

CHAPTER 60**(HB 116)**

AN ACT relating to the Kentucky Independence Plus through Consumer-Directed Services Program Act of 2004.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS 205.510 TO 205.645 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act, unless the context otherwise requires:

- (1) *"Budget allowance" means the amount of money made available each month to a consumer to purchase covered services and supports. The amount of money shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer;*
- (2) *"Consumer" means a person who has chosen to participate in the program, has met the enrollment requirements, has a person-centered plan, and has received an approved budget allowance;*
- (3) *"Covered services and supports" means those services and supports that are eligible for reimbursement under the program and that are approved for the consumer following a functional needs assessment and pursuant to a person-centered plan;*
- (4) *"Fiscal intermediary" means an entity that is approved by the cabinet to provide service that helps the consumer manage his or her budget allowance, retains the funds, processes any employment and tax information, reviews records to ensure correctness, writes paychecks to providers, and delivers paychecks or electronically transfers funds to the consumer for distribution to providers or caregivers;*
- (5) *"Provider" means:*
 - (a) *A person or agency licensed or otherwise permitted to render services eligible for reimbursement under this program for whom the consumer is not the employer of record; or*
 - (b) *A consumer-employed caregiver that renders services eligible for reimbursement under this program for whom the consumer is the employer of record;*
- (6) *"Representative" means an uncompensated individual designated by the consumer to assist in managing the consumer's budget allowance and needed services; and*
- (7) *"Service advisor" means the person who provides technical assistance to a consumer in meeting responsibilities under Sections 1 to 3 of this Act.*

SECTION 2. A NEW SECTION OF KRS 205.510 TO 205.645 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health Services shall establish the Kentucky Independence Plus through Consumer-Directed Services Program that shall provide an option within each of the home and community-based services waivers. The option within each of the waiver programs shall be based on the principles of consumer choice and control and that shall be implemented upon federal approval, if required. The program shall allow enrolled persons to assist with the design of their programs and choose their providers of services and to direct the delivery of services to meet their needs.*

- (2) *The cabinet shall establish interagency cooperative agreements with any state agency as needed to implement and administer the program.*
- (3) *A person who is enrolled in a Medicaid home and community-based waiver program may choose to participate in the consumer-directed services program.*
- (4) *A consumer shall be allocated a monthly budget allowance based on the results of his or her assessed functional needs, his or her person-centered plan, and the financial resources of the program. The budget allowance shall be disbursed directly from a cabinet-approved fiscal intermediary on behalf of the consumer. The cabinet shall develop purchasing guidelines to assist each consumer in using the budget allowance to purchase needed, cost-effective services.*
- (5) *A consumer shall use the budget allowance to pay for nonresidential and nonmedical home and community-based services and supports that meet the consumer's needs and that constitute a cost-effective use of funds.*
- (6) *A consumer shall be allowed to choose providers of services, including but not limited to when and how the services are provided. A provider may include a person otherwise known to the consumer, unless prohibited by federal law.*
- (7) *If the consumer is the employer of record, the consumer's roles and responsibilities shall include but not be limited to the following:*
 - (a) *Developing a job description;*
 - (b) *Selecting providers and submitting information for any required background screening;*
 - (c) *With assistance of the cabinet or its agents, developing a person-centered plan and communicating needs, preferences, and expectations about services being purchased;*
 - (d) *Providing the fiscal intermediary with all information necessary for provider payments and tax requirements; and*
 - (e) *Ending the employment of an unsatisfactory provider.*
- (8) *If a consumer is not the employer of record, the consumer's roles and responsibilities shall include but not be limited to the following:*
 - (a) *With assistance of the cabinet or its agents, developing a person-centered plan and communicating needs, preferences, and expectations about services being purchased;*
 - (b) *Ending the services of an unsatisfactory provider; and*
 - (c) *Providing the fiscal agent with all information necessary for provider payments and tax requirements.*
- (9) *The roles and responsibilities of the cabinet or its agents shall include but not be limited to the following:*
 - (a) *Assessing each consumer's functional needs, helping with the development of a person-centered plan, and providing ongoing assistance with the plan;*

- (b) *Offering the services of service advisors who shall provide training, technical assistance, and support to the consumer as prescribed through an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A;*
 - (c) *Approving fiscal intermediaries; and*
 - (d) *Establishing the minimum qualifications for all providers and being the final arbiter of the fitness of any individual to be a provider.*
- (10) *The fiscal intermediary's roles and responsibilities shall include but not be limited to the following:*
- (a) *Providing recordkeeping services, including but not limited to maintaining financial records as required through administrative regulation promulgated in accordance with KRS Chapter 13A by the Cabinet for Health Services; and*
 - (b) *Retaining the consumer-directed funds, processing employment and tax information, if any, reviewing records to ensure correctness, writing paychecks to providers, and delivering paychecks.*
- (11) (a) *Each person who provides services or supports under this section shall comply on an annual basis with any required background screening. A person shall be excluded from employment upon failure to meet the background screening requirements unless otherwise exempted through an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A.*
- (b) *The service advisor shall, as appropriate, complete background screening as required by this section.*
- (12) *For purposes of this section, a person who has undergone screening, is qualified for employment under this section, and has not been unemployed for more than one hundred eighty (180) days following the screening shall not be required to be rescreened. Such person must attest under penalty of perjury to not having been convicted of a disqualifying offense since completing the screening.*
- (13) *To implement this section:*
- (a) *The cabinet shall be authorized to promulgate necessary administrative regulations in accordance with KRS Chapter 13A; and*
 - (b) *The cabinet shall take all necessary action to ensure state compliance with federal regulations. The cabinet shall apply for any necessary federal waivers or federal waiver amendments to implement the program within three (3) months following the effective date of this Act pending availability of funding.*
- (14) *The cabinet, with consumer input, shall review and assess the implementation of the consumer-directed program. By January 15 of each year, the cabinet shall submit a written report to the General Assembly that includes the review of the program and recommendations for improvements to the program.*

SECTION 3. A NEW SECTION OF KRS 205.510 TO 205.645 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of law to the contrary, the provisions of KRS Chapter 342 shall not apply to the provision of any service under Section 2 of this Act between the provider and the state or any state agency or political subdivision, the provider and the consumer, or as arranged by the provider and any fiscal intermediary, representative, or service advisor.

Section 4. Sections 1 to 3 of this Act shall be known as the Kentucky Independence Plus through Consumer-Directed Services Program Act of 2004.

Approved April 2, 2004