

Chapter 255 - AN ACT RELATIVE TO REAL LIVES

Approved by the Governor Deval Patrick, August 6, 2014

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Chapter 19B of the General Laws is hereby amended by adding the following section:-

Section 19. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

“Chosen planning team”, an individual or group of individuals chosen by the participant to assist in the development of a person-centered plan or other aspect of self-determination.

“Commissioner”, the commissioner of developmental services.

“Department”, the department of developmental services.

“Financial management service”, a service or function provided by an entity to assist a participant in disbursing allocated funds in accordance with the participant’s individual budget and person-centered plan; provided, that financial management services may include facilitating the employment of service and support workers by aiding the participant with payments, fiscal accounting, tax withholding, compliance with relevant state and federal employment laws, verification of provider qualifications, criminal background checks and expenditure reports; provided, further, that the financial management service entity shall owe the participant a fiduciary duty and shall meet minimum qualifications as established by the department through regulation.

“Independent facilitator”, a person selected and directed by the participant to assist in the development and execution of a person-centered plan and to assist the participant in making informed decisions about the participant’s choices regarding self-determination including, but not limited to, the short and long term planning goals for self-determination and the transition to self-determination; provided, that an independent facilitator shall meet minimum qualifications established by the department through regulation prior to assisting a participant; and provided further, that an independent facilitator shall not provide any services, supports or goods to the participant under the participant’s individual support plan and shall not be employed by a person providing services, supports or goods to the participant.

“Individual budget”, an allocation of federal and state funds based upon the participant’s assessed needs, as determined by the department in consultation with the participant, the participant’s individual support plan team and chosen planning team, used to facilitate self-determination and to purchase services, supports or goods identified or referenced in the person-centered plan.

“Individual support plan”, shall have the same meaning as described in 115 CMR 6.20.

“Participant”, an individual with disabilities receiving department services and, when appropriate, an individual’s parents, legal guardian, conservator or other authorized representative, who has voluntarily agreed to take part in, and has been deemed eligible for, the self-determination option.

“Person-centered plan”, a plan of service for a participant who elects to participate in self-determination; provided, that, the person-centered plan shall be incorporated into the participant’s individual support plan.

“Self-determination”, an approach to service delivery in which the participant is given control over the decision-making process for the participant’s supports or services and budget and the participant may tailor the support to meet the participant’s needs.

(b) The department shall offer self-determination as an option to all individuals eligible for services through the department. Self-determination shall be based on the participant’s judgment and preferences as set forth in the participant’s person-centered plan. An individual who is not MassHealth eligible but is otherwise eligible for department services may participate in self-determination.

(c) The department shall establish a statewide self-determination advisory board to advise the department on efforts to implement, publicize, evaluate, improve and develop information regarding self-determination. The advisory board shall consist of: the longest serving member of the disabled persons protection commission, or a designee, who shall serve as chair; 19 individuals appointed by the commissioner, 1 of whom shall be a member of the department, 1 of whom shall be a member of an advocacy organization, 1 of whom shall represent taxpayers, 1 of whom shall have experience with consumer protection, 1 of whom shall have experience with self-determination models, 1 of whom shall have experience with nonprofit and for-profit services markets and competition and services for persons with disabilities, 1 of whom shall have experience with financial management

services, 1 of whom shall be an independent facilitator; 1 of whom shall be a provider of direct services, supports or goods and 10 of whom shall be a participant or a family member, legal representative or guardian of a participant; 1 individual appointed by the disabled persons protection commission; 1 individual appointed by the office of the inspector general; and 1 individual appointed by the office of the state auditor. Members shall serve for a term of 3 years. Upon the expiration of the term of any member, a successor shall be appointed in like manner. The appointing entity shall in like manner fill any vacancy for the remainder of the unexpired term.

The self-determination advisory board shall also compile, and continually update, a list of participants or participants' chosen planning teams who are willing to volunteer to discuss their experiences in self-determination with individuals considering implementing the self-determination option in their individual support plans and shall provide said list to the department.

(d) The department and the statewide self-determination advisory board shall develop informational materials and training for department staff regarding self-determination. Training shall include how to explain the concept and practice of self-determination and shall inform department staff about the mechanics of self-determination, including but not limited to: the development of individual budgets; the selection, purchase and use of services, supports and goods by participants; information about the types of providers and services that may be utilized; information about the selection and supervision of vendors; the respective roles of independent facilitators, financial management services and the department; and the methods of identifying and reporting instances of suspected waste, fraud and abuse. The department shall educate all department staff, except for department staff classified as janitorial, maintenance or secretarial, on all service options including, but not limited to, self-direction annually.

