

CALIFORNIA CODE OF REGULATIONS

DIVISION 2. CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

CHAPTER 3. COMMUNITY SERVICES

SUBCHAPTER 2.5. SELF-DIRECTED SERVICES

Article 1. Definitions.

Section 54400. Meaning of Words.

Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense. Words in the singular form include the plural form. Use of the word "shall" denotes mandatory conduct. "May" denotes permissive conduct.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4405, 4648 and 4685.7, Welfare and Institutions Code.

Section 54401. Definitions.

(a) As used in this subchapter, the following words and phrases shall have the meanings specified in Section 54302 of these regulations:

- (1) Consumer;
- (2) Department;
- (3) Director;
- (4) Individual program plan (IPP);
- (5) Generic agency;
- (6) Generic support(s);
- (7) Regional center;
- (8) Vendor;
- (9) Vendorization.

(b) As used in this subchapter, "planning team" shall have the meaning specified in Section 4512(j) of the Welfare and Institutions Code.

(c) As used in this subchapter, the following words and phrases shall have the meanings specified in Section 4685.7 of the Welfare and Institutions Code:

- (1) Financial management services;
- (2) Supports broker;
- (3) Supports brokerage;
- (4) Self-directed services;
- (5) Advocacy services;
- (6) Individual budget;

- (7) Risk pool;
- (8) Participant;
- (9) Waiver.

(d) As used in this subchapter, the following words and phrases shall have the following meanings:

- (1) "Category code" means a number that is assigned by the Department to each of the six budget categories that may be included in the participant's individual budget;
- (2) "Designated provider" means an individual who, or a legal entity that, meets service provider qualifications and provides services and supports on a non-paid basis; and
- (3) "Service provider" means any person or legal entity, including a designated provider, qualified under the terms of Article 2 of these regulations to provide services or supports to a participant in self-directed services.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4512, 4648 and 4685.7, Welfare and Institutions Code.

Article 2. Standards for Self-Directed Services.

Section 54402. General Requirements.

- (a) Self-directed services shall be implemented pursuant to Section 4685.7 of the Welfare and Institutions Code.
- (b) Participation in self-directed services is voluntary, and consumers determined to be eligible for participation may enroll in the program, or discontinue participation in the program, at any time.
- (c) A service provider and the agent or employee of a service provider shall not be considered an agent or employee of the regional center or the State of California.
- (d) Consistent with the requirements of subsection 4685.7(a) of the Welfare and Institutions Code, self-directed services shall not be implemented until the Department has obtained federal approval of a waiver pursuant to Title 42, United States Code, Section 1315 ("waiver").
- (e) Notwithstanding paragraph 4685.7(b)(6) of the Welfare and Institutions Code, only services and supports included in the Department's approved federal waiver shall be funded through self-directed services.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4620, 4648, 4685.7, and 15600, Welfare and Institutions Code.

Section 54403. Enrollment Process.

- (a) Prior to enrollment in self-directed services, a consumer and, when appropriate, his or her parents, legal guardian or conservator, or authorized representative shall:
- (1) Express to the regional center a desire to participate in self-directed services; and
 - (2) Receive an in-depth orientation to self-directed services provided by the regional center pursuant to subsection 4685.7(d) of the Welfare and Institutions Code, using materials and guidelines developed by the Department. A regional center may develop and use additional training materials.
- (b) Within 30 days of the consumer's request to enroll in self-directed services, the regional center shall:
- (1) Make a determination of eligibility pursuant to subsection 4685.7(i) of the Welfare and Institutions Code; and
 - (2) For consumers determined to be eligible, convene a planning team meeting to initiate planning for transition to the self-directed services program.
- (c) At the planning team meeting, the following shall occur:
- (1) The regional center shall provide the consumer in writing, two individual budget amounts developed pursuant to the methodology in subsection 4685.7(e) of the Welfare and Institutions Code; and
 - (2) Consistent with Section 4646.5 of the Welfare and Institutions Code, the planning team shall determine the type and amount of services needed to assist the consumer with planning for the transition to self-directed services.
- (d) Within 5 working days of a determination that the consumer is not eligible for self-directed services, the regional center shall provide the consumer written notification of:
- (1) The reason for the determination of ineligibility; and
 - (2) Fair hearing rights pursuant to Section 4701 et seq., of the Welfare and Institutions Code.
- (e) When a consumer is found ineligible for self-directed services because he or she receives residential or day services pursuant to paragraph 4685.7(i)(3) of the Welfare and Institutions Code, the consumer and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, may request that a regional center provide person-centered planning services in order to make arrangements for the transition to self-directed services. In the event that the consumer makes such a request, the regional center shall initiate person-centered planning services that are needed to assist the consumer with planning for the transition to self-directed services within 60 days of a request.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4512, 4646, 4646.5, 4685.7 and 4701, Welfare and Institutions Code.

