

Division of TennCare Operational Protocol

Protocol Title: Protocol for Consumer Direction in the 1915(c) Waivers

Effective date: January 1, 2025

Background:

Consumer Direction (Statewide Waiver (SW) and Comprehensive Aggregate Cap (CAC) Waiver) and Self-Direction (Self-Determination (SD) Waiver) are **models** of service delivery for home and community-based services (HCBS). They are not services. This model of service delivery affords members (or someone's representative) designated on the member's behalf as the employer of record) the opportunity to have choice and control over how eligible 1915(c) Waiver HCBS are provided, who provides the services, and how much workers are paid, up to a maximum amount specified by TennCare. For purposes of this protocol, the term "consumer direction" will be used to reference both Consumer Direction for CAC and SW Waivers as well as Self-Direction in the SD Waiver. Services eligible for consumer direction are Personal Assistance, Respite, and Individual/Community Transportation.

Services for each individual are facilitated by an Independent Support Coordinator (ISC) or a Case Manager (CM), depending upon the 1915(c) Waiver in which the individual is enrolled. Individuals enrolled in the Comprehensive Aggregate Cap (CAC) or Statewide Waiver are assigned an ISC from the ISC agency they select; individuals enrolled in the Self-Determination Waiver are assigned a CM who is employed by the Department of Disability and Aging (DDA). They will be referred to as "ISC/CMs" for the purposes of this document. Individuals enrolled in and receiving services through a 1915(c) Waiver will be referred to as "the member" throughout this document.

The member or representative, ISC/CM, Managed Care Organization (MCO), Fiscal Employer Agent (FEA), Supports Broker, and DDA have responsibilities at different points throughout the process related to requesting, authorizing, overseeing, and paying for consumer directed services. This protocol outlines each entity's responsibility as well as the processes related to service requests and continued authorization.

Responsibilities

1. **Independent Support Coordinator/DDA Case Manager**
 - a. During the annual person-centered planning process, and/or at any time the member expresses interest, the ISC/CM shall offer consumer direction of eligible 1915(c) Waiver Services (Comprehensive Aggregate Cap, Statewide Waiver, Self-Determination Waiver) HCBS to all 1915(c) Waiver members who are determined to need such services. The services available in the 1915(c) waivers for consumer direction are Personal Assistance, Respite, and Individual/Community Transportation. Members assessed to need one or more of these services are

informed of the opportunity to participate in consumer direction as part of educational materials developed by TennCare and the FEA and discussed with the member by the ISC/CM during the annual person-centered planning meeting. The educational materials describe the benefits and potential risks of consumer direction, the member or representative's responsibilities, and the supports that will be available if consumer direction is elected.

- b. ISCs/CMs will monitor on an ongoing basis to ensure that the person's needs are being met through consumer direction and are responsible for reporting any concerns to DDA.
- c. The ISC/CM will:
 - i. Provide an orientation to consumer direction so that the person supported has the information necessary to understand the requirements and responsibilities associated with consumer direction;
 - ii. Inform members who elect consumer direction of the required use of the TennCare contracted FEA/Supports Brokerage entity;
 - iii. Continuously review the status of the approved budget for each service and assist the Employer of Record (EOR) in managing the budget, as needed and requested;
 - iv. Conduct ongoing monitoring of the implementation of the PCSP and health and welfare of the member, including as it relates to participate in consumer direction;
 - v. Act as a liaison when there are communication challenges between the member and FEA, including but not limited to an inability to reach the member; and
 - vi. Support the EOR in activating the back-up plan when needed.

For each consumer directed service, a budget shall be established based on the member's needs and preferences and the units of service necessary to meet the member's needs as reflected in the PCSP. Any requests for adjustments in the budget amount or in waiver services are submitted through the ISC/CM.

d. Member or Representative Responsibilities

- i. The member or the conservator will decide whether to directly manage these services or receive them from a contracted, qualified provider. A member who does not have a legally appointed representative may designate an individual (including family members, friends, or other persons) to serve as a representative for consumer direction. Requirements that the representative must meet are set forth in TennCare Rules. The ISC/CM will verify that a representative meets these qualifications, and the Fiscal Employer Agent (FEA) will confirm and approve.
- ii. When a representative for consumer direction has been designated, the member will participate in consumer direction activities to the extent they are able and allowed under the legal representation. A member may elect to participate or withdraw from participation in consumer direction at any time. A member can elect to change a representative at any time.

