

**TITLE 210 – EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**CHAPTER 50 – MEDICAID LONG-TERM SERVICES AND SUPPORTS**

**SUBCHAPTER 10 – HOME & COMMUNITY BASED LTSS**

**PART 2 – Self-Directed Care**

**2.1 Purpose**

This Rule applies to the Personal Choice self-directed program and the home and community-based services provided by Personal Care Aides (PCAs) under this program. This Rule sets out the eligibility criteria and program operations for self-direction, a service delivery model which allows individuals to have responsibility for managing their long-term services and supports in a person-centered manner. Individuals choose who provides their services and when and how the services are provided. Self-directed services are intended to support community tenure and individual control, choice, and independence.

**2.2 Applicability**

- A. The Personal Choice Program provides self-directed home and community-based services to Medicaid long-term services and supports (LTSS) eligible individuals. Personal Choice is a long-term care program for individuals with disabilities who are over the age of eighteen (18) or all individuals age sixty-five (65) or over who meet either a high or highest level of care. Services are geared toward reducing unnecessary institutionalization by providing specialized home and community-based services to qualified Medicaid participants at an aggregate cost which is less than or equal to the cost of institutional or nursing facility care.
- B. This Regulation does not apply to self-directed programs for individuals with intellectual and developmental disabilities (I/DD) overseen by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) pursuant to R.I. Gen. Laws § 40.1-1-13. To reference the Regulations for BHDDH Self-Directed services, please refer to the Rules and Regulations for Developmental Disability Organizations [212-RICR-10-05-1.10.3](#), Fiscal Intermediary Services, and [212-RICR-10-05-1.2\(A\)\(42\)](#), Definitions.
- C. Pursuant to R.I. Gen. Laws § 40-8.15-2(b), nothing in this Part shall interfere with the regulatory authority of the Rhode Island Department of Health (RIDOH) over individual providers' licensing.

## **2.3 Authority**

Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-7, provides the legal authority for the Rhode Island Medicaid Program. The Medicaid Program also operates under a waiver granted by the Secretary of the U.S. Department of Health and Human Services pursuant to § 1115 of the Social Security Act, 42 U.S.C. § 1315. Additionally, R.I. Gen. Laws Chapters 40-6, 40-8, 40-18, 40-8.14, and 40-8.15 serve as the enabling statutes for the Personal Choice Program.

## **2.4 Definitions**

- A. The following terms, which are listed alphabetically, are referenced in this Regulation.
1. "Activities of daily living" or "ADLs" means everyday routines generally involving functional mobility and personal care, including but not limited to, bathing, dressing, eating, toileting, mobility, and transfer.
  2. "Applicant" means new applicants to be determined for Medicaid eligibility.
  3. "Assessment" means a meeting with the participant and their representative (if applicable) to evaluate ADLs and IADLs to determine the amount and scope of services needed. Assessments also help to identify services, equipment, home modifications, and other supports in the community that may help the participant to increase their independence within the community.
  4. "Budget" means the amount of Medicaid funds set aside each month for the participant's personal care and homemaker services. The budget is based on the amount of assistance the participant requires to meet their personal care needs as determined by the functional assessment. The budget is based on what EOHHS would normally spend to purchase services from a Home Health Agency for the services necessary to allow a participant to live at home.
  5. "Case management services" means services that assist participants in gaining access to needed supports through the coordination of a person-centered service plan. Such programs shall be provided in the person's home or in the home of a responsible relative or other responsible adult, but not provided in a skilled nursing facility and/or an intermediate care facility.
  6. "Case manager" means an individual employed by a conflict-free case management agency that assesses service needs, assists with planning what services are needed and how to receive them, performs check-ins and evaluations, and is an additional resource to the participant, representative, and/or family to promote safety and quality of care. The

case manager conducts quarterly home visits, one of which is unannounced, and makes phone contact with the participant in the months where there is not a home visit. The case manager guides and supports, rather than directs and manages, the participant through the service planning and delivery process.

7. "Conflict-free" means that the entity providing case management services must be different than the entity providing the direct services a participant is referred to.
8. "Conflict-free case management agency" means an agency certified by EOHHS that provides conflict-free case management services for participants receiving home and community-based services, including participants in the Personal Choice program.
9. "Critical incident" means any actual or alleged event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety, or well-being of a participant. This includes but is not limited to physical abuse; verbal abuse; psychological or emotional abuse; sexual abuse; financial abuse; use of physical, chemical or mechanical restraint; self-neglect; neglect by another member of the home; exploitation; and unexplained death.
10. "Electronic Visit Verification" or "EVV" is a method used to verify that home healthcare visits occur by collecting data electronically about the visit.
11. "Environmental modifications" or "home modifications" are defined as those physical adaptations to the home of the participant or the participant's family as required by the participant's person-centered service plan, that are necessary to ensure the health, welfare and safety of the participant or that enable the participant to attain or retain capability for independence or self-care in the home and to avoid institutionalization, and are not covered or available under any other funding source. A completed home assessment by a specially trained and certified rehabilitation professional is also required. Such adaptations may include the installation of modular ramps, grab-bars, vertical platform lifts and interior stair lifts. Excluded are those adaptations that are of general utility, are not of direct medical or remedial benefit to the participant. Excluded are any re-modeling, construction, or structural changes to the home (i.e., changes in load bearing walls or structures) that would require a structural engineer, architect and/or certification by a building inspector.
  - a. Adaptations that add to the total square footage of the home are excluded from this benefit. All adaptations shall be provided in accordance with applicable state or local building codes, and prior approval on an individual basis by EOHHS, Office of Durable Medical Equipment, is required.