Section 54404. Individual Budget Methodology.

- (a) A participant is provided an individual budget amount as follows:
- (1) Individuals with a history of purchased services shall be provided with individual budget amounts as established in paragraphs (b)(1) and (b)(2) of this section; or
 - (2) When there is no history of purchased services, individuals shall be provided with an individual budget amount as established by paragraph (b)(2) of this section.
- (b) The individual budget amounts available to the participant shall be calculated as follows:
- (1) An amount equal to 90 percent of the annual regional center purchase-of-service costs for the participant for the previous two fiscal years; or
 - (2) An amount equal to 90 percent of the annual purchase-of-service costs for the previous two fiscal years based on consumers with similar characteristics who do not receive self-directed services. This amount shall be based on factors including, but not limited to:
 - (A) Age;
 - (B) Type of residence;
 - (C) Type of disability and ability;
 - (D) Functional skills; and
 - (E) Whether the individual is in transition.
 - (3) Neither calculation described in this subsection shall include the cost of purchasing durable specialized medical equipment and supplies, environmental accessibility adaptations, and vehicle adaptations.
- (c) The calculation described in subsection (b) of this section shall be based upon fiscal and consumer data from the Department's information system. The Department shall, not less than annually, publish the values associated with the characteristics described in clauses (b)(2)(A) through (b)(2)(D) of this section that will be used in the calculation.
- (d) Notwithstanding subsections (a) and (b) of this section, a regional center shall, based upon identified need, fund the actual cost to purchase the following services as described in the approved federal waiver for self-directed services:
- (1) Specialized medical equipment and supplies. The equipment and supplies must be durable;
 - (2) Environmental accessibility adaptations; and
 - (3) Vehicle adaptations.

Authority cited: Section 4685.7, Welfare and Institutions Code; Section 11152, Government Code. Reference: Sections 4685.7 and 4783, Welfare and Institutions Code.

Section 54405. Individual Program Plan Development.

- (a) The regional center shall convene the planning team within 60 days from the date of the initial planning team meeting pursuant to subsection 54403(b), unless a longer period is agreed upon by the consumer, to complete the IPP for self-directed services.
- (b) In accordance with Section 4646.5 of the Welfare and Institutions Code and subsection 4685.7(k), the planning team shall utilize the person-centered planning process to develop the IPP for the participant. The IPP shall detail goals and objectives for the participant that are to be met through the purchase of participant-selected services and supports as described in the approved federal waiver for self-directed services.
- (c) In addition to the requirements specified in subsection (b) of this section, the IPP for a participant shall include, but not be limited to, the following:

 - (1) Service provider qualifications necessary to meet the needs of the individual;
 - (2) Emergency back-up plans necessary to ensure the participant's health or safety;
 - (3) Name and contact information of any representative designated pursuant to subsection 54406(b);
 - (4) Name or names of the selected financial management services provider consistent with subsection 54407(a) and supports broker consistent with subsection 54407(c);
 - (5) The individual budget amount selected by the participant to implement the IPP;
 - (6) Consistent with the type and amount of services identified, and as determined by the participant, the individual budget funds distributed among the following budget categories:

 - (A) Community living;
 - (B) Health and clinical services;
 - (C) Employment;
 - (D) Training and education;
 - (E) Environment and medical supports; and
 - (F) Transportation; and

 - (7) A statement that the participant agrees with the terms and conditions for participation in self-directed services, pursuant to paragraph 4685.7(i)(4) of the Welfare and Institutions Code.

- (d) A regional center may not prohibit the purchase of any service or support that is specified in the participant's IPP and allowable under paragraph 4685.7(b)(6) of the Welfare and Institutions Code.
- (e) Consistent with subsection 4646(g) of the Welfare and Institutions Code, a regional center representative and the participant or, where appropriate,

his or her parents, legal representative, or conservator, shall sign the IPP prior to its implementation.

- (f) The date of the participant's selection of an individual budget amount shall be the same date as the implementation date of the IPP pursuant to subsection (e) of this section. This amount shall be available to the participant for the 12 months immediately following the participant's selection.
- (g) A regional center shall forward the IPP and any amendments to the participant and financial management services provider within 10 working days of agreement with the IPP.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4646, 4646.5, and 4685.7, Welfare and Institutions Code.