- iii. Members in 1915(c) Waivers have authority to manage the schedule at which each of the authorized services provided through Consumer Direction are needed. It is the member's responsibility to ensure that the worker does not work more than forty (40) hours per week. The approved annual or monthly budget for consumer directed services in combination with all other authorized 1915(c) Waiver HCBS must not exceed the member's annual expenditure cap, as applicable.
- e. **DDA Responsibilities in Consumer Direction**
 - i. DDA will authorize consumer directed services based on the member's specific monthly or annual budget, as applicable.
- f. **FEA Responsibilities in Consumer Direction**
 - i. The Fiscal Employer Agent is the entity contracting with the State, MCOs, and/or DDA that helps participants in Consumer Direction and Self-Direction.
 - ii. The FEA provides both Financial Administration and Supports Brokerage functions for Participants. The FEA acts as the agent to members for the purpose of filing certain federal tax forms and paying federal income tax withholding, FICA and FUTA taxes. The FEA also files unemployment insurance tax forms and pays the associated taxes and processes payroll based on the Eligible 1915(c) waiver HCBS authorized and provided.
 - iii. For members who consumer direct services, the FEA prepares and submits monthly budget status reports to the member and to the ISC/CM. In addition, the FEA is required to alert the member or representative, as appropriate, and the ISC/CM whenever the pattern of expenditures reveals the potential that the budget would be prematurely exhausted. The ISC/CM will review the monthly expenditure report with the member or representative, as appropriate, to identify and discuss potential problems, including potential over-expenditure of funds or expenditure patterns that might indicate that the member is having difficulty in accessing authorized services. The ISC/CM will assist the participant as needed to ensure the PCSP is adequate to meet the member's needs and the member or representative is properly trained on how to manage the budget.
- g. **Supports Broker**
 - i. The Supports Broker is an individual assigned by the FEA to each Member who assists the Member/Representative as requested by the Member/Representative in performing certain Employer of Record functions as follows: developing job descriptions; recruiting, interviewing, and hiring Workers; Member and Worker enrollment in Consumer Direction and Consumer Direction training or Self-Direction and Self-Direction training, as applicable; and, if requested, assist in developing (as part of the onboarding process for new Workers) a schedule for the Member's Workers that aligns with the schedule at which services are needed by the Member as reflected in the Member's PCSP. The Supports Broker shall also assist the Member as needed with developing and verifying the initial Back-up Plan. The Supports Broker collaborates with the Member's ISC/CM, as applicable

and appropriate. The Supports Broker does not have authority or responsibility for Consumer Direction or Self-Direction. The Member/Representative must retain authority and responsibility for Consumer Direction or Self-Direction, as applicable.

- ii. The Supports Broker is also responsible for training the member/representative and workers on Electronic Visit Verification (EVV) compliance. This training should include an overview on how to use the EVV application and alternative entry methods should the application be down or internet services unavailable. The Supports Broker and FEA will monitor EVV compliance to ensure established standards are being met **and provide retraining** when a member or worker is not following EVV guidelines. When issues are identified, the FEA and Supports Broker will notify the ISC/CM. Trainings and reeducation for EVV compliance should be an ongoing activity for Supports Brokers. Additionally, the FEA will share monthly compliance data for each waiver program with TennCare and DDA and complete ad hoc requests in accordance with TennCare and DDA's requests and timelines.

2. Authorization, Referral, and Service Implementation Process

- h. The model of Consumer Direction in the 1915(c) waivers is a prior authorization model. The determination regarding the services a member will receive will be based on a comprehensive assessment performed by an ISC/CM which identifies the member's needs, the availability of family and other caregivers to meet those needs, and the gaps in care for which paid services may be authorized. Once the type and amount of services that a member needs have been determined, the member can elect to have certain consumer-directed services provided by a more traditional "Contract Provider," or to participate in Consumer Direction and employ the persons who will deliver needed services. Members electing consumer direction are empowered and have the responsibility for managing, in accordance with waiver service definitions and limitations, a budget affording flexibility in service design and delivery.
- i. In 1915(c) Waivers, each authorization for consumer directed services shall include the type of service authorized; the dollar amount for each month of service authorized (i.e., the monthly budget for that service), or for Respite services, the dollar amount (applicable for hourly respite) for the year of service authorized (i.e., the annual budget); or, for Individual and Community Transportation, the dollar amount of approved expenditures up to the authorized maximum per member. Services provided through Consumer Direction shall be authorized in accordance with the PCSP.
- j. New requests for consumer directed services – When a new request for consumer directed services is made by a member, a comprehensive assessment will be performed by the ISC/CM to determine if the requested service is needed and at what amount and frequency the service is needed. Once it has been determined that the service is needed and that the member desires to consumer direct, the referral should be sent to the FEA by the ISC/CM via the agreed upon data sharing

interface. If the member is with an ISC agency, the ISC should notify the FEA.