- b. Items should be of a nature that they are transferable if a participant moves from their place of residence.
- 
- 12. “Fiscal intermediary services” or “FI services” means financial management services delivered to Personal Choice participants by an EOHHS certified Fiscal Intermediary. FI services are designed to assist participants in allocating funds as outlined in the Individual Service and Spending Plan and to facilitate employment of PCAs by the participant. Personal Choice financial matters are maintained by the fiscal agency and a portion of the participant’s monthly budget is set aside for the services it provides.
  - 13. “Home delivered meals” means the delivery of hot meals, frozen meals, cultural/therapeutic meals and/or shelf staples to the participant’s residence. Meals are available to individuals unable to care for their nutritional needs because of a functional dependency/disability and who require this assistance to live in the community. Meals provided under this service will not constitute a full daily nutritional requirement. Meals must provide a minimum of one third (1/3) of the current recommended dietary allowance. Provision of home delivered meals will result in less assistance being authorized for meal preparation for individual participants, if applicable.
  - 14. “Homemaker services” means aid in grocery shopping, cooking, using the phone, looking up phone numbers, assistance with housework (cleaning, dusting, vacuuming, laundry), assistance using public transportation, assistance paying and managing bills, and reminding the participant to take their medication(s).
  - 15. “In-home training” means training directed by the participant, as opposed to mandatory orientation and training. This option empowers the participant, as the employer, to train the PCA themselves and decide how services should be delivered by the PCA to suit the participant's needs.
  - 16. “Individual service and spending plan” or “ISSP” means a written plan that shows the services that are purchased with the budget amount provided through the Personal Choice Program. The plan shows the services purchased, the rate of purchased services, and the total dollars spent on care. The ISSP provides information on the participant's goals, goods, and services, as well as taxes and fees associated with their budget. The ISSP also includes a plan for handling emergencies. The ISSP can be updated annually or as the budget or other personal circumstances change.
  - 17. “Instrumental activities of daily living” or “IADLs” means activities related to living independently in the community, including but not limited to: meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores;

scheduling appointments; communicating by phone or other media, and traveling around and participating in the community.

18. "Mandatory orientation and training" means a series of orientation and training courses required by EOHHS for all PCAs listed on the registry. Courses include program overview and structure; PCA eligibility, scope of work, and responsibilities; ethics, accountability, consumer privacy and dignity, HIPAA, and EVV; recognizing and reporting critical incidents; infection control and safety; health management; emotional support; mobility; and understanding and supporting ADLs and IADLs.
19. "Medicaid fraud" means making a false statement, misrepresentation of material fact, submitting a claim or causing a submission to obtain some benefit or payment involving Medicaid money for which no entitlement would otherwise exist. This can be done for the benefit of oneself or another party and includes obtaining something of value through misrepresentation, concealment, omission, or willful blindness of a material fact.
20. "Minor environmental modifications" means minor modifications to the home that may include grab bars, versa frame (toilet safety frame), handheld shower and/or diverter valve, raised toilet seats and other simple devices or appliances such as eating utensils, transfer bath bench, shower chair, aides for personal care (e.g., reachers), and standing poles to improve home accessibility adaptation, health, or safety.
21. "Nonmedical" means not involving, relating to, used in, or concerned with medical care or the field of medicine.
22. "Participant" means the individual, also referred to as the beneficiary, who utilizes services in the Personal Choice program.
23. "Participant directed goods and services" means services, equipment or supplies not otherwise provided through Medicare or Medicaid, that address an identified need and are in the approved ISSP (including improving and maintaining the individual's opportunities for full membership in the community). Examples include a laundry service for a person unable to launder and fold clothes or a microwave for a person unable to use a stove due to their disability.
24. "Person-centered" means that the assessment and service planning processes are directed and led by the participant (with assistance as needed or desired from a representative or other persons of the participant's choosing) for the purposes of identifying the strengths, capacities, preferences, needs, and desired outcomes that become the core of an individualized plan of LTSS care.

