports (SDCS). A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following: ()

~~01a. Participant Responsibilities.~~ The legal guardian must not be paid to perform or to assist the participant in meeting the participant responsibilities outlined in Section 120 of these rules. (3-30-07)()

~~01b. Legal Guardian Obligations.~~ The legal guardian must not be paid to fulfill any obligations he is legally responsible to fulfill as outlined in the guardianship or conservator order from the court. (3-30-07)()

02. Family-Directed Community Supports (FDCS). A parent or legal guardian cannot be a paid community support worker. A paid community support worker: ()

a. Must not supplant the role of the parent or legal guardian: ()

b. Cannot be paid to fulfill any obligations that the parent or legal guardian is legally responsible to fulfill for their child. ()

(BREAK IN CONTINUITY OF SECTIONS)

160. SUPPORT AND SPENDING PLAN DEVELOPMENT.

01. Support and Spending Plan Requirements. The participant, with the help of his support broker, must develop a comprehensive support and spending plan based on the information gathered during the person-centered planning. The support and spending plan is not valid until authorized by the Department and must include the following: (3-30-07)

a. The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (3-30-07)

b. Paid or non-paid ~~self-consumer-~~directed community supports that focus on the participant's wants, needs, and goals in the following areas: (3-30-07)()

i. Personal health and safety including quality of life preferences; (3-30-07)

ii. Securing and maintaining employment; (3-30-07)

iii. Establishing and maintaining relationships with family, friends and others to build the participant's circle of supports; (3-30-07)

iv. Learning and practicing ways to recognize and minimize interfering behaviors; and (3-30-07)

v. Learning new skills or improving existing ones to accomplish set goals. (3-30-07)

c. Support needs such as: (3-30-07)

- i. Medical care and medicine; (3-30-07)
- ii. Skilled care including therapies or nursing needs; (3-30-07)
- iii. Community involvement; (3-30-07)
- iv. Preferred living arrangements including possible roommate(s); and (3-30-07)
- v. Response to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (3-30-07)

d. Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (3-30-07)

e. Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; and (3-30-07)

f. The budgeted amounts planned in relation to the participant's needed supports. Community support worker employment agreements submitted to the fiscal employer agent must identify the negotiated rates agreed upon with each community support worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The fiscal employer agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment. (3-30-07)

02. Support and Spending Plan Limitations. Support and spending plan limitations include: (3-30-07)

a. Traditional Medicaid waiver and traditional rehabilitative or habilitative services must not be purchased under the SCDCS option. Because a participant cannot receive these traditional services and ~~self-consumer~~-directed services at the same time, the participant, the support broker, and the Department must all work together to assure that there is no interruption of required services when moving between traditional services and the SCDCS option; ~~(3-30-07)~~(____)

b. Paid community supports must not be provided in a group setting with recipients of traditional Medicaid waiver, rehabilitative or habilitative services. This limitation does not preclude a participant who has selected the ~~self-consumer~~-directed option from choosing to live with recipients of traditional Medicaid services; ~~(3-30-07)~~(____)

c. All paid community supports must fit into one (1) or more types of community supports described in Section 110 of these rules. Community supports that are not medically necessary or that do not minimize the participant's need for institutionalization must only be listed as non-paid supports. Additionally, the support and spending plan must not include supports or services that are illegal, that adversely affect the health and safety of the participant, that do harm, or that violate or infringe on the rights of others; (3-30-07)

d. Support and spending plans that exceed the approved budget amount will not be authorized; and (3-30-07)

e. Time sheets or invoices that are submitted to the fiscal employer agent for payment that exceed the authorized support and spending plan amount will not be paid by the fiscal employer agent. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

180. CIRCLE OF SUPPORTS.

The circle of support is a means of natural supports for the participant and consists of people who encourage and care about the participant. Work or duties the circle of supports performs on behalf of the participant are not paid. (3-29-10)