- i. Identification of workers** – It is the responsibility of the member or the member’s representative to identify and hire workers. While the FEA may offer assistance such as writing job descriptions or offer ideas on where to post a job, it is up to the member or the member’s representative to identify, interview, hire, and manage workers.
- ii. Requesting Services** – When a member in the SW or CAC waiver requests CD services, the ISC agency should notify the FEA of the intent. The FEA will then communicate with the DDA to process the referral and begin the CD process.
- iii. Referral to FEA**– When a request for CD services has been made and approved by DDA, ISC/CM will send the referral to the FEA via the agreed upon electronic process. Once the referral has been received, the FEA will assign a Supports Broker who will then contact the member following all contractual timeframes.
- iv. Background checks** – As part of the hiring process, the FEA will conduct all necessary background and registry checks in compliance with the FEA contract. The FEA will also inform the member of the outcome of each check and if there are any concerns about hiring the potential worker. After review of the background results, the member has the final decision-making authority on offering employment, which must be documented in the member’s PCSP to reflect the member’s understanding and acknowledgement of any risks associated with hiring the worker.
- v. Paperwork/what to expect** – The FEA will furnish all of the new employee paperwork to be completed such as tax documents, worker agreements, background checks, etc. The Supports Broker will make weekly phone calls if paperwork is not received and is preventing service initiation. The FEA will also work with the member to ensure that all workers are aware and trained on EVV compliance. This training should be thorough and comprehensive to stress the necessity of EVV compliance. When there is an issue of EVV noncompliance, the Support Broker shall work with the person and the Employer of Record (EOR) for additional training or support needed to maintain compliance. With support from the Support Broker as needed, the EOR will determine when a worker who is noncompliant with EVV can no longer be a worker and needs to be terminated. The FEA is responsible for re-training and education with the member as it relates to EVV compliance. Should workers not maintain EVV compliance they may no longer be able to serve as a CD worker. Should members fail to follow EVV compliance, they may no longer be able to utilize CD services. If a worker, member, or EOR are not able to maintain EVV compliance, the FEA will notify DDA. The member would be notified that they would be disenrolled from CD and have the option to hire a provider agency for their services rather than consumer direct.
- vi. Choosing rates** – The rate paid to each worker is determined by the member/representative in conjunction with the ISC/CM in order to ensure

the rate of pay stays within the member's authorized budget for consumer directed services as listed on the PCSP. Overtime is not allowed.

- vii. **Supports Broker responsibilities** – Upon initial enrollment into CD services, the Supports Broker will conduct a face-to-face visit within 10 business days of assignment to begin the paperwork process and assist the member in completing the necessary steps for workers to begin. The Supports Broker is expected to participate in the development of the PCSP, Backup Plan, schedule, and rates, whenever requested by the member or member's representative.
- viii. **Back-up Plan** - A written plan that is a required component of a Member's PCSP, as applicable which specifies family members, other unpaid persons as well as Workers who are available, have agreed to serve as back-up, and who will be contacted to deliver needed care or support in situations when regularly scheduled Workers are unavailable or do not arrive as scheduled. A member shall not elect, as part of the Back-up Plan, to go without services. The Back-up Plan shall include the names and telephone numbers of contacts (workers, agency staff, organizations, natural supports) for alternate care, the order in which each shall be notified, and the services to be provided by each of the listed contacts. The member and his/her representative (as applicable) or other legal guardian shall have primary responsibility for the development and implementation of the Back-up Plan for Consumer-Directed or Self-Directed services, as applicable. The FEA will assist as needed with the development and verification of the initial Back-up Plan. The ISC/CM as applicable, shall be responsible for assistance as needed with implementing the Back-up Plan and for updating and verifying the Back-up Plan on an ongoing basis. MCOs shall not be expected or required to maintain contract providers on standby to serve in a back-up capacity for services a member has elected to receive through Consumer Direction.
- ix. Prior to beginning the provision of CD services, the FEA shall notify DDA that all requirements have been fulfilled, including verification of all worker qualifications, criminal background checks, signed service agreements, and that the member is ready to begin CD.