25. "Person-centered options counseling" means an interactive decision-support process that helps people assess and understand their LTSS needs, goals, and preference. Person-centered options counseling emphasizes person-centered thinking to support consumers in making informed decisions about their LTSS options. The person-centered options counseling process is a multi-step approach of asking for and providing information about LTSS programs, offering decision support, and assisting in accessing services.
26. "Person-centered options counselor" means an individual who is trained in person-centered options counseling.
27. "Person-centered service plan" means the written document, developed in a person-centered manner, that specifies the services and supports, both formal and informal, that are furnished to meet the needs of each participant and help them remain in the community. The person-centered service plan contains the types of services to be furnished; the amount, frequency, and duration of each service; and the type of provider to furnish each service.
28. "Personal care services" means the provision of direct supportive, nonmedical services provided in the home or community to individuals in performing tasks they are functionally unable to complete independently due to illness and/or disability, based on the ISSP. Personal care services do not include services that require a professional license, certification or registration by State law such as wound care, injections, oxygen application, and other services which are medical in nature. Personal care services may include but are not limited to:
  - a. Participant assistance with activities of daily living, such as grooming, personal hygiene, toileting, bathing, and dressing;
  - b. Assistance with monitoring health status and physical condition;
  - c. Assistance with preparation and eating of meals (not the cost of the meals itself);
  - d. Assistance with housekeeping activities (bed making, dusting, vacuuming, laundry, grocery shopping, cleaning);
  - e. Assistance with transferring; ambulation; use of special mobility devices; assisting the participant by directly providing or arranging transportation.
29. "Personal emergency response system" or "PERS" means an electronic device that enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's

phone and programmed to signal a response center once a “help” button is activated. This service includes coverage for installation and a monthly service fee. Providers are responsible to ensure the upkeep and maintenance of the devices/systems.

30. “Registry” means the official list, maintained by EOHHS or its designee, of qualified PCAs who are available to provide services to participants in the Personal Choice program. Participants may utilize the registry when hiring PCAs for self-directed care.
31. “Representative” means a person designated by a participant to assist the participant in managing some or all the requirements of the Personal Choice program. A representative cannot be paid to provide this assistance. The representative also cannot be paid to provide direct care or hands on care. In other words, the representative cannot be a paid PCA.
32. “Self-directed” means a participant-controlled method of selecting and providing services and supports that allows the individual maximum control of their home and community-based services and supports, with the individual acting as the employer of record with necessary supports to perform that function, or the individual having a significant and meaningful role in the management of a provider of service when the agency-provider model is utilized. Individuals exercise as much control as desired to select, train, supervise, schedule, determine duties, and dismiss the PCA.
33. “Service advisement team” means a team, consisting of a Case Manager, a Nurse, and a Mobility Specialist, that focuses on empowering participants to define and direct their own personal assistance needs and services.
34. “Special medical equipment” or “Minor assistive devices” means the following:
  - a. Devices, controls, or appliances, specified in the plan of care, which enable participants to increase their ability to perform activities of daily living;
  - b. Devices, controls, or appliances that enable the participant to perceive, control, or communicate with the environment in which they live; including such other durable and non-durable medical equipment not available through the participant's medical insurance that is necessary to address participant functional limitations;
  - c. Items reimbursed with waiver funds through the Personal Choice Program are in addition to any medical equipment and supplies furnished by Medicaid and exclude those items that are not of direct medical or remedial benefit to the participant. All items shall meet

applicable standards of manufacture, design, and installation. Provision of Specialized Medical Equipment requires prior approval on an individual basis by Medicaid.

35. “Supports for participant direction” or “Supports facilitation” means empowering participants to define and direct their own personal assistance needs and services by guiding and supporting, rather than directing and managing, the participant through the service planning and delivery process.
36. “Taxes” means fees deducted from the participant’s monthly budget that are required to be paid on behalf of employees (PCAs):
  - a. FICA (Federal Insurance Contributions Act): Finances care for the aging, disabled, and survivors, including funding for Medicare.
  - b. FUTA (Federal Unemployment Tax Act): Finances employment programs at the federal level.
  - c. SUTA (State Unemployment Tax Act): Finances employment programs at the state level.
  - d. RITDI (Rhode Island Temporary Disability Insurance): Provides income to employees who cannot work temporarily due to illness or non-job related injury.
37. “Worker’s Compensation Insurance” means funds that provide for monetary awards paid to individuals who are injured, disabled, or killed on the job. Worker’s Compensation Insurance is a cost of employment paid by the participant from their monthly budget.

## **2.5 Eligibility**

- A. All general eligibility Rules for Medicaid LTSS contained in the Rhode Island Code of Regulations, [Subchapter 00 Part 1 of this Chapter](#), Medicaid LTSS Overview and Eligibility Pathways, and [Subchapter 00 Part 4 of this Chapter](#), Medicaid Long-Term Services and Supports Application and Renewal Process, apply to the Personal Choice Program. Additional eligibility requirements for Personal Choice are as follows:
  1. Individuals who are either aged (age sixty-five (65) and older) or who have a disability and are at least eighteen (18) years old and are determined to have high or highest need for level of care;
  2. Individuals who have demonstrated the ability and competence to direct their own care or have a qualified designated representative to direct care, and want to either remain in their home or return to their home; and



3. Individuals who have been determined to have a developmental disability and are receiving services via the Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH) and are interested in the Personal Choice Program must be approved by BHDDH and EOHHS Medicaid.