01. Focus of the Circle of Support. The participant's circle of support should be built and operate with the primary goal of working in the interest of the participant. The group's role is to give and get support for the participant and to develop a plan of action, along with and on behalf of the participant, to help the participant accomplish his personal goals. (3-30-07)

02. Members of the Circle of Support. A circle of support may include family members, friends, neighbors, co-workers, and other community members. ~~For the SDCS, W~~when the participant's legal guardian is selected as a community support worker, the circle of support must include at least one (1) non-family member that is not the support broker. For the purposes of this chapter a family member is anyone related by blood or marriage to the participant or to the legal guardian. (~~3-30-07~~)(____)

03. Selection and Duties of the Circle of Support. Members of the circle of support are selected by the participant and commit to work within the group to: (3-30-07)

a. Help promote and improve the life of the participant in accordance with the participant's choices and preferences; and (3-30-07)

b. Meet on a regular basis to assist the participant to accomplish his expressed goals. (3-30-07)

04. Natural Supports. A natural support may perform any duty of the support broker as long as the support broker still completes the required responsibilities listed in Subsection 136.02 of these rules. Additionally, any community support worker task may be performed by a qualified natural support person. Supports provided by a natural support person must be identified on the participant's support plan, but time worked does not need to be recorded or reported to the fiscal employer agent. (3-30-07)

181. -- 189. (RESERVED).

190. INDIVIDUALIZED BUDGET.

The Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's assessed needs. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. The participant must work within the identified budget and acknowledge that he understands the budget figure is a fixed amount. (3-29-10)

01. Budget Amount Notification ~~and Request for Reconsideration~~. The Department notifies each participant of his set budget amount. The notification will include how the participant may request ~~reconsideration of~~ to appeal the set budget amount determined by the Department. (~~3-30-07~~)(____)

02. Annual Re-Evaluation of Individualized Budgets. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget. (3-30-07)

191. -- 199. (RESERVED).

200. QUALITY ASSURANCE.

The Department will implement quality assurance processes to assure: access to ~~self~~consumer-directed services, participant direction of plans and services, participant choice and direction of providers, safe and effective environments, and participant satisfaction with services and outcomes. (~~3-30-07~~)(____)

01. Participant Experience Survey (PES). Each participant will have the opportunity to provide feedback to the Department about his satisfaction with ~~self~~consumer-directed services utilizing the PES.

(3-30-07)()

02. Participant Experience Outcomes. Participant experience information will be gathered at least annually in an interview by the Department, and will address the following participant outcomes: (3-30-07)

- a. Access to care; (3-30-07)
- b. Choice and control; (3-30-07)
- c. Respect and dignity; (3-30-07)
- d. Community integration; and (3-30-07)
- e. Inclusion. (3-30-07)

03. Fiscal Employer Agent Quality Assurance Activities. The fiscal employer agent must participate in quality assurance activities identified by the Department such as readiness reviews, periodic audits, maintaining a list of criminal history check waivers, and timely reporting of accounting and satisfaction data. (3-30-07)

04. Community Support Workers and Support Brokers Quality Assurance Activities. Community support workers and support brokers must participate and comply with quality assurance activities identified by the Department including performance evaluations, satisfaction surveys, quarterly review of services provided by a legal guardian, if applicable, and spot audits of time sheets and billing records. (3-30-07)

05. Participant Choice of Paid Community Support Worker. Paid community support workers must be selected by the participant, or his chosen representative, and must meet the qualifications identified in Section 150 of this rule. (3-30-07)

06. Complaint Reporting and Tracking Process. The Department will maintain a complaint reporting and tracking process to ensure participants, workers, and other supports have the opportunity to readily report instances of abuse, neglect, exploitation, or other complaints regarding the HCBS program. (3-30-07)

07. Quality Oversight Committee. A Quality Oversight Committee consisting of participants, family members, community providers, and Department designees will review information and data collected from the quality assurance processes to formulate recommendations for program improvement. (3-30-07)

08. Quarterly Quality Assurance Reviews. On a quarterly basis, the Department will perform an enhanced review of services for those participants who have waived the criminal history check requirement for a community support worker or who have their legal guardian providing paid services. These reviews will assess ongoing participant health and safety and compliance with the approved support and spending plan. (3-30-07)

201. -- 209. (RESERVED).