3. Services available for Consumer Direction

a. Personal Assistance

- i. Consumer directed Personal Assistance (PA) is available to all members in the 1915(c) Waivers, who are not receiving residential services, and shall be authorized on a monthly basis. The monthly budget amount shall be determined as follows:
 - 1. The ISC/CM shall determine the number of hours of PA services needed per month based on the member's comprehensive assessment
 - 2. The assessed need and hours of service required to meet the member's need shall be documented in the PCSP
- ii. The member may not exceed the approved monthly budget amount when

managing his/her consumer directed PA service. The ISC/CM must ensure the amount of consumer directed PA authorized in combination with all other 1915(c) Waiver HCBS the member receives does not exceed the member's annual expenditure cap.

b. Respite

- i. Consumer directed Respite services shall be available for 1915(c) Waiver members who are not receiving residential services and are assessed to need the service. Consumer directed Respite shall be authorized by DDA on a monthly and annual basis.
- ii. The annual budget amount shall be determined as follows:
 1. The ISC/CM shall determine the number of hours of Respite services needed based on the member's comprehensive assessment;
 2. The assessed need and hours of service required to meet the member's need shall be documented in the PCSP.
- iii. DDA shall submit to the FEA service authorizations containing the approved annual budget (dollar) amount electronically using the agreed-upon data interface or transmission method.
- iv. The member may not exceed the approved annual budget when managing his/her consumer directed Respite service. The ISC/CM must ensure the amount of consumer directed Respite authorized in combination with all other 1915(c) waiver HCBS the member receives does not exceed the member's annual expenditure cap.

c. Individual and Community Transportation

- i. The ISC/CM will work with the member or their representative to determine the appropriate transportation service: Individual Daily Transportation or Monthly Community Transportation and the number of days per month the member will need to pay for or reimburse a transportation expense (bus fare, mileage, taxi, etc.).
- ii. Consumer directed Monthly Community Transportation shall be authorized as follows:
 1. DDA shall submit to the FEA service authorizations containing the approved monthly transportation budget amount electronically using the agreed upon data interface. Authorizations submitted to the FEA shall not, in totality, exceed the approved monthly transportation budget.
 2. The member will purchase their transportation services and maintain receipts/mileage log for reimbursement.
 3. Receipts/mileage logs will be submitted by the member using the expense reimbursement form to the FEA
 - a. The FEA will review all receipts/mileage logs to ensure appropriate community transportation expense per the member's needs documented in the PCSP.
 4. Upon approval of the receipts/mileage log, DDA provides the

Community Transportation authorization to the FEA so the FEA can pay out after verifying the supporting documents submitted for the services.

- a. DDA will not authorize additional funds retroactively. The member is expected to manage the benefit within the authorized amount for that month. If changes are appropriate, amendments to the CD Community Transportation benefit in the PCSP shall be made prospectively.
- b. Each subsequent month will follow the same pattern.

iii. Members are expected to submit receipts/mileage log within 30 days of the end of the month of service.

1. The member is expected to submit receipts within 30 days of the end of each month and may submit more frequently if they prefer and will be reimbursed per the FEA monthly schedule.
2. If at any point after participation in CD Transportation a member does not submit appropriate documentation for CD transportation services within 120 days, the member will not be reimbursed. Any extension of the 120-day timeframe shall be approved by DDA or the MCOs.
3. The ISC/CM will work with the member when issues arrive in a delay of submitted receipts prior to the 120-day period.
4. If a member submits receipts/mileage log in excess of the monthly budget amount, only the approved budget amount will be authorized by DDA and reimbursed to the member. If a member submits receipts/mileage log that total an amount less than the budgeted amount, only the total amount of the receipts/mileage log submitted will be reimbursed to the member. If the member consistently submits receipts/mileage log in an amount greater or less than the authorized amount, the ISC/CM must reassess the member's needs to ensure the approved service authorization for transportation continues to be appropriate. Retroactive authorizations in an amount greater or less than the assessed documented need will not be permitted.
5. If the member will no longer be eligible to receive the Community Transportation benefit through Consumer Direction, the member may be able to receive the Individual Transportation Benefit.

d. Payment Process

- i. DDA will provide authorizations to the FEA that contain dollar amounts as described above. The FEA will submit claims to DDA in dollar amounts that do not exceed service authorizations and that align with services rendered. Any claim submitted in an amount exceeding the service authorization will be denied. DDA will submit claims to TennCare and TennCare will submit

claims to MCOs for payment to the FEA.

e. References:

- i. Applicable References include:
 1. [Comprehensive Aggregate Cap Waiver](#) (Control #0357)
 2. [Statewide Waiver](#) (Control #0128)
 3. [Self Determination Waiver](#) (Control #0427)
 4. Rules of Tennessee Department of Finance and Administration
Division of TennCare Chapter 1200-13-01
 5. Contract Between the State of Tennessee Department of
Finance and Administration and Division of TennCare and the FEA