Section 54406. Individual Program Plan Implementation.

- (a) A participant directs implementation of the IPP with assistance from the supports broker and financial management services provider.
- (b) An adult participant may designate a representative to effect implementation of the IPP, pursuant to subsection 4685.7(m) of the Welfare and Institutions Code.
- (c) A participant may change the distribution of funds among categories described in paragraph 54405(c)(6) within an individual budget under the following conditions:
 - (1) The total amount of the individual budget shall not change;
 - (2) For a transfer of up to 10 percent of the original funds in any budget category, a participant shall notify the financial management services provider. The participant may complete any number of these transfers from one budget category or categories to another budget category or categories. The amount transferred shall not be more than 10 percent of the original amount allocated to the budget category from which the funds are transferred;
 - (3) For a transfer in excess of 10 percent of the original funds in any budget category, the participant shall obtain approval from the regional center in the following manner:
 - (A) The participant shall request the transfer from the regional center;
 - (B) The regional center shall convene a planning team meeting with the participant to make a decision about the requested transfer; and
 - (C) Upon planning team agreement of the transfer, the regional center shall:
 - (i) Amend the IPP; and

- (ii) Forward the amended IPP to the participant and the financial management services provider within 10 working days from the time the IPP amendment is agreed upon.
- (d) The regional center may only deny a transfer if necessary to protect the health or safety of the participant. The regional center shall within 5 working days provide written notification of:
 - (1) The reasons for the denial to the participant and the financial management services provider; and
 - (2) The participant's appeal rights pursuant to Section 4701 et seq., of the Welfare and Institutions Code.
- (e) Consistent with the implementation date of the IPP pursuant to subsection 54405(e), the regional center shall annually ascertain from the participant whether there are any circumstances that require a change to the participant's annual individual budget amount. Based upon the review:
 - (1) The regional center shall calculate a new individual budget amount based on the methodology described in Section 54404;
 - (2) The participant may choose the new individual budget amount or choose to continue using the current individual budget amount; and
 - (3) If a new individual budget amount is selected, the planning team shall amend the IPP consistent with Section 54405.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4646, 4646.5, 4701, 4685.7, Welfare and Institutions Code.

Section 54407. Participant Responsibilities.

- (a) A participant shall select at least one, but not more than two, types of financial management services providers, consistent with paragraph 4685.7(b)(1) of the Welfare and Institutions Code, as follows:
 - (1) A paid individual or legal entity to manage and direct the disbursement of individual budget funds functions as the participant's agent by providing and conducting payroll services and fiscal accounting activities;
 - (2) A paid legal entity to serve as a co-employer with the participant. The co-employer may perform any or all of the functions listed in clauses (b)(1)(A) through (b)(1)(G) of this section, and conduct employment-related tasks, including fiscal and payroll services; or
 - (3) An individual or legal entity designated as a non-paid agent to perform the same functions specified in paragraph (1) of this subsection for the participant.
- (b) Consistent with the requirements of paragraph 4685.7(i)(4) of the Welfare and Institutions Code, a participant shall:
 - (1) Direct, manage and supervise service providers as follows:
 - (A) Select and hire service providers;

- (B) Determine the service provider's duties and work schedule;
 - (C) Supervise the service providers;
 - (D) Evaluate service providers and make decisions about maintaining or changing those providers based upon quality of service;
 - (E) Ensure service providers receive essential training to meet the participant's needs and preferences;
 - (F) Approve billing documentation verifying that services were provided prior to payment by the financial management services provider; and
 - (G) Submit annual performance evaluations for the financial management services provider and supports broker to the regional center.
- (2) Purchase the type and amount of services and supports only as specified in the IPP. Except as permitted by subsection 54406(c), a modification in the type and amount of services or supports shall require the regional center to convene a planning team meeting with the participant pursuant to Section 4646 et seq., of the Welfare and Institutions Code;
- (3) Prior to the delivery of service, complete a written agreement with all service providers directly employed by the participant. The agreement shall include, but not be limited to, the following:
 - (A) The duties to be performed within authorized hours consistent with the participant's IPP;
 - (B) Expectations and standards for performance;
 - (C) The fee negotiated for services and supports including, but not limited to, taxes, benefits, insurance, and billing requirements;
 - (D) A statement of compliance with all state and federal statutes and regulations related to providing self-directed services;
 - (E) Certification that all information submitted to the participant as employer or the financial management services provider as co-employer, for purposes of billing and payment is accurate and complete;
 - (F) A statement affirming the participant's legal rights and the duty of the service provider to honor these rights;
 - (G) A statement agreeing to maintain the participant's privacy and security of confidential personal information; and
 - (H) A statement acknowledging the specific prohibition of seclusion and restraints in the provision of self-directed services.