B. Income

All income eligibility Rules contained in [Subchapter 00 Part 6 of this Chapter](#), Medicaid Long-Term Services and Supports: Financial Eligibility, apply. If Medically Needy eligible, the applied income cannot exceed the cost of services.

C. Resources

All resource Rules contained in [Subchapter 00 Part 6 of this Chapter](#), Medicaid Long-Term Services and Supports: Financial Eligibility, apply.

D. Post Eligibility Treatment of Income

All Post Eligibility Treatment of Income (PETI) rules contained in [Subchapter 00 Part 8 of this Chapter](#), Post-Eligibility Treatment of Income, apply.

## 2.6 Enrollment and Disenrollment

A. Enrollment

Enrollment in the Personal Choice program is by choice. Individuals who wish to participate and who meet all the eligibility requirements may contact a person-centered options counselor, Conflict-Free Case Management Agency, or visit the MyOptionsRI website <http://www.myoptions.ri.gov/>.

B. Involuntary Disenrollment

1. The participant shall be involuntarily disenrolled from the Personal Choice Program if they lose either Medicaid financial eligibility or level of care eligibility.
2. Involuntary disenrollment may also occur when:
  - a. The participant or representative is unable to self-direct care and provide oversight of the PCA and spending plan.
  - b. A representative proves incapable of acting in the best interest of the participant, can no longer assist the participant, and no replacement is available.
  - c. The participant or representative fails to comply with legal/financial obligations as an employer of domestic workers and/or is unwilling

to participate in advisement training or training to remedy non-compliance.

- d. The participant or representative fails to maintain a safe working environment for PCAs.
  - e. The participant or representative is unable to manage the monthly budget as evidenced by: repeatedly submitting time sheets for unauthorized budgeted amount of care; underutilizing the monthly budget, which results in inadequate services; and/or continuing attempts to spend budget funds on non-allowable goods and services.
  - f. The participant's health and well-being is not maintained through the actions and/or inactions of the participant or representative.
  - g. EOHHS receives a substantiated critical incident report involving the participant that cannot otherwise be remediated.
  - h. The participant or representative refuses to cooperate with minimum program oversight activities, even when staff has made efforts to accommodate the participant.
  - i. The participant or representative fails to pay the amount determined in the post eligibility treatment of income, as described Subchapter 00 Part 8 of this Chapter, Post-Eligibility Treatment of Income, to the fiscal agency.
  - j. There is evidence that Medicaid funds were used improperly or illegally according to local, State or Federal Regulations.
  - k. No Conflict-Free Case Management Agency is able to provide proper service, such as the inability to meet repeated requests for services, satisfy participant needs, and/or provide the individual with a quality working relationship.
  - l. The participant or representative fails to notify both the Conflict-Free Case Management Agency and the Fiscal Intermediary of any change of address and/or telephone number within ten (10) days of the change.
3. When a Medicaid-eligible participant is involuntarily disenrolled from the Personal Choice Program, the participant is referred to EOHHS or BHDDH to explore other available options.
4. EOHHS shall notify the participant in writing that they intend to remove the participant from the Personal Choice Program, the reason for

disenrollment, and shall inform the participant that services may be provided through Medicaid long-term care via a home health agency.

5. Disenrollment is determined by the Conflict-Free Case Management Agency, and confirmed by EOHHS, based on an assessment in conjunction with the policies and procedures of that Agency, and/or the receipt of information from the Fiscal Intermediary or EOHHS.

C. Voluntary Disenrollment

1. The participant or representative may request discharge from the Personal Choice Program with a thirty (30) day written notice to the Conflict-Free Case Management Agency and Fiscal Intermediary.
2. A participant's representative must provide both the Conflict-Free Case Management Agency and Fiscal Intermediary with a thirty (30) day written notice stating they are no longer able to provide representative services.

D. Disenrollment Appeal

1. The Conflict-Free Case Management Agency and the Fiscal Intermediary Agency shall inform the participant in writing of an involuntary disenrollment with the reason and provide the participant with a Medicaid appeal procedure and request forms.
2. The participant has the right to appeal utilizing the standard appeals process as described in [Part 10-05-2 of this Title](#), Appeals Process and Procedures for EOHHS Agencies and Programs.

## 2.7 Appeals

An opportunity for a hearing is granted to an applicant/participant, or their designated representative, when a person is aggrieved by an agency action resulting in a disenrollment, suspension, reduction, discontinuance, or termination of a participant's services or budget, or a requested adjustment to the budget or service is denied in accordance with the provisions of [Part 10-05-2 of this Title](#), Appeals Process and Procedures for EOHHS Agencies and Programs.

## 2.8 Screening Requirements and Qualifications for PCAs

- A. Age: PCAs must be at least eighteen (18) years of age.
- B. Work Status: PCAs must be authorized to work in the United States.
- C. Relationship: Individuals cannot work as a PCA if they are the participant's representative, spouse, financial power of attorney, or Social Security Representative Payee.