(e) The department, in administering self-determination, shall:

(1) facilitate and assist in the preparation of a person-centered plan, individual support plan and individual budget for each participant and, if applicable, the selection of a financial management service or independent facilitator;

(2) collect and disclose information to participants about providers and vendors who provide goods and services to participants; provided, that said information shall be in a format that employs standard categories of services, supports and goods and enables a participant or a participant's chosen planning team to compare various combinations of possible budget expenditures; provided, further that said information shall include the costs of goods, on a per unit basis, and rates for supports and services, known to the department, which are likely to be charged against a participant's individual budget if the participant utilizes said service, support or good; provided, further, that said information shall include information about the costs likely to be charged against a participant's budget by a specific provider or vendor of financial management services or independent facilitation services; provided further, that where specific information is not available to the department, the department shall provide average rates for such services; and provided further, that the department shall not disclose any information that violates privacy protections under [section 7 of chapter 4](#), [section 2 of chapter 66A](#), [section 17 of chapter 123B](#) or any other state or federal privacy law;

(3) set minimum qualifications and guidelines for financial management service providers and independent facilitators; provided that, independent facilitators and financial management service providers shall owe participants a fiduciary duty; and provided, further, that the department shall provide a list to each participant of the persons or organizations qualified to act as a financial management service provider or independent facilitator;

(4) in accordance with subsection (i), set individual budgets annually in a fair, equitable and transparent manner in consultation with the participant and the participant's individual support plan; provided, that each individual budget shall be provided in a standard format that provides a breakdown of the individual budget into standard categories determined by the department including, but not limited to, services, supports and goods; and provided, further, that the individual budget shall specify whether a service, support or good has a rate that was negotiated by the department;

(5) in consultation with the self-determination advisory board, review existing methodologies and develop alternative methodologies for computing and adjusting individual budgets as needed;

(6) ensure that the value of a participant's individual budget is equivalent to the amount the department would have spent providing services, supports or goods to the participant if the participant had chosen to receive services, supports and goods through a traditional service model supported by the department; provided, that the department shall establish an appeals process for decisions regarding the individual budget;

(7) establish a process for providing funds under an individual budget to the participant in a timely manner ensuring that a participant is able purchase services, supports or goods without experiencing an interruption in services;

(8) promulgate standard forms on which the financial management service provider for each participant shall annually report the participant's total expenditures for the year to the department; provided, that said report shall facilitate the collection of information under clause (2);

(9) approve a qualified financial management service provider, which may provide services to participants; provided, that the department shall negotiate with the financial management service provider uniform rates for each given unit of service, to be paid by each participant from the participant's individual budget; provided, that the department may approve additional qualified financial management providers upon a determination by the department that providing additional service options will not materially increase participants' costs or have a material adverse effect on the department's oversight of individual budgets; provided further, that the department may reduce the number of qualified financial management service providers in order to control costs or enhance oversight of individual budgets; and provided further, that the department may opt to not require a participant to use a designated financial management service if the participant is using the agency with choice model, under section 1915(c) of the Social Security Act, codified at 42 U.S.C. 1396n et seq.;

(10) monitor the expenditure of funds from individual budgets;

(11) make efforts to ensure that participants are reasonably representative of the diversity of individuals eligible for services from the department;

(12) facilitate individual and family understanding of self-determination and related issues of budgeting, planning, service and provider selection and staff and employee management;

(13) provide information on the department's website about all service options including, but not limited to, self-determination and options for residential placements; provided, that said website shall inform individuals, at minimum, that with self-determination (i) the participant has control over the annual budget, (ii) the participant is central to and directs the decision-making process and determines what supports are utilized and (iii) the service system is flexible, so the participant may tailor the participant's supports to meet the participant's needs; and provided, further that said website shall provide other information as determined by the department in consultation with the statewide self-determination advisory board;

(14) provide the information described in subclauses (i) to (iii), inclusive, of clause (13) to individuals upon: (A) notification to an individual of priority for services; (B) commencement of the development of an individual support plan; (C) commencement of the renewal of an individual support plan; (D) annual notification to persons who have declined an individual support plan of their option to participate in the individual support plan; and (E) the person's entry into the department's turning 22 program;

(15) provide information on providers of self-determination supports, services or goods through its website or another means as determined by the department;