The agreement shall be signed by the participant and the service provider. A financial management services provider who is a co-employer shall also sign the written agreement.
- (4) File relevant complaints and grievances, as appropriate, pursuant to the Consumer Rights Complaint Process described in Section 4731 et seq., of the Welfare and Institutions Code;
- (5) Report significant changes in needs or circumstances, including concerns about services and supports, to the supports broker, and the regional center as needed; and

- (6) Participate in periodic evaluations of self-directed services upon the request of the regional center or the Department.

- (c) The participant shall select supports brokerage services, as defined in paragraph 4685.7(b)(2) of the Welfare and Institutions Code, as follows:
 - (1) A paid or designated supports broker; or
 - (2) A service coordinator employed by the regional center, subject to the following:
 - (A) A regional center is under no obligation to provide supports brokerage services; and
 - (B) A regional center has a right to decline a specific request for a service coordinator to fulfill the functions of a supports broker.

- (d) If it is determined that a service provider no longer meets the requirements of Sections 54409 or 54410, the participant shall terminate the services of the provider.

Authority cited: Section 4685.7(m), Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4646, 4646.5, 4648, 4685.7, 4731 and 4783, Welfare and Institutions Code.

Section 54408. Regional Center Responsibilities.

- (a) In addition to the requirements of Section 4685.7 of the Welfare and Institutions Code, the regional center shall:
 - (1) Consistent with the implementation date of the IPP pursuant to subsection 54405(e), meet with the participant to review and document the participant's progress toward achieving IPP objectives and the individual budget statements as follows:
 - (A) The meetings shall take place at a location determined by the participant with the following frequency:
 - (i) At least quarterly for participants who reside in their own homes;
 - (ii) At least annually for participants who reside with parents or a guardian;
 - (2) Review and maintain the participant's monthly individual budget statements submitted by the financial management services provider; and
 - (3) Vendorize financial management services providers in accordance with subchapter 2 of chapter 3 of these regulations.

- (b) The regional center may advance funds to the financial management services provider in the first quarter of the participant's individual budget year as follows:
 - (1) The amount of the funds advanced shall not exceed 25 percent of the individual budget amount;
 - (2) The total of the advance and payments of invoices shall not exceed 100 percent of the individual budget amount; and

- (3) If all bills from the financial management services provider for services and supports have been processed and there are still unspent funds from the advance, the financial management services provider shall return the unused funds to the regional center no more than 90 days from the end of the individual budget year.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4646, 4646.5, 4648, 4685.7, and 15600, Welfare and Institutions Code.

Section 54409. Service Provider Responsibilities.

- (a) A service provider shall fulfill the responsibilities for the service which they will provide as specified in the participant's IPP and required in the approved federal waiver for self-directed services.
- (b) Any service provider directly employed by the participant shall:
- (1) Sign a written agreement with the participant consistent with paragraph 54407(b)(3);
 - (2) Provide only those services that have been agreed upon;
 - (3) Submit billing to the participant for approval consistent with the written agreement that specifies the type of service, date, actual service time and location, and amount of service;
 - (4) Comply with the special incident reporting requirements of a vendor described in Section 54327 of these regulations. A parent or participant acting as a designated provider is exempt from these special incident reporting requirements;
 - (5) Maintain service provider records and files pursuant to Section 54411; and
 - (6) Provide access to the regional center and Department, with or without notice, for the purpose of conducting audits as specified in Section 4648.1 of the Welfare and Institutions Code.
- (c) In addition to the requirements in subsections (a) and (b) of this section, a supports broker under the direction of a participant, shall at a minimum assist the participant to:
- (1) Participate in the person-centered planning process;
 - (2) Identify immediate and long term needs, preferences, goals and objectives of the participant for developing the IPP;
 - (3) Make informed decisions about the individual budget;
 - (4) Develop options to meet identified needs and access community services and supports specified in the IPP;
 - (5) Negotiate rates of payment and written agreements with service providers;
 - (6) Select, hire and train service providers, as applicable; and
 - (7) Develop and implement risk management agreements and emergency back-up plans.