- D. Driver's License: If the PCA is approved to provide transportation for the participant, the PCA must have a valid driver's license, liability coverage and provide their own vehicle.
- E. Training: Training requirements vary based on how the prospective PCA is introduced to the program. PCAs will not be paid until the participant has verified that training has occurred.
  - 1. If the PCA is known to the participant, the participant may choose to provide in-home training, request that the PCA undergo mandatory orientation and training, or a combination of in-home training and selected courses from the mandatory orientation and training.
  - 2. If the PCA is introduced to the Personal Choice program through the registry, the PCA is required to undergo mandatory orientation and training before the PCA is listed on the registry.
  - 3. Participants may request that their PCA complete continuing education courses offered by EOHHS or its designee. PCAs may also voluntarily complete continuing education courses.
- F. Certifications: PCAs must receive a cardiopulmonary resuscitation (CPR) and First Aid certification, renewed every two (2) years, in order to be listed on the registry. Exceptions may be made if the PCA is a Certified Nursing Assistant (CNA) or has an active CPR/First Aid certification.
- G. Background Checks: All PCAs and participant representatives that have direct contact with participants must submit to a National Criminal Background Check supported by fingerprints every five (5) years, annual Office of Inspector General (OIG) screenings, and an annual Abuse Registry Record Check to be authorized to provide assistance to participants under the Personal Choice Program.
  - 1. The FI is EOHHS' designated agent to provide authorization for the Department of Attorney General to complete the National Criminal Background Check supported by fingerprints.
  - 2. The individual to be fingerprinted is responsible for the cost of the fingerprint.
  - 3. To participate in the Personal Choice program as the participant's representative or in a provider (PCA) capacity, there must be no evidence of disqualifying convictions as described in R.I. Gen. Laws § 42-7.2-18.4. The FI is EOHHS' designated agent to receive information about whether a disqualifying conviction appears during the background check. The Department of Attorney General will not disclose the nature of the conviction to the FI. The FI will notify EOHHS, accordingly.

4. Evidence of any disqualifying conviction will bar the individual from acting as a PCA or representative. The individual may request a copy of their record from the Department of Attorney General and request an exception from the EOHHS Office of Community Programs Review Committee. The individual may participate as a PCA or representative, notwithstanding evidence of a disqualifying conviction, only if, in the judgment of the EOHHS Office of Community Programs Review Committee, such participation:
  - a. Would not threaten the health, welfare, or safety of participants; and
  - b. Would not compromise the integrity of the Rhode Island Medicaid program.

## **2.9 Assessments**

- A. Nursing Assessment – The Nursing Assessment is one (1) of the multiple assessments done for the participant. This assessment measures Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) which are conducted to determine participant needs and goals. A nursing assessment must be performed by a nurse licensed by RIDOH in accordance with [216-RICR-40-05-3](#), Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs.
- B. Functional Assessment – The functional assessment rates the participant's level of assistance required to complete each task, and the number of times the task is performed. If there is a condition or characteristic in addition to the disability, the participant may require more time to complete a particular task. These conditions and/or characteristics do not apply to all ADL/IADL tasks; they only apply if the condition has a direct impact on the performance of the task. In addition to medical information and self-reporting, the assessor may observe or request that the participant demonstrate their ability to complete a task.
  1. Initial assessments occur upon entry to the Personal Choice program and reassessments occur annually thereafter. A participant or representative may request a reassessment sooner if their situation has changed and there is either an increased or decreased need for assistance. The Case Manager may also perform a reassessment sooner if there are life changes resulting in a possible increase or decrease in need for assistance.
  2. When a participant is identified through the Nursing Home Transition Program/Money Follows the Person Program, a temporary assessment shall be conducted. This shall be a temporary assessment because it is conducted while the participant is in an institutional Nursing Home setting and may not fully reflect the participant's functional abilities within a non-

institutional home setting. The Conflict-Free Case Management Agency selected by the participant shall complete an updated assessment within ninety (90) days of the participant returning home. After the temporary assessment is completed, the Office of Community Programs staff shall review the assessment with the participant to:

- a. Verify that the participant wants to participate in the Personal Choice program; and
  - b. Identify the participant's choice of Conflict-Free Case Management Agency responsible for the additional assessments and oversight of the participant's services.
- C. In addition to the nursing and functional assessments, staff will conduct an environmental assessment as part of the eligibility determination and plan of care.

