# Application for

# Section 1915(b) (4) Waiver
# Fee-for-Service
# Selective Contracting Program

June, 2012

v1.0

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# Application for Section 1915(b) (4) Waiver
# Fee-for-Service (FFS) Selective Contracting Program

## Facesheet

The **State** of Washington requests a waiver/amendment under the authority of section 1915(b) of the Act. The Medicaid agency will directly operate the waiver.

The **name of the waiver programs** are:

- 1915(k) Community First Choice State Plan Option
- Optional State Plan personal care services
- 1915(c) New Freedom Waiver
- 1915 (c) Individual and Family Services (IFS) Waiver
- 1915(c) Basic Plus Waiver
- 1915(c) Children's Intensive In Home Behavior Support (CIIBS) Waiver
- 1915(c) Core Waiver

(List each program name if the waiver authorizes more than one program.).

**Type of request**. This is:
_X__ an initial request for new waiver. All sections are filled.
___ a request to amend an existing waiver, which modifies Section/Part ____
___ a renewal request
Section A is:
___ replaced in full
___ carried over with no changes
___ changes noted in **BOLD**.
Section B is:
___ replaced in full
___ changes noted in **BOLD**.

**Effective Dates:** This waiver is requested for a period of 5 years beginning 10/1/2021 and ending 9/30/2026.

**State Contact:** The State contact person for this waiver is Jamie Tong and can be reached by telephone at (360)725-3293, or fax at (360) 438-8633, or e-mail at jamie.tong@dshs.wa.gov. (List for each program)

# Section A – Waiver Program Description

## Part I: Program Overview

**Tribal Consultation:**
Describe the efforts the State has made to ensure that Federally-recognized tribes in the State are aware of and have had the opportunity to comment on this waiver proposal.

The department has been committed to an inclusive and transparent effort regarding the development of the Consumer Directed Employer (CDE) program by engaging tribal governments throughout the process. A Dear Tribal Leader Letter was mailed on April 3, 2018 requesting a CDE project representative for the CDE strategic development group, and on August 3, 2018 notifying tribal partners of the intent by the department to issue a Request for Proposals (RFP) for a CDE. In addition, CDE developments were presented and consultation occurred at the following Tribal events:

| | |
|---|---|
| April 10, 2018 | Indian Policy Advisory Committee (IPAC) subcommittee meeting. |
| July 10, 2018 | IPAC subcommittee meeting – Consumer Directed Employment Report |
| July 11, 2018 | IPAC Quarterly Meeting |
| August 15, 2018 | Tribal Roundtable #1 |
| September 4, 2018 | Tribal Roundtable #2 |
| September 11, 2018 | Tribal Consultation and Roundtable |
| November 1 and 2, 2018 | Tribal Summit |
| November 8, 2018 | Governor's Indian Health Council Meeting |
| December 4, 2018: | CDE Stakeholder and Tribal Engagement Report released |
| January 9, 2019 | IPAC Quarterly Meeting |
| March 12, 2019 | IPAC Subcommittee |
| April 9, 2019 | IPAC Subcommittee |
| April 10, 2019 | IPAC Quarterly Meeting |
| June 6, 2019 | Tribal Summit |

| | |
|---|---|
| November 1, 2019 | Tribal Summit |
| February 11, 2020 | Consultation |
| June 9, 2020 | IPAC Subcommittee |
| August 11, 2020 | IPAC Subcommittee |
| November 10, 2020 | IPAC Subcommittee |

**Program Description:**
Provide a brief description of the proposed selective contracting program or, if this is a request to amend an existing selective contracting waiver, the history of and changes requested to the existing program. Please include the estimated number of enrollees served throughout the waiver.

The Consumer Directed Employer (CDE) program will transfer the administrative functions and responsibilities of personal care and respite Individual Provider (IP) management from the Department of Social and Health Services (DSHS) and Area Agency on Aging (AAA) staff to a contracted CDE vendor, the Consumer Direct Care Washington, LLC. Participants (also referred to as consumers) will retain the authority to select, supervise, manage, and dismiss their IPs. The CDE must be responsive to the needs of participants, families, the IP workforce, and DSHS. Person-centeredness and self-directed care remains the top priority in the implementation of the CDE.

When an IP is chosen by a participant, the participant refers the IP for hiring to the CDE. If qualified, the IP is hired and becomes an employee of the CDE. The CDE is the legal employer and will be responsible for payroll, tax reporting, tracking paid leave, and credentialing of IPs. The CDE is also responsible for electronic visit verification for IPs, billing in the MMIS system, and withholding taxes and garnishments. The CDE will also engage in collective bargaining with the exclusive representative for the IP workforce.