- (d) The supports broker shall provide information and practical skills training to the participant in the following areas:
- (1) Person-centered planning and its application;
 - (2) The range and scope of individual choices and options;
 - (3) The process for changing the IPP and individual budget;
 - (4) Recruitment and hiring of service providers;
 - (5) The management of service providers, including effectively directing, supervising, communicating, and problem-solving;
 - (6) Participant responsibilities in self-directed services, including the appeal process; and
 - (7) Recognition and reporting of abuse, neglect, and exploitation.
- (e) A paid financial management services provider must be vendored by a regional center and shall obtain Department certification pursuant to Section 54416 prior to vendorization.
- (f) A designated financial management services provider must be vendored by a regional center and shall:
- (1) Demonstrate to a regional center the capacity to fulfill the roles and responsibilities of a financial management services provider as defined in the approved federal waiver for self-directed services;
 - (2) Be subject to criminal history background checks pursuant to Section 54413 prior to vendorization; and
 - (3) Provide fiscal management services consistent with paragraph 4685.7(b)(1) of the Welfare and Institutions Code only to the participant who is his or her direct employer.
- (g) A parent or legal guardian of a minor child may provide community living supports services as specified in the participant's IPP and defined in the approved federal waiver for self-directed services, as follows, if:
- (1) The parent or legal guardian has left a full-time job or is prevented from obtaining full-time employment because of an extraordinary need to provide community living supports services that is extraordinary. Extraordinary need for the purposes of this paragraph is unique assistance that is required due to the nature of the participant's developmental disability, and that is not required by other children of the same age in the household who are not developmentally disabled;
 - (2) There is no other suitable provider of community living supports services available in the immediate geographic area;
 - (3) Out-of-home placement would otherwise be required, or the child would not have his or her extraordinary needs met without the provision of community living supports services by the parent or legal guardian; and
 - (4) All generic services have been exhausted.
- (h) The parent or legal guardian providing services pursuant to subsection (f) of this section must comply with all applicable requirements concerning the submission of billings to the financial management services provider

and such billings are subject to post-payment review by the regional center and the Department to ensure that services provided and billed for are properly documented.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4502, 4648.1, and 4685.7, Welfare and Institutions Code.

Section 54410. Statement of Service Provider Qualifications.

- (a) A service provider shall meet the qualifications for the service which they will provide as specified in the participant's IPP and required in the approved federal waiver for self-directed services.
- (b) A prospective service provider (other than a financial management services provider) shall complete and submit to the financial management services provider a signed written statement of qualifications, which includes:
- (1) The service provider's name, including the name of any governing body or management organization;
 - (2) The service provider's Social Security Number or Federal Employer Identification Number, or a copy of any document accepted by the federal government which establishes the identity of the applicant;
 - (3) The service provider's mailing and business address;
 - (4) The address of the location where the service is to be provided;
 - (5) Name of the legal owner or executive director, or other person serving in like capacity, if the service provider is a legal entity other than a natural person;
 - (6) Type of service to be provided;
 - (7) Telephone number;
 - (8) Identification of any consultants, subcontractors and community resources to be used by the service provider in providing self-directed services;
 - (9) Copies of:
 - (A) Any license, credential, registration, certificate, insurance policy, bond, or permit required to perform the service, or proof of application for such license, credential, registration, certificate, insurance policy, bond or permit. If the required document is not issued to the prospective service provider by the issuing entity within 90 days, any acceptance of the statement of qualifications shall be revoked;
 - (B) Any academic degree required for performance of the service;
 - (C) Any waiver from licensure, registration, certification, credential, or permit from the responsible controlling agency; and
 - (D) The qualifications and duty statement for the prospective service provider and related staff; and
 - (10) A statement of criminal history, other than a minor traffic violation.