## **2.10 Budget Development**

- A. Personal Choice monthly budgets are based on the functional assessment of participant need for hands-on assistance or supervision with ADLs (such as bathing, toileting, dressing, grooming, transfers, mobility, skincare, and/or eating) and IADLs (such as communication, shopping, housework, meal preparation, and/or food shopping), as described in § 2.9 of this Part and listed in the tables in § 2.15 of this Part.
- B. The Conflict-Free Case Management Agency and Service Advisement Team will perform assessments to determine the individual's budget and Individual Service and Spending Plan (ISSP). In accordance with the service provider agreements, a budget is developed based on the amount and level of assistance required, frequency of the task, and presence of any secondary conditions that would require a need for more time to complete the task. There are six (6) levels of assistance for each activity.
- 1. Determine Monthly Budget Amount: Each Activity of Daily Living (ADL) and Instrumental Activity of Daily Living (IADL) has an amount of unit and/or functional time allowed to complete the task. The monthly figures for each ADL/IADL are added together to form a monthly budget. Taxes, worker's compensation insurance, and administrative costs are deducted from the Personal Choice participant's monthly budget.
    - a. Unit Time – the amount of time allowed to complete the task if the participant is unable to participate and requires total assistance with the task.
    - b. Functional Time – the amount of time allowed to complete the task if the participant is unable to participate and requires total

assistance with the task and certain conditions or characteristics are present. These characteristics are listed in the table in § 2.15 of this Part.

2. EOHHS will implement a budget re-assessment for any budget which is decreased by five hundred dollars (\$500.00). This second (2nd) level re-assessment will be conducted by an EOHHS nurse and social worker in the home of the participant.
  3. Documentation of the assessment will be maintained by the Conflict-Free Case Management Agency, such as the functional, mobility and health assessments.
- C. The budget amount is determined by EOHHS and may be subject to change. The budget funds are set aside by Medicaid for the purchase of assistance to meet individual participant needs. The participant determines what services are required and the amount the participant is willing to pay for those services from their budget. Participants determine the hourly wage for PCA, which can range from fifteen dollars (\$15.00) up to twenty-one dollars (\$21.00) per hour. The budget does not allow for companionship, watching, or general supervision of a participant.
- D. The individual budget for participants in the Personal Choice program is limited to the purchase of personal care, homemaking, goods and services, and related taxes and fees. However, because participants are eligible for Medicaid long-term services and supports, participants are entitled to other medically necessary services which are paid directly by Medicaid outside of the scope of the individual budget. The person-centered service plan includes referrals to out-of-budget services. Such services include, but are not limited to, physician services, prescription drugs, adult day care, case management services, home modifications, home delivered meals, minor environmental modifications, PERS, special medical equipment, and supports facilitation. Such services may affect the individual budget amount if they increase the participant's independence in the community and reduce the level of assistance required to complete a particular task.
- E. The Case Manager will provide the participant/representative with a copy of the approved budget and the approved ISSP after sign off by the participant. Additional copies may be provided upon request.
- F. The Conflict-Free Case Management Agency will provide the Personal Choice fiscal intermediary with a copy of the approved budget.

## **2.11 Participant Directed Goods and Services**

- A. Participants may also set aside a specified amount of their budget each month to purchase services, equipment and supplies not otherwise provided by Medicaid

that address an identified need, are documented in the approved ISSP, and meet the following requirements:

1. Alternative funding sources are not available; and
2. The item or service would decrease the need for other Medicaid services; and/or
3. The item or service would promote inclusion in the community; and/or
4. The item or service would increase the individual's ability to perform ADLs/IADLs; and/or
5. The item or service would increase the person's safety in the home environment.

**B. Limitations:**

1. Participant goods and services generally do not include any good/service that is medical in nature and requires a physician's order which is covered by health insurance or another primary payor.
2. Items must be necessary to ensure the health, welfare, and safety of the participant, or must enable the participant to function with greater independence in the home or community, and to avoid institutionalization.
3. Items cannot be restrictive to the individual or strictly experimental in nature.
4. Items for gifts or loans to others, housing and/or utility expenses, clothing, groceries, entertainment, alcohol or tobacco, or payments to a representative are not covered.
5. Items cannot duplicate equipment provided under Medicaid-funded primary and acute care or through other sources of funding, such as Medicare, private insurance or free services from community organizations.
6. Items intended to lessen the need for assistance from a caregiver will result in a redetermination of need for caregiver assistance.
7. No more than ten percent (10%) of a participant's monthly budget may be set aside for goods and services, so that an individual continues to receive personal care services that provide for their health, welfare, and safety.