210. CONTINUATION OF THE ~~SELF~~CONSUMER-DIRECTED COMMUNITY SUPPORTS (SCDCS) OPTION.

The following requirements must be met or the Department may require the participant to discontinue the SCDCS option: (3-30-07)()

01. Required Supports. The participant is willing to work with a support broker and a fiscal employer agent. (3-30-07)

a. The participant can only change FEA services by providing a written request to his current FEA provider at least sixty (60) days in advance, and this change must occur at the end of a fiscal quarter. The request must include the name of the new FEA chosen by the participant and provide the specific date the change will occur. (3-29-10)

b. When a participant provides a written request to his current FEA provider to change to a different

FEA provider, the current FEA provider must notify the participant of the specific date that the last payroll run will occur at the end of the fiscal quarter. (3-29-10)

02. Support and Spending Plan. The participant's support and spending plan is being followed. (3-30-07)

03. Risk and Safety Back-Up Plans. Back-up plans to manage risks and safety are being followed. (3-30-07)

04. Health and Safety Choices. The participant's choices do not directly endanger his health, welfare and safety or endanger or harm others. (3-30-07)

211. -- 299. (RESERVED).

**FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES
(Sections 300 through 314)**

300. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: DEFINITIONS. For purposes of Sections 300 through 314, the following definitions apply: (3-29-10)

01. Employee. A community support worker employed by a participant receiving services under the §CDCS option. (~~3-29-10~~)(____)

02. Employer. A participant receiving services under the §CDCS option. (~~3-29-10~~)(____)

03. Provider. The term "provider" specifically refers to the fiscal employer agent providing financial management services to individuals participating in selfconsumer-direction. (~~3-29-10~~)(____)

04. SFTP. Secure File Transfer Protocol. A secure means of transferring data that allows certain Department staff to access information regarding selfconsumer-direction participants. (~~3-29-10~~)(____)

05. Vendor. Provides goods and services rendered by agencies and independent contractors in accord with a participant's support and spending plan. (3-29-10)

06. Medicaid Billing Report. A report generated every payroll period by the provider; it provides a list and count of unduplicated participants and payroll expenditures by service code, based on the date of service time frame specified by the user. (3-29-10)

301. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: SELFCONSUMER-DIRECTED COMMUNITY SUPPORTS.

01. Federal Tax ID Requirement. The fiscal employer agent must obtain a separate Federal Employer Identification Number (FEIN) specifically to file tax forms and to make tax payments on behalf of program participants under Section 3504 of the Internal Revenue Code (26 USC 3504). In addition, the provider must: (3-29-10)

a. Maintain copies of the participant's FEIN, IRS FEIN notification letter, and Form SS-4 Request for FEIN in the participant's file. (3-29-10)

b. Retire participant's FEIN when the participant is no longer an employer under selfconsumer-directed community supports (§CDCS). (~~3-29-10~~)(____)

02. Requirement to Report Irregular Activities or Practices. The provider must report to the Department any facts regarding irregular activities or practices that may conflict with federal or state rules and regulations; (3-29-10)

03. Procedures Restricting FMS to Adult and Children's DD Waiver and Children's HCBS State Plan Option Participants. The provider must not act as a fiscal employer agent and provide fiscal management services to ~~an HCBS~~ DD waiver or Children's HCBS State Plan Option participant for whom it also provides any other services funded by the Department. (3-29-10)(____)

04. Policies and Procedures. The provider must maintain a current manual containing comprehensive policies and procedures. The provider must submit the manual and any updates to the Department for approval. (3-29-10)

05. Key Contact Person. The provider must provide a key contact person and at least (2) two other people for backup who are responsible for answering calls and responding to e-mails from Department staff and ensure these individuals respond to the Department within one (1) business day. (3-29-10)

