# A Report on Supports for Community Living Waiver Program: Paying the Costs of Background Checks and Other Requirements for Direct Service Workers

Edward T. Jennings, Jr., Ph.D.

Seungjin Choi

Martin School of Public Policy and Administration

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**University of Kentucky**

## Executive Summary

The Supports for Community Living (SCL) waiver program is designed as an alternative to institutional care and a home- and community-based program funded by the Kentucky Department for Medicaid Services and administered by the Department for Behavioral Health, Developmental and Intellectual Disabilities.

The SCL waiver program includes many requirements for direct support professionals including CPR training, TB Skin screening, and multiple background checks that cost $ 372 per employee. This cost becomes a significant issue for individuals who get self-directed services because they cannot require a direct support professional to pay the cost in Kentucky.

This report focuses on showing how this issue is handled in other states. It is based on information collected by reviewing each state's statutes and contacting 15 states by email inquiries (May 22nd – June 4th, 2014).

- Requirements for direct services and financial responsibility for the requirements vary from state to state (see Table).
  - In brief, the costs for requirements are paid through three ways: by an employer, an agency (as administrative costs), or an employee.
    a) Employer's responsibility: Kentucky, Minnesota, and Wisconsin (training);
    b) Administrative costs: Indiana, Missouri (background checks), Michigan, Alabama, Colorado, Louisiana, and Wisconsin (background checks);
    c) Employee's responsibility: Missouri (training), Ohio, West Virginia, Arkansas, Nevada, Florida, Hawaii, and Idaho.
  - Many states financially assist individuals who self-direct supports in terms of background checks using their agency or administrative funds, and it appears that most states consider that employees are responsible for the costs of training requirements for them.

- The costs of a Medicaid provider agency ensuring that its employees meet qualifications identified in rules are built into the reimbursement rate in all responding states.

| State | Requirement | Responsibility for Cost for Requirements |
|---|---|---|
| Kentucky | CPR, TB Test, background checks | - Employer/Not defrayed by Medicaid |
| Minnesota | CPR and background checks (optional) | - Training: employer with his/her annual self-directed service budget |

| State | Requirement | Responsibility for Cost for Requirements |
|---|---|---|
| | | - Checks: employer/Not defrayed by Medicaid |
| Indiana | CPR, TB Test, background checks | - Provider agency |
| Michigan | CPR, background checks | - Training: administrative cost<br>- Checks: agency |
| Missouri | CPR, background checks | - Training: employee<br>- Checks: administrative cost |
| Ohio | CPR, background checks | - Employee |
| West Virginia | CPR, background checks | - Employee |
| Arkansas | CPR, background checks | - Employee |
| Nevada | CPR, background checks | - Employee |
| Alabama | Background checks | - Financial management service agency |
| Colorado | Background checks | - PPL CO agency<br>- Additional requirement: employer |
| Louisiana | Background checks | - Fiscal/employer agency |
| Wisconsin | Background checks | - Training: employer<br>- Checks: Fiscal/Employment agent |
| Florida | Background checks | - Employee |
| Hawaii | Background checks | - Employee or employer |
| Idaho | Background checks | - Employee |

## Introduction

1. Supports for Community Living (SCL) Waiver Program
   - The SCL Waiver Medicaid program is developed as an alternative to institutional care for individuals with mental retardation or developmental disabilities to allow them to remain in or return to the community in the least restrictive setting (Kentucky Voices, 2012).

2. Federal and Kentucky Statutory Basis
   - §1915(c) of the Social Security Act: The 1915(c) waivers are one of many options available to states to allow the provision of long term care services in home and community based settings under the Medicaid Program. States can offer a variety of services under a Home and Community-Based Settings (HCBS) Waiver program. Programs can provide a combination of standard medical services and non-medical services. Standard services include but are not limited to: case management (i.e. supports and service coordination), homemaker, home health aide, personal care, adult day health services, habilitation (both day and residential), and respite care. States can also propose "other" types of services that may assist in diverting and/or transitioning individuals from institutional settings into their homes and community (Center for Medicaid and CHIP Services).

   - 907 KAR 12:010. New Supports of Community Living Waiver Services and Coverage Policies: The SCL waiver program is federally authorized via a 1915(c) Home and Community based waiver.

3. Direct Support Professional (907 KAR 12:020)
   - The direct support professional means an individual who provides services to a participant of SCL waiver programs and has direct contract with a participant when providing services to the participant.

4. The Requirement for Direct Support Professional
   - The Kentucky Labor Cabinet has consistently interpreted KRS 336.220[1] to prohibit an employer/potential employer from passing to the employee/applicant the cost of furnishing any records required by the employer as a condition of employment. This includes background checks, drug screening, etc.

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[1] 336.220 Cost of medical examination required by employer.
(1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

- An employer is responsible for payment for processing drug screen, TB screen, CPR/First Aid, College of Direct Support (CDS), any additional training, possible educational requirements, and background check requirements; the funding for these requirements is the responsibility of the employer; having these requirements paid for the first five employees by Medicaid is not an option (Q & A of Kentucky Cabinet for Health and Family Services).

5. Self-Directed Services
   - Self-directed Medicaid services means that participants have decision-making authority over certain services and take direct responsibility to manage their services with the assistance of a system of available supports. Self-direction of services allows participants to have the responsibility for managing all aspects of service delivery in a person-centered planning process (Centers for Medicare & Medicaid Services).

## State by State Information

### I. Neighboring States

**1. Indiana**

- Requirement (460 IAC 1.2-6-3 and 460 IAC 1.2-14-1)
  - Indiana does not enroll individual rendering providers; this state ONLY holds the entities (or agencies) responsible for meeting overall staffing qualifications and other requirements.
  - Staff providing direct care for HCBS providers must:
    a) Submit a copy of a current negative TB test or negative chest x-ray that is completed annually.
    b) Maintain current CPR certification, verification of each training session attended by the employee, and limited criminal history information that meets the requirements of 460 IAC 1.2-6-2(3).

- Costs for Requirement
  - The costs of meeting the employee/staffing requirements are incurred by the prospective or approved provider agency. Indiana has not outlined requirements from whom specifically those costs must be paid.

**2. Missouri**

- Requirement (Self Directed Supports (SDS) Handbook, 2014)
  - Anyone over age 18 with a High School diploma or GED, who the individual or their designated representative chooses to hire, can be a SDS employee.
  - When participants self-direct supports, they have the freedom as well as the responsibilities that come with being an employer. The Fiscal Management Service (FMS) acts as an agent for them. The FMS assists employers with processing prospective employees' background checks and verifying that their employees have received required training.
  - Employees must meet pre-employee training requirements and must submit documentation for the training. Personal Assistants (employees) may have CPR, First Aid, Med Aide, and Behavioral training unless the training has been exempted by the individual/designated representative. It is the