## **2.12 Participant Rights and Responsibilities**

**A. Every participant has the right to:**



1. Be treated as an adult, with dignity and respect at all times;
2. Privacy in all interactions with EOHHS, the Case Manager, and the Fiscal Intermediary and freedom from unnecessary intrusion;
3. Make informed choices based upon appropriate information provided to the participant, and have questions answered and choices respected, while respecting the rights of others to disagree with their choices;
4. Freely choose between approved providers as appropriate or applicable;
5. Feel safe and secure in all aspects of life, including health and well-being, be free from exploitation and abuse, and not be overprotected;
6. Realize the full opportunity that life provides by not being limited by others, by making full use of the resources their self-directed program provides, and by being free from judgments and negativity;
7. Live as independently as they choose;
8. Have their individual ethnic background, language, culture and faith valued and respected;
9. Be treated equally and live in an environment that is free from bullying, harassment and discrimination;
10. Voice grievances about care or treatment without fear of discrimination or reprisal;
11. Voluntarily withdraw from the Personal Choice program at any time;
12. Manage PCAs by:
  - a. Deciding who to hire, whether self-selected or selected from the registry of available PCAs;
  - b. Deciding what special knowledge or skills the PCA must possess;
  - c. Training each PCA to meet individual needs; and
  - d. Replacing PCAs who do not meet individual needs.
13. Request a new assessment and/or person-centered service plan if needs change;
14. Know about all fees;
15. Appeal any decision made by the Conflict-Free Case Management Agency, Fiscal Intermediary, or EOHHS and expect a prompt response.

B. Every participant has the responsibility to:

1. Manage and maintain their health and access medical help as needed, or seek assistance in order to do so;
2. Demonstrate the required skills and abilities needed to self-direct PCAs without jeopardizing their health and safety, or designate a representative to assist them;
3. Be aware of the Personal Choice program rules and regulations;
4. Act as a supervising employer by:
  - a. Screening prospective PCAs to determine who is best able to meet the participant's needs at the desired times;
  - b. Interviewing prospective PCAs if they are not already known to the participant;
  - c. Requesting and checking references for prospective PCAs if they are not already known to the participant;
  - d. Completing hiring agreements with each PCA;
  - e. Ensuring that the PCA is oriented, trained, and understands the participant's goals, boundaries and house rules;
  - f. Deciding wages and schedules for each PCA, and ensuring that hours do not exceed forty (40) hours per week;
  - g. Developing a plan for communication process for the PCA to inform the participant if they will be late or unable to report to work;
  - h. Supervising PCAs and ensuring they are performing their duties as required;
  - i. Completing Electronic Visit Verification, unless the PCA lives in the same household;
  - j. Reviewing timesheets for accuracy, ensuring that time is not billed when services were not delivered by the PCA (such as when the participant was on vacation, in an emergency room, in an inpatient hospital stay, at an adult day care center, or receiving therapies or other services), and submitting timesheets to the Fiscal Intermediary in a timely manner;

- k. Following all employment laws and Regulations, including providing a safe, harassment-free working environment and treating all employees with dignity and respect;
    - l. Following all requirements of the Fiscal Intermediary/IRS for hiring and paying PCAs, including completing all necessary forms and paying PCAs promptly; and
    - m. Deciding whether and when to dismiss a PCA and notifying the Fiscal Intermediary when termination occurs.
  - 5. Develop an emergency back-up plan in the event a PCA is unavailable;
  - 6. Manage personal care services by:
    - a. Meeting and cooperating with the Case Manager and Service Advisement Team as required for completing all needed assessments and monitoring; and
    - b. Developing and monitoring an ISSP to address personal care service needs;
  - 7. Report instances or concerns about critical incidents to the Conflict-Free Case Management Agency and/or appropriate State agency;
  - 8. Understand what Medicaid fraud is and how to report it;
  - 9. Track expenses so that the budget is not exceeded and contact the Fiscal Intermediary in the event of a billing or payment complaint;
  - 10. Notify the Conflict-Free Case Management Agency and Fiscal Intermediary of absences from home that are nonmedical (vacations or trips); and
  - 11. Notify the Conflict-Free Case Management Agency of any changes in medical status, admissions to hospitals or other medical facilities, or if other services are being provided (for example, visiting nurses, hospice, home delivered meals, or adult day services).
- C. The participant may request that the PCA perform additional tasks that help them continue to live in the community. The PCA may, but is not required to, perform such additional tasks. The participant cannot ask the PCA to support another person. The requested task cannot pose a health or safety risk to the participant or the PCA, the PCA should feel comfortable and confident in the ability to perform the task, the task must be legal and cannot be considered fraudulent.

## **2.13 EOHHS Responsibilities**

- A. EOHHS shall be responsible for the following activities:
  - 1. Approve budgets and individual service and spending plans;
  - 2. Authorize participant-directed goods and services;
  - 3. Authorize out-of-budget services when medically necessary;
  - 4. Provide Personal Choice participants with notice of budget amount through a standardized letter which provides information on budget amount and any changes that occur in the assessment process. The letter also includes information on the appeals process;
  - 5. Certify, monitor, and conduct audits of Conflict-Free Case Management and Fiscal Intermediary agencies.
- B. The EOHHS reviews and approves the assessment and individual service and spending plan (ISSP) for each Personal Choice participant before services begin.
- C. Any changes made to a Personal Choice participant's ISSP must be forwarded to EOHHS for review and approval.
- D. Once the ISSP is approved, EOHHS will notify the appropriate Conflict-Free Case Management Agency who will inform the Fiscal Intermediary and participant that the ISSP will be implemented.
- E. EOHHS is responsible for educating participants, representatives and PCAs about reporting critical incidents and for reviewing reported critical incidents with the Conflict-Free Case Management Agency to determine feasibility of the individual continuing participation in the Personal Choice Program.
- F. If Medicaid fraud is either known or suspected, EOHHS, through the Office of Community Programs and the Office of Program Integrity, shall refer the case to the Medicaid Fraud Control Unit at the Rhode Island Department of Attorney General.