- (c) The financial management services provider shall review a prospective service provider's completed statement of qualifications within 10 working days after receipt, and shall ensure the following:
- (1) The prospective service provider meets the requirements for the service they intend to provide; and
 - (2) A criminal history background check is initiated in accordance with Section 54413.
- (d) The financial management services provider shall issue a letter of verification to any prospective service provider and to the participant within 5 working days of determining that all applicable criteria have been met. This letter does not guarantee that any service provider will be utilized, nor used for any length of time, or otherwise employed by a participant. The letter of verification shall, at a minimum, specify the following:
- (1) The prospective service provider meets self-directed services qualifications to provide the service described in the participant's IPP;
 - (2) The type of service to be provided in accordance with the approved federal waiver for self-directed services; and
 - (3) The effective period of any license, credential, registration, certificate, or permit required, and that the service provider shall not provide any service if any of these required documents is suspended or revoked.
- (e) For a prospective service provider who is not issued a letter of verification, the financial management services provider shall provide within 5 working days of determining that all criteria have not been met written notification that describes the reason for the denial. The prospective service provider may resubmit a statement of qualifications that demonstrates that the reason for the denial has been remedied.
- (f) The financial management services provider shall revoke a letter of verification and within 5 days of the revocation provide written notification to the participant and the regional center that payment for services of the service provider will be terminated when the planning team determines any of the following:
- (1) The continued utilization of the service provider would threaten the health or safety of the participant;
 - (2) The services provided do not meet the terms and conditions of the signed written agreement between the participant and the service provider;
 - (3) The service provider no longer meets the qualifications in accordance with the approved federal waiver for self-directed services;
 - (4) The service provider's supporting documentation for billing purposes does not comply with the requirements of paragraphs 54411(b)(2) and 54411(b)(3); or

- (5) The source billing documentation is not submitted by the service provider or does not sufficiently support the services specified in the participant's IPP.
- (g) The letter of verification shall be automatically revoked upon notice from the Department of the service provider's ineligibility due to a criminal history pursuant to subsection 54413(g).

Authority cited: Sections 4648 and 4685.7, Welfare and Institutions Code, and Section 11152, Government Code. Reference: Sections 4631, 4648, 4648.1, 4685.7 and 4626-4628, Welfare and Institutions Code.

Section 54411. Service Provider Records and Files.

- (a) All service providers shall maintain records of services provided to participants as follows:
- (1) The supporting documentation for issuing a letter of verification;
 - (2) Records must specify for each participant the actual service date and time, locations, units of service, cost, and nature of services provided;
 - (3) The service billed is the same service verified in the service provider's statement of qualifications pursuant to subsection 54410(b) and as specified in the participant's IPP; and
 - (4) Such records shall be maintained by the service provider for a minimum of 5 years from the date of final payment for the State Fiscal Year in which the services were rendered or until audit findings have been resolved, whichever is longer.
- (b) In addition to the requirements in subsection (a) of this section, the financial management services provider shall maintain records and a file for each service provider, which shall include copies of:
- (1) The service provider statement of qualifications described in subsection 54410(b);
 - (2) Any required certificate, credential, license, academic degree, permit or registration pursuant to clauses 54410(b)(9)(A), (B) and (C);
 - (3) The service provider letter of verification issued pursuant to subsection 54410(d);
 - (4) The staff qualifications and duty statements described in clause 54410(b)(9)(D);
 - (5) A signed written agreement between the participant and the service provider pursuant to paragraph 54407(a)(3); and
 - (6) Documentation of a criminal history background clearance or exemption for applicable service providers, pursuant to Section 54413.
- (c) The Department shall annually conduct a review of a random statewide sample of financial transactions performed by the financial management

services providers to verify compliance with paragraphs (a)(2) and (a)(3) of this section.

- (d) All service providers shall make available any books and records pertaining to the provided services as described in Section 4648.1 of the Welfare and Institutions Code, and be subject to audits as described in Section 50606 of these regulations.

Authority cited: Section 4685.7, Welfare and Institutions Code and Section 11152, Government Code. Reference: Sections 4631, 4646.5, 4648.1, 4648.2, 4685.7, and 4691, Welfare and Institutions Code.

Section 54412. Risk Pool Allocation.

- (a) Pursuant to subsection 4685.7(f) of the Welfare and Institutions Code and subject to the availability of funding, the Department shall administer a risk pool fund to meet the unanticipated needs of participants in self-directed services consistent with the requirements of the statute.
- (b) Upon the recommendation of the planning team and subject to the approval of the Executive Director of the regional center, the participant may be eligible for risk pool funds consistent with the requirements of the statute when both of the following conditions are satisfied:
- (1) There is a substantial unanticipated service or support need that was not known at the time the IPP was agreed upon. A substantial unanticipated need for the purposes of this section includes an urgent need to relocate a participant or to maintain the existing living arrangement, or a catastrophic injury or illness; and
 - (2) The funds in the participant's individual budget are insufficient to address the unanticipated need.
- (c) The determination made pursuant to subsection (b) of this section must be documented in the IPP.
- (d) The regional center shall submit written documentation to the Department that specifies the participant's name, a description of the conditions used to satisfy subsection (b) of this section, and the amount of risk pool funds used.
- (e) The regional center may advance risk pool funds to the financial management services provider for the purposes described in subsection (b) of this section.
- (f) If all bills from the financial management services provider for services and supports have been processed and there are still unspent funds from the advance of risk pool funds, the financial management services provider shall return these unused funds to the regional center no more than 90 days from the end of the individual budget year.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 13340(a), Government Code. Reference: Sections 4648(a) and 4685.7, Welfare and Institutions Code; and Section 13340, Government Code.