06. Face-to-Face Transitional Participant Enrollment. The provider must conduct face-to-face transitional participant enrollment sessions in group settings or with individual participants in their homes or other designated locations. The provider must work with the regional Department staff to coordinate and conduct enrollment sessions. (3-29-10)

07. SFTP Site. The provider must provide an SFTP site for the Department to access. The site must have the capability of allowing participants and their employees to access individual specific information such as time cards and account statements. The site must be user name and password protected. The provider must have the site accessible to the Department upon commencement of the readiness review. (3-29-10)

08. Required IRS Forms. The provider must prepare, submit, and revoke the following IRS forms in accordance with IRS requirements and must maintain relevant documentation in each participant's file including: (3-29-10)

- a. IRS Form 2678; (3-29-10)
- b. IRS Approval Letter; (3-29-10)
- c. IRS Form 2678 revocation process; (3-29-10)
- d. Initial IRS Form 2848; and (3-29-10)
- e. Renewal IRS Form 2848. (3-29-10)

09. Requirement to Obtain Power of Attorney. The provider must obtain an Idaho State Tax Commission Power of Attorney (Form TC00110) from each participant it represents and must maintain the relevant documentation in each participant's file. (3-29-10)

10. Requirement to Revoke Power of Attorney. The provider must revoke the Idaho State Tax Commission Power of Attorney (Form TC00110) when the provider no longer represents the participant and must maintain the relevant documentation in the participant's file. (3-29-10)

302. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: CUSTOMER SERVICE.

01. Customer Service System. The provider must provide a customer service system to respond to all inquiries from participants, employees, agencies, and vendors. The provider must: (3-29-10)

- a. Provide staff with customer service training with an emphasis on ~~self~~consumer-direction. (3-29-10)(____)
- b. Ensure staff are trained and have the skills to assist participants with enrollment and to help them understand their account statements. (3-29-10)
- c. Ensure that fiscal employer agent personnel are available during regular business hours, 8 a.m. to 5

- p.m. Mountain Time, Monday through Friday, excluding state holidays. (3-29-10)
- d.** Provide translation and interpreter services (i.e., American Sign Language and services for persons with limited English proficiency). (3-29-10)
 - e.** Provide prompt and consistent response to verbal and written communication. Specifically: (3-29-10)
 - i.** All voice mail messages must be responded to within one (1) business day; and (3-29-10)
 - ii.** All written and electronic correspondence must be responded to within five (5) business days. (3-29-10)
 - f.** Maintain a toll-free phone line where callers speak to a live person during business hours and are provided the option to leave voice mail at any time, all day, every day. (3-29-10)
 - g.** Maintain a toll-free fax line that is available all day, every day, exclusively for participants and their employees. (3-29-10)
- 02. Complaint Resolution and Tracking System.** The provider is responsible for receiving, responding to, and tracking all complaints from any source under this agreement. A complaint is defined as a verbal or written expression of dissatisfaction about fiscal employer agent services. The provider must: (3-29-10)
- a.** Respond to all written and electronic correspondence within five (5) days. (3-29-10)
 - b.** Respond to verbal complaints within one (1) business day. (3-29-10)
 - c.** Maintain an electronic tracking system and log of complaints and resolutions. The electronic log of complaints and resolutions must be accessible for Department review through the SFTP site. (3-29-10)
 - d.** Log and track complaints received from the Department pertaining to fiscal employer agent services. (3-29-10)
 - e.** Compile a summary report and analyze complaints received on a quarterly basis to determine the quality of services to participants and to identify any corrective action necessary. (3-29-10)
 - f.** Post the complaint to the SFTP site within twenty-four (24) hours any day a complaint is received Monday through Friday. Saturday and Sunday complaints must be posted to the SFTP site by close of business the following Monday. Failure to comply will result in a fifty dollar (\$50) penalty payable to Medicaid within ninety (90) days of incident. (3-29-10)