## **2.14 PCA Registry**

- A. A registry of qualified caregivers shall be posted by EOHHS from information validated by the Fiscal Intermediary. Listed on the registry are the PCAs who have completed training and screening requirements and are available to provide services. The registry does not contain personally identifiable information, but rather details regarding gender, experience, additional certifications, languages spoken, town of origin, distance willing to travel, days and hours available to work, smoking habits, allergies, willingness to be called for emergency visits, and a free form self-description.

1. Individuals working as PCAs are not required to join the registry, for example when the PCA is only interested in working for one (1) dedicated participant. PCAs will only be listed if they have expressed interest to EOHHS to be listed.
2. PCAs who are trained by the participant are not listed in the registry and cannot work for other participants through the registry unless they complete mandatory orientation and training and certifications. No accommodations are made to list provisional providers on State registries/website.
3. PCAs may self-initiate entry into the registry. Information posted on the registry is validated by the Fiscal Intermediary.
4. Participants may use the registry to find and hire PCAs.
5. The frequency of updates to the registry is dependent on the availability of qualifying PCAs.
6. No participant information is listed on the registry.

## 2.15 Personal Choice Assessments and Budget Development Tables

### A. Six (6) Levels of Assistance:

Independent	LTSS beneficiary is independent in completing the task safely.
Set-Up	LTSS beneficiary requires brief supervision, cueing, reminder and/or set- up assistance to perform the task.
Minimum	LTSS beneficiary is actively involved in the activity, requires some hands- on assistance for completion, thoroughness or safety. Needs verbal or physical assistance with twenty-five (25%) of the task.
Moderate	LTSS beneficiary requires extensive hands-on assistance but is able to assist in the process. Needs verbal or physical assistance with fifty percent (50%) of the task.
Extensive	LTSS beneficiary requires verbal or physical assistance with seventy-five percent (75%) of the task.
Total Assistance	LTSS beneficiary cannot participate or assist in the activity and requires one hundred percent (100%) assistance with the task.
Not Applicable	This task does not apply to this LTSS beneficiary.

B. Functional Characteristics for Each ADL/IADL:

ADL/IADL	Functional Characteristics
Bowel	Behavioral Issues, Limited ROM, Spasticity/Muscle Tone
Dressing	Behavioral Issues, Limited ROM, Spasticity/Muscle Tone
Eating	Behavioral Issues, Fine Motor Deficit, Spasticity/Muscle Tone
Grooming	Cognitive, Limited ROM, Spasticity/Muscle Tone
Mobility	Balance Problems, Decreased Endurance, Pain, Spasticity/Muscle Tone
Shower	Balance Problems, Behavioral Issues, Limited ROM, Spasticity/Muscle Tone
Skin Care	Open Wound
Sponge Bath	Behavioral Issues, Limited ROM, Spasticity/Muscle Tone
Transfers	Balance Problem, Limited ROM, Spasticity/Muscle Tone
Tub Bath	Balance Problem, Behavioral Issues, Limited ROM, Spasticity/Muscle Tone
Urinary/Menses	Behavioral Issues, Limited ROM, Spasticity/Muscle Tone
Communications	No Functional Characteristics
Housework	LTSS beneficiary Lives Alone
Meal Preparation	No Functional Characteristics
Shopping	No Functional Characteristics

C. Activity and Time Allotments, in minutes:

Activity	Unit Time	Functional Time
Sponge Bath	30	45
Shower	20	40
Tub Bath	40	45
Dressing	15	20
Eating	20	40
Mobility	10	10
Urinary/Menses	10	15
Transfers	5	10
Grooming	8	8
Skin Care	10	10
Bowel	30	50
Meal Preparation	25	25
House Work	12.5	25
Communications	15	15
Shopping	60	60
Medications	2	5



#### D. ADL Multipliers:

[illegible]

E. IADL Multipliers:

Level of Assistance	Meal Preparation	Housework	Communications	Shopping
Total Assist	1	1	1	1
Maximum Assist	1	1	1	1
Moderate Assist	.75	.75	.75	1
Minimum Assistance	.5	.5	.5	1
Set-Up Assistance	.25	.25	.25	1
Independent	0	0	0	0

**210-RICR-50-10-2**

**TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**CHAPTER 50 - MEDICAID LONG-TERM SERVICES AND SUPPORTS**

**SUBCHAPTER 10 - HOME & COMMUNITY BASED LTSS**

**PART 2 - SELF-DIRECTED CARE**

Type of Filing: Amendment

**Agency Signature**

---

Agency Head Signature

---

Agency Signing Date

**Department of State**

---

Regulation Effective Date

---

Department of State Initials

---

Department of State Date