Article 3. Criminal History Background Check.

Section 54413. Criminal History Background Check.

- (a) Pursuant to subsection 4685.7(r) of the Welfare and Institutions Code, the participant may request a criminal history background check for a prospective or current service provider of:
- (1) Direct care services; or
 - (2) Supports brokerage services.
- (b) Notwithstanding the requirement of subsection (a) of this section, a service coordinator employed by a regional center shall not be subject to a criminal history background check.
- (c) Consistent with subsection (a) of this section, in the event that the prospective or current service provider is employed by a legally constituted entity other than a natural person, the executive director of the entity or other person serving in like capacity shall also be subject to a criminal history background check.
- (d) As a condition of providing financial management services, an individual or the executive director of the entity or other person serving in like capacity shall be subject to a criminal history background check as follows:
- (1) A prospective paid provider shall request a criminal history background check as part of certification by the Department consistent with Section 54416; and
 - (2) A prospective designated provider shall request a criminal history background check as part of vendorization by a regional center, consistent with subchapter 2 of chapter 3 of these regulations.
- (e) The Department shall conduct criminal history background checks for prospective and current service providers listed in subsections (a), (c) and (d).
- (f) The participant's financial management services provider shall assist the prospective or current service provider listed in subsections (a) and (c) of this section to complete the criminal history background check process as follows:
- (1) Request a criminal history background check of a prospective or current service provider in a format determined by the Department;
 - (2) Submit to the Department the completed request for the criminal history background check; and

- (3) Refer the prospective or current service provider to local law enforcement agencies that conduct Live Scan fingerprinting for transmittal to the Department of Justice.
- (g) The Department of Justice shall conduct the criminal history background check and submit the information electronically to the Department, pursuant to paragraph 4689.2(d)(2) of the Welfare and Institutions Code. For those individuals who have not resided continuously in California for the past two years, the criminal history background check shall include criminal history record information maintained by the Federal Bureau of Investigation.
- (h) The Department shall review the criminal history report and provide written notification to the participant, prospective or current service provider, financial management services provider, and regional center as to the eligibility or ineligibility of the prospective or current service provider to provide services.
- (i) Any prospective or current paid service provider may seek an exemption to a denial of eligibility in accordance with subsection 4689.2(f) of the Welfare and Institutions Code.
- (j) After a review of the criminal history report, the Director of the Department, or his or her designee, shall have the authority to grant an exemption to a denial when:

 - (1) The Director has substantial and convincing evidence to support a reasonable belief that the prospective or current service provider is of such good character as to justify approval of an exemption:

 - (A) The Director shall have the authority to consider factors, including any of the following, as evidence of good character and rehabilitation:

 - (i) The nature of the crime;
 - (ii) The period of time since the crime was committed and the number of offenses;
 - (iii) The circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition;
 - (iv) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior;
 - (v) The granting of a full and unconditional pardon by the Governor;
 - (vi) Character references; or
 - (vii) A certificate of rehabilitation from a superior court.
 - (2) Any prospective or current service provider who has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the county of residence of the prospective or current service provider.

- (3) The prospective or current service provider has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
- (k) Following the receipt of all information necessary to evaluate any exemption request, the Director shall either grant or deny the exemption.
- (l) Any prospective or current paid service provider may appeal the Director's denial of the request for exemption pursuant to subsections 4689.6(b) and 4689.6(e) of the Welfare and Institutions Code.
- (m) A clearance or exemption for a prospective or current service provider for one participant shall be transferable as a clearance or exemption to provide services to additional participants as long as the criminal record clearance has been processed through the Department, and no subsequent arrests have been received.
- (n) Except as otherwise provided in subsection 4689.2(f) of the Welfare and Institutions Code, no exemption shall be granted if the conviction was for an offense specified in Sections 220, 243.4, 264.1, paragraph (1) in (a) of 273a, 273d, 288, 289 or 368(a) or (b) of the Penal Code, or for another crime against an individual specified in subsection 667.5(c) of the Penal Code.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4685.7, 4689.2, 4689.4, 4689.5 and 4689.6, Welfare and Institutions Code; Sections 220, 243.4, 264.1, 273, 288, 289, 368, 667.5, and 4852, Penal Code.

