

1915(k) | Community First Choice Option in New York State

OVERVIEW

The Community First Choice (CFC) Option is a community-based Medicaid state plan service which includes hands on assistance, safety monitoring, and cueing for assistance with activities of daily living, instrumental activities of daily living and health related functions based on functional need, not diagnosis or age.

BACKGROUND

For over twenty years, the disability rights community from New York has advocated to reform Title XIX's (Medicaid) long term services and support provisions to end the institutional bias that forces people into unwanted and unnecessary institutionalizations. New York State Senator Schumer played an integral role in the passage of CFC as part of the Affordable Care Act.

THE BASICS

- The Affordable Care Act, Section 2401, added 1915(k) to the Social Security Act under Medicaid
- Supports choice, independence, and integration in accordance with the *Olmstead* decision
- Person-centered and consumer-directed
- Services must be provided in a home and community-based setting and CANNOT be provided in a:
 - Nursing facility
 - Institution for mental diseases (IMD)
 - Intermediate care facility for the mentally retarded (ICF-MR)
 - Any settings located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment or custodial care
 - A building on the grounds of or immediately adjacent to a public institution or disability-specific housing complex designed expressly around an individual's diagnosis
- Must be provided on a statewide basis
- Eliminates HCBS waiting lists
- Available for implementation as of October 1, 2011
- States that implement CFC will receive an *additional* 6% in federal matching funds, with no sunset
- In addition to NY, states that have indicated they will implement CFC (to date): AK, CA, MD, RI, and WA

ELIGIBILITY¹

- Must be Medicaid eligible
- Must have an income less than 150% of the Federal Poverty Level or, if greater, the income level required to be eligible for nursing facility services under the State plan²
- Must require an institutional level of care (hospital, nursing facility, ICF-MR, or IMD)

REQUIRED SERVICES

States must provide the following services.

- Attendant services and supports to assist in accomplishing: activities of daily living (ADL), instrumental activities of daily living (IADL), and health-related tasks
- Attendant services and supports include: hands-on assistance, safety monitoring, and cueing
- Assistance with the learning skills necessary to accomplish ADL, IADL, and health-related tasks
- Allows for the purchase of back-up systems (such as beepers or other electronic devices) to ensure continuity of services and supports.
- The State must develop and offer a voluntary training to individuals on how to select, manage and dismiss attendants.

¹ This information is based on the statute (P.L. 111-148 §2401). When final rules are issued, there may be a change to the income eligibility criteria.

² This is not applicable to New York State because the State does not have a separate income eligibility criteria for nursing facility services.

PERMISSIBLE SERVICES & SUPPORTS

States can choose to provide the following services.

- Transition costs, such as security deposits for rent or utilities, purchasing basic kitchen supplies, etc.
- Services that increase independence or substitute for human assistance, such as assistance with learning how to use public transportation, for example.

EXCLUDED SERVICES

CFC funding cannot be used to pay for the following services because either the service cannot be paid for by Medicaid or the service is available through alternative mechanisms, such as HCBS waivers.

- Room and board
- Special education and related services provided under IDEA and vocational rehab
- Assistive technologies (other than those used as back-up systems)
- Medical supplies and equipment
- Home modifications

MODELS FOR SERVICE DELIVERY

States can select one or more model for the delivery of CFC. Ideally, states will provide consumers with a robust system in order to increase choice. Services must be provided under a person-centered plan.

- “Agency Provider Model” includes a range of approaches, with the individual having the ability to select, train, and dismiss their direct attendant, including:
 - Traditional agency managed services
 - Agency-with-Choice model where the agency operates solely as a fiscal intermediary³
- “Self-Directed Model with service budget” including:
 - Vouchers
 - Direct Cash Payments (similar to a Cash & Counseling model)
 - Fiscal Agent

CONSUMER RIGHTS

- Emphasis on a person-centered plan and planning process, which includes individuals chosen by the consumer
- Consumers can select family members (except spouse or legal guardian) or any other individuals to provide services and supports
- Consumers can train workers in specific areas of attendant care needed by the individual and to perform the needed assistance in a manner that is consistent with the individual’s personal, cultural, and/or religious preferences
- Consumers can establish additional staff qualifications based on their specific needs and preferences

SO, WHAT WILL CFC LOOK LIKE IN NEW YORK?

Many decisions still have to be made. CFC sets the framework for a fully integrated, non-diagnosis-specific, community-based service system that provides individuals the civil right to live independently in the community and out of an institution. CFC is structured to allow states to work within their unique Medicaid system of state plan services, waivers, and managed care services. The decisions for structure, implementation, and monitoring are the responsibility of the state’s CFC Development and Implementation Council⁴, which must be comprised of mostly people disabilities, seniors, and their representatives – as required by CFC.

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³ This is similar to New York State’s Consumer Directed Personal Assistance Program (CDPAP)

⁴ The New York State Department of Health has temporarily suspended the creation of the Development and Implementation Council, http://www.health.ny.gov/facilities/long_term_care/solicitation_community_first_choice_options.htm