The total estimated number of participants who have the choice to receive care through an IP and could access an IP through this waiver is approximately 50,000. At the time of this application, the estimated number of participants actually receiving personal care or respite through an individual provider is approximately 44,000.

The first phase of the transition to the CDE will begin October 1, 2021 based on geographical area, with statewide implementation in 2022.

**Waiver Services:**
Please list all existing State Plan services the State will provide through this selective contracting waiver.

## A. Statutory Authority

1. **Waiver Authority.** The State is seeking authority under the following subsection of 1915(b):

   _X__ **1915(b) (4) - FFS Selective Contracting program**

2. **Sections Waived.** The State requests a waiver of these sections of 1902 of the Social Security Act:

   a._X_ **Section 1902(a) (1) - Statewideness**
   b.___ **Section 1902(a) (10) (B) - Comparability of Services**
   c._X__**Section 1902(a) (23) - Freedom of Choice**
   d.___ **Other Sections of 1902** – (please specify)

## B. Delivery Systems

1. **Reimbursement.** Payment for the selective contracting program is:

   __X_ the same as stipulated in the State Plan
   ___ is different than stipulated in the State Plan (please describe)

2. **Procurement**. The State will select the contractor in the following manner:

   _X__ **Competitive** procurement
   ___ **Open** cooperative procurement
   ___ **Sole source** procurement
   ___ **Other** (please describe)

## C. Restriction of Freedom of Choice

1. **Provider Limitations**.

   _X__ Beneficiaries will be limited to a single provider in their service area.
   ___ Beneficiaries will be given a choice of providers in their service area.

   (NOTE: Please indicate the area(s) of the State where the waiver program will be implemented)

2. **State Standards.**

   Detail any difference between the state standards that will be applied under this waiver and those detailed in the State Plan coverage or reimbursement documents.
   The state is not changing the standards for the caregivers, only the entity who will hire and pay them.

## D. Populations Affected by Waiver

(May be modified as needed to fit the State's specific circumstances)

1. **Included Populations**. The following populations are included in the waiver:

___ Section 1931 Children and Related Populations
___ Section 1931 Adults and Related Populations
__X_Blind/Disabled Adults and Related Populations
__X_Blind/Disabled Children and Related Populations
__X_Aged and Related Populations
___ Foster Care Children
__X_Title XXI CHIP Children

2. **Excluded Populations.** Indicate if any of the following populations are excluded from participating in the waiver:

___ Dual Eligibles
___ Poverty Level Pregnant Women
___ Individuals with other insurance
_X__Individuals residing in a nursing facility or ICF/MR
___ Individuals enrolled in a managed care program
___ Individuals participating in a HCBS Waiver program
___ American Indians/Alaskan Natives
___ Special Needs Children (State Defined). Please provide this definition.
___ Individuals receiving retroactive eligibility
___ Other (Please define):

# Part II: Access, Provider Capacity and Utilization Standards

## A. Timely Access Standards

Describe the standard that the State will adopt (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State has adopted) defining timely Medicaid beneficiary access to the contracted services, *i.e.,* what constitutes timely access to the service?

1. How does the State measure (or propose to measure) the timeliness of Medicaid beneficiary access to the services covered under the selective contracting program?

With the Consumer Directed Employer (CDE), the participant retains the ability to hire any qualified provider. Providers chosen by the participant are referred to the CDE to complete the hiring process. DSHS will measure timeliness of access to the service in

business days. The CDE vendor has a requirement via the contract performance standards to complete hiring activities for all IPs within 5 business days from the IP's completion of all required paperwork. After hiring activities are complete, the IP may begin providing services to the participant, based on the participant's direction, and for the authorized service hours. DSHS will monitor compliance with this performance standard at least on an annual basis looking for at least 98% compliance.

2. Describe the remedies the State has or will put in place in the event that Medicaid beneficiaries are unable to access the contracted service in a timely fashion.

Habitual non-performance on contract performance standards is grounds to declare the vendor in material breach. The contract allows DSHS the remedy to withhold payment for a portion of the rate until performance standards are met. DSHS can off-set damages incurred during the period of substandard performance. In the event of extended material breach, DSHS has the option to move those specific services to another vendor, negotiate changes to the services and compensation, or move to end the contract and find a new CDE vendor.

## B. Provider Capacity Standards

Describe how the State will ensure (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State has ensured) that its selective contracting program provides a sufficient supply of contracted providers to meet Medicaid beneficiaries' needs.

1. Provide a detailed capacity analysis of the number of providers (e.g., by type, or number of beds for facility-based programs), or vehicles (by type, per contractor for non-emergency transportation programs), needed per location or region to assure sufficient capacity under the selective contracting program.