(16) hold meetings, briefings and orientations, as necessary, with providers, organizations and businesses to offer introductory and on-going information on self-determination and discuss ways the department can work with parties to establish and improve services, supports or goods that facilitate self-determination;

(17) ensure that the participant and the participant's chosen planning team comprehend and commit to appropriate means of identifying, monitoring, preventing and reporting to the disabled persons protection commission suspected instances of abuse or neglect of participants, including financial abuse;

(18) provide, in consultation with the advisory board established in subsection (c), an annual report to the chairs of the house and senate committees on ways and means and to the house and senate chairs of the joint committee on children, families and persons with disabilities, not later than September 1; provided that said report shall (i) set forth any modifications or improvements made by the department to the administration of self-determination, (ii) specify any recommended legislation, (iii) provide an assessment of the performance of providers, vendors and persons who have received funds for the provision of services, supports and goods under this section, (iv) specify the number of participants utilizing self-determination during the previous fiscal year, (v) specify the number of participants per region in the commonwealth, (vi) specify types and amounts of services, supports or goods purchased under self-determination, in a manner that facilitates analyses and year to year comparisons, (vii) provide ranges and averages for expenditures from all individual budgets, inclusive of any adjustments to individual budgets made pursuant to subsection (i), and (viii) the number of participants who withdrew voluntarily from the option; and

(19) provide, except as is necessary to comply with privacy laws, any information requested by the attorney general, state auditor, inspector general, senate or house committees on post audit and oversight, disabled persons protection commission or any other department, agency or law enforcement body investigating suspected neglect or physical, emotional or financial abuse. The superior court shall have jurisdiction over disputed requests for information.

(f) Participation in self-determination shall be available to any individual who receives services from the department and who agrees to the following terms and conditions:

(1) the participant and participant's chosen planning team shall be responsible for implementation of the person-centered plan and the individual support plan, including the hiring or purchasing of necessary services, supports or goods;

(2) the participant shall utilize the services of a financial management service, unless an exception applies; and

(3) the participant, the participant's chosen planning team and the participant's individual support plan team members shall attend an orientation prior to enrollment, the subject matter of which shall include, but not be limited to, the concept and practice of self-determination, related issues of budgeting, planning, services and provider selection, staff and employee management and the respective roles of independent facilitators, financial management services and the department; provided, that no person shall be required to attend more than 1 orientation per year if working with multiple participants.

(g) Participation in self-determination shall be voluntary. An individual may choose to take part in or seek other department services at any time; provided, that the individual budget shall follow a participant who seeks other department services. The department shall not require or prohibit participation in self-determination as a condition of eligibility for, or delivery of, services, supports or goods otherwise available.

(h) If a participant voluntarily terminates self-determination or ceases participation in self-determination due to a medical event or other change in condition, the department shall provide for the participant's transition to other eligible services or supports. The transition shall include the development of a new individual support plan, which reflects the services, supports and goods necessary to meet the individual's needs and objectives. The department shall ensure that there is no gap in services, supports or goods during the transition period.

(i) The department, in consultation with the participant and the participant's chosen planning team, shall determine the initial and any revised individual budget for the participant.

The amount of the individual budget shall be available to the participant each year for the purchase of self-determination services, supports or goods. An individual budget may be recalculated by the department based on the needs of the participant. An individual budget shall not be increased to cover the cost of an independent facilitator; except as provided by the department through regulation.

Employees of entities providing services, supports and goods to participants shall be eligible for a proportional amount of any additional appropriation designated for the increase of salary for workers employed by the department or its providers.

Funds not spent by the annual individual budget shall revert back to the department. The department shall consider adjusting a participant's individual budget when a participant does not utilize all funds in the participant's individual budget within the designated year.

(j) The self-determination option established under this section shall be contingent upon federal financial participation. The department shall seek reimbursement through federal Medicaid funding, the Home and Community Based Waiver or other federal reimbursement mechanisms of the department.

In adopting or modifying regulations, the department shall seek to maximize federal financial participation in, or funding or reimbursement for, self-determination.

(k) The provider of financial management services shall provide the participant and the department with a monthly individual budget statement in a format specified by the department through regulation.

(l) The department, in consultation with the advisory board established in subsection (c), shall determine which persons shall be subject to criminal background checks as a condition of providing services, supports or goods to participants and shall promulgate or amend its regulations as necessary to require and implement said criminal background checks; provided, that participants shall not be required to pay the cost of a criminal background check required under this subsection.