Article 4. Appeals.

Section 54414. Appeals.

- (a) A participant in self-directed services shall have all appeal rights established in Chapter 7, Sections 4700 - 4731, of the Welfare and Institutions Code.
- (b) A participant may appeal the regional center's calculation of the individual budget amount. The appeal process is as follows:

 - (1) The participant submits his or her appeal to the Executive Director of the regional center, within 30 working days after receipt of written notification of the budget calculation. The Executive Director shall issue a written decision on the appeal within 10 working days;
 - (2) The decision of any Executive Director on an appeal of a budget calculation may be appealed to the Director of the Department within 15 working days of the Executive Director's decision. The decision of the Director of the Department shall be final; and
 - (3) The participant may not appeal the methodology as described in paragraph 54404(b) that is used to calculate the individual budget.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4648, 4648.1, 4685.7 and 4700 through 4731, Welfare and Institutions Code.

Article 5. Self-Directed Services Disenrollment Procedures.

Section 54415. Disenrollment Procedures.

- (a) A participant shall be disenrolled from self-directed services when either:
- (1) The participant voluntarily elects to disenroll; or
 - (2) The regional center determines that a participant is not eligible because the participant no longer meets the eligibility criteria for self-directed services or is not fulfilling any responsibility resulting from his or her participation.
- (b) Within 10 days of disenrollment, the regional center shall provide written notification to:
- (1) The participant and financial management services provider of the date and reason for the disenrollment; and
 - (2) The participant of their fair hearing rights pursuant to Welfare and Institutions Code, Chapter 7, Sections 4700 - 4731, when the participant is disenrolled as described in paragraph (a)(2) of this section.
- (c) Advance notice specified in subsection 4711(a) of the Welfare and Institutions Code shall not be required if the regional center determines that disenrollment is necessary for the health or safety of the participant. The regional center shall provide adequate notice within 10 working days after the action.
- (d) Upon any disenrollment, the regional center shall provide for the participant's transition from self-directed services to other services and supports as described in Section 4646 et seq., of the Welfare and Institutions Code, and ensure there is no gap in services and supports.
- (e) A participant who voluntarily disenrolls from self-directed services or who is determined ineligible shall be permitted to re-enroll in self-directed services:
- (1) Upon meeting all eligibility criteria; and
 - (2) After 12 months time has elapsed from the effective date of disenrollment.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4501, 4646.5, and 4700 - 4731, Welfare and Institutions Code.

Article 6. Financial Management Services Provider Certification.

Section 54416. Financial Management Services Provider Certification.

- (a) A prospective paid financial management services provider seeking certification shall submit to the Department a signed application package that contains:
- (1) His or her financial experience, ability and capability to perform financial management services as required in the approved federal waiver for self-directed services;
 - (2) A proposed fee schedule and a basis for the fees to be charged; and
 - (3) A request for a criminal history background check in accordance with Section 54413.
- (b) Within 30 days of receipt of a complete application package, the Department shall determine if:
- (1) The prospective service provider meets the requirements to provide financial management services;
 - (2) The proposed fee schedule is reasonable; and
 - (3) The service provider has cleared a criminal history background check.
- (c) Upon completion of the determination, the Department shall issue to the prospective service provider written notification as follows:
- (1) A letter of certification if all of the requirements in subsection (b) of this section are met. A letter of certification does not guarantee that the prospective service provider will be vendored by a regional center in accordance with subsection 54409(d) or utilized by any participant; or
 - (2) A denial of certification that specifies the reason for the denial based on the requirements in subsection (b) of this section. The prospective service provider may resubmit an application package if the reason for the denial has been remedied.
- (d) If at any point a financial management services provider no longer meets the requirements of certification, including the requirements specified in paragraphs 54411(a)(2) and 54411(a)(3), the Department shall:
- (1) Decertify the financial management services provider; and
 - (2) Provide within 5 working days written notification to the participant, financial management services provider, and regional center of the decertification and of the reason for the decertification.

Authority cited: Section 4685.7, Welfare and Institutions Code; and Section 11152, Government Code. Reference: Section 4685.7, Welfare and Institutions Code.