The CDE provider is unique in that IPs are already in place. There are approximately 46,000 IPs authorized each month to provide in-home care. The transition to the CDE will follow a phased in approach based on geographical region beginning October 1, 2021 with statewide implementation in 2022. A phased in approach will ensure the vendor demonstrates sufficient capacity to provide contractual requirements, and allows time for correction before full implementation statewide. At the time of transition to the CDE, all current providers will be credentialed and working.

The CDE vendor must have capacity to provide administrative employer support services to the IPs. The services can be performed almost entirely remotely for the IPs. The DSHS contract requires the CDE vendor to provide in person support to IPs in all 39 counties in the state of Washington. DSHS has required the CDE vendor to agree to specific performance requirements for timeliness of service and specific outcomes. DSHS has also required the vendor to submit a staffing plan as part of their bid, and commit to adequately staffing the CDE in order to meet the contract requirements. DSHS will work with the vendor to monitor staffing levels and performance against contract requirements.

2. Describe how the State will evaluate and ensure on an ongoing basis that providers are appropriately distributed throughout the geographic regions covered by the selective contracting program so that Medicaid beneficiaries have sufficient and timely access throughout the regions affected by the program.

As most of this work can be performed remotely, geographic distribution is not a significant risk for this provider type, although the vendor is required to have a local presence in all 39 Washington counties. DSHS will work with the CDE vendor to ensure that their local supports across the 39 counties are maintaining support levels that meet performance standards within the contract. This will be evaluated during the annual monitoring cycle as part of the performance standard monitoring.

For the transition to the CDE, a phased in approach will be used to allow for evaluation of each geographic region to ensure sufficient and timely access by clients.

## C. Utilization Standards

Describe the State's utilization standards specific to the selective contracting program.

1. How will the State (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State) regularly monitor(s) the selective contracting program to determine appropriate Medicaid beneficiary utilization, as defined by the utilization standard described above?

DSHS has included utilization as a performance standard of the CDE contract. DSHS will evaluate the number of authorized hours vs. claimed hours as well as overtime assignment and claims. A utilization baseline will be established prior to the CDE implementation of operations. DSHS will then monitor this utilization rate on at least an annual basis.

2. Describe the remedies the State has or will put in place in the event that Medicaid beneficiary utilization falls below the utilization standards described above.

Habitual non-performance on contract performance standards is grounds to declare the vendor in material breach. The contract allows DSHS the remedy to withhold payment for a portion of the rate until performance standards are met. DSHS can off-set damages incurred during the period of substandard performance. The vendor will continue to receive a portion of the overall rate to ensure the IPs are paid timely. In the event of extended material breach, DSHS has the option to move those specific services to another vendor, negotiate changes to the services and compensation, or move to end the contract and find a new CDE vendor.

# Part III: Quality

## A. Quality Standards and Contract Monitoring

1. Describe the State's quality measurement standards specific to the selective contracting program.

a. Describe how the State will (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State):

i. Regularly monitor(s) the contracted providers to determine compliance with the State's quality standards for the selective contracting program.

DSHS will review contract performance during the annual contracting cycle for the CDE vendor for all performance standards defined in the contract. This will include regular evaluation of ongoing operations, intermittent tasks, and tasks required only once per year.

ii. Take(s) corrective action if there is a failure to comply.

The CDE contract contains remedies for non-performance on the part of the vendor that include withholding of payment, requirements for a corrective action plan by the vendor, and a parent company guarantee, where applicable. DSHS may exercise these remedies for non-performance in any of the areas related to the quality of the service delivery as measured by the performance standards and contract requirements. Habitual non-performance on contract performance standards is grounds to declare the vendor in material breach. In the event of material breach, DSHS has the option to move those specific services to another vendor, negotiate changes to the services and compensation, or move to end the contract and find a new CDE vendor.

2. Describe the State's contract monitoring process specific to the selective contracting program.

a. Describe how the State will (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State):

i. Regularly monitor(s) the contracted providers to determine compliance with the contractual requirements of the selective contracting program.

During operations of the CDE, DSHS will employ three full time employees to monitor the contract and perform quality assurance activities to evaluate the vendor's operations. This will include the annual review of vendor performance reporting described above, regular quality assurance oversight reviews of vendor systems and processes, and periodic formal audits including a SOC 2 Type II audit for 6 months of every year.

ii. Take(s) corrective action if there is a failure to comply.

DSHS will have all contract remedies available described above for breaches identified during contract monitoring.

## B. Coordination and Continuity of Care Standards

Describe how the State assures that coordination and continuity of care is not negatively impacted by the selective contracting program.