(m)(1) Any member of a participant's chosen planning team, any member of the advisory board established in subsection (c), any mandated reporter of the disabled persons protection commission, as defined in section 1 of

chapter 19C, and any other person involved in the preparation or implementation of the self-determination plan who suspects financial abuse, including, but not limited to, mismanagement, misappropriation or waste of a participant's self-determination funds or individual budget shall immediately report such suspicious actions or inactions to the disabled persons protection commission. The disabled persons protection commission shall evaluate and forward the report to the appropriate law enforcement or state agency and shall forward all reports of suspected financial abuse to the state auditor. The disabled persons protection commission shall provide an annual itemization to the house and senate chairs of the joint committee on children, families and persons with disabilities detailing the number, types and geographic locations of specific reports and the agency or agencies to which the complaint was referred.

(n) The department shall adopt and may modify regulations to implement this section.

(o) The state auditor, pursuant to [section 12 of chapter 11](#), shall audit the self-determination option as the state auditor determines necessary and shall make recommendations to the department, the senate and house committees on ways and means and the joint committee on children, family and persons with disabilities about changes in law or regulation that may improve the efficiency of the self-determination option, decrease costs, improve services or prevent waste, fraud or abuse.

(p) The attorney general or the department may independently investigate any allegations of mistreatment, waste, abuse, fraud or breach of any explicit or implied duties under this section. The attorney general or the department, on behalf of a participant, may seek to recover any monies lost because of mistreatment, waste, abuse, fraud or breach of any explicit or implied duties under this section in the superior court.

SECTION 2. The department shall submit a report to the chairs of the house and senate committees on ways and means and the house and senate chairs of the joint committee on children, families and persons with disabilities on the feasibility and cost of facilitating participant access to comparative information by making available a searchable online repository of providers of self-determination supports, services or goods, not later than 6 months from the effective date of this act. Said repository may be limited to providers serving multiple participants, who receive \$75,000 or more of self-determination funds per year, within the 2 years preceding the year in which the department requires said information, or any other provider that voluntarily submits information to the department. Said report shall also include a proposed method to establish standardized units and descriptive categories for the searchable website. Such standardized units and descriptive categories may include:

(i) organizational structure, history and performance, including but not limited to, the (A) complete legal name of the provider, vendor or supplier and, where different, the popular or public name of the provider, vendor or supplier, (B) legal structure and organizational type, (C) accreditation and licensure status, (D) web address location of recent formal audits, reports and investigations and (E) contact information and website information;

(ii) services, supports or goods offered at each geographic location by said provider including, but not limited to, (A) hours and schedules of availability of each service, support or good, (B) populations served, (C) provisions regarding the supervision, storage and dispensation of prescription medications and (D) any special or non-standard eligibility requirements or restrictions;

(iii) facilities available and in good operating order at each geographic location including, but not limited to, (A) precise street address of each geographic location (B) availability of or proximity to public transportation (C) hours of operation and (D) accessibility by mobility-impaired individuals;

(iv) medical and non-medical professional staff at each geographic location including, but not limited to, (A) number of staff in each staff category, (B) educational and professional attainments of staff, (C) ratio of staff to client for each shift and (D) average tenure, in years and months, of staff who work at least 16 hours a week; and

(v) characteristics of individuals receiving services, supports and goods at each geographic location including, but not limited to, number of clients, age range of clients and gender distribution of clients.

If the department finds that a form or an alternative form of the searchable online repository is not cost prohibitive, the department shall develop and implement the repository within 18 months after the effective date of this act.

SECTION 3. Subject to appropriation, the department of developmental services shall contract with an independent research organization or academic institution not later than August 1, 2019 to evaluate self-determination authorized in [section 19 of chapter 19B of the General Laws](#) and recommend improvements to the self-determination option.

SECTION 4. Notwithstanding any general or special law to the contrary, the department of developmental services shall only approve 1 qualified financial management service provider under clause (9) of subsection (e)

of [section 19 of chapter 19B](#).

The department of developmental services shall hold a meeting, briefing or orientation at least once annually under clause (16) of subsection (e) of [section 19 of chapter 19B](#).

SECTION 5. Section 4 is hereby repealed.

SECTION 6. The department of developmental services shall advertise on its website that self-determination is a new service option available for individuals receiving services from the department for 2 years from the effective date of this act.

SECTION 7. The state auditor, pursuant to [section 12 of chapter 11](#), shall audit the self-determination option, established under [section 19 of chapter 19B of the General Laws](#), at least once during the first 4 years of its operation.

SECTION 8. Section 5 shall take effect 3 years from the effective date of this act.

Approved, August 6, 2014.