Coordination and continuity of care will be preserved with this selective contracting program because:

1. Clients will continue to direct how, when, and by whom the care services are provided.
2. Automation will be implemented to support communication between the CDE and the case managers regarding any potential disqualification of a client's caregiver (e.g., due to expiring training certification or background check) or when a change in caregiver has been requested by the client, or is otherwise needed (e.g., caregiver quits).
3. The CDE will offer assigned service coordinators to work with each client and their caregiver(s).
4. Case managers will continue to assess client needs and authorize care services, and provide ongoing case management services to the client.
5. The CDE will have staff in local communities available to assist clients face-to-face, by phone, or virtually with any questions or changes related to the employment or assignment of their caregiver(s).
6. Staff will receive training on communication protocols to ensure smooth collaboration between the CDE and case manager.
7. An escalation processes will be implemented and staff will be trained on when to invoke it should issues arise.
8. The CDE will have the ability to implement efficiencies that will decrease time in hiring and qualifying caregivers.
9. Clients will have access to a complaint resolution process which also includes an opportunity for appeals.
10. Clients will have access to a pool of potential caregivers who have met all worker qualifications through the IP referral registry. These are not on-call workers, but are people who have indicated they are interested in providing more hours if a client selects them to be an IP.
11. The CDE will continuously recruit and retain a skilled pool of available individual providers across the state.

In preparation for each implementation phase, the CDE will be responsible to complete all hiring activities for individual providers, and will receive demographic information transferred from the legacy system to the CDE. The hiring activities will begin no later than 3 months prior to the conversion. The CDE shall ensure a sufficient presence in all counties to support transition hiring activities for existing IPs.

In addition, the CDE will be responsible for tracking hiring progress, and providing this information to the state.

# Part IV: Program Operations

## A. Beneficiary Information

Describe how beneficiaries will get information about the selective contracting program.
For beneficiaries, the transition to the CDE vendors should be seamless as participants will have the same care providers, only paid through the CDE vendor rather than the state. In order to keep beneficiaries informed of the process, several resources will be used to provide

information to participants. DSHS is engaging participants in readiness activities, such as webinars and a public website; will send a formal letter informing participants of the changes; and will send notice of the change in provider authorization prior to the transition. After implementation of the CDE, an informational brochure will be available to participants.

## B. Individuals with Special Needs.

__X_ The State has special processes in place for persons with special needs (Please provide detail).

DSHS requires that vendors be able to communicate with clients and providers in ways that comply with the ADA. At a minimum, this includes TTY communication for people who have difficulty hearing.

DSHS also requires the CDE to work with authorized representatives of clients who are empowered to make decisions regarding the client's care.

Lastly, DSHS requires the CDE vendors to be able to communicate with providers and clients in languages other than English.

# Section B – Waiver Cost-Effectiveness & Efficiency

**Efficient and economic provision of covered care and services**:

1. Provide a description of the State's efficient and economic provision of covered care and services.

As this is a new way of doing business for the department, the department does not have a comparison of before and after costs. The following is a projected comparison of the selective contracting waiver costs (1 CDE vendor) with the cost of the same services with "any willing provider". The state estimates that there are likely no more than four providers that would be willing and qualified to act in this capacity with these increasing volumes.

Cost of multiple CDEs:
Vendor cost efficiencies - By having one CDE, DSHS will benefit from efficiencies in operations that will push down the overall costs in comparison to having multiple CDEs providing the same services. This is due to minimizing overhead and decreased profit margin expectations of one vendor performing these tasks for all IPs (46,000) vs. many vendors who have no certainty of the number of IPs they will cover (1,000-3,000). With fewer IPs to serve, but similar requirements for technology and overhead investment, vendors will charge more per participant in order to maintain profitability.

2. Project the waiver expenditures for the upcoming waiver period.

Year 1 from: 10/01/2021 to 9/30/2022

Trend rate from current expenditures (or historical figures): 3%

Projected pre-waiver cost 60,913,000
Projected Waiver cost 41,090,000
Difference: 19,823,000

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Year 2 from: 10/01/2022 to 9/30/2023

Trend rate from current expenditures (or historical figures): 3%

Projected pre-waiver cost 168,703,000
Projected Waiver cost 117,465,000
Difference: 51,238,000)

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Year 3 (if applicable) from: 10/1/2023 to 9/30/2024
(*For renewals, use trend rate from previous year and claims data from the CMS-64*)
Projected pre-waiver cost 154,280,000
Projected Waiver cost 109,277,000
Difference: 45,003,000

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Year 4 (if applicable) from: 10/1/2024 to 9/30/2025
(*For renewals, use trend rate from previous year and claims data from the CMS-64*)

Projected pre-waiver cost 160,187,000
Projected Waiver cost 113,437,000
Difference: 46,750,000

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Year 5 (if applicable) from: 10/1/2025 to 9/30/2026
(*For renewals, use trend rate from previous year and claims data from the CMS-64*)

Projected pre-waiver cost 164,973,000
Projected Waiver cost 116,829,000
Difference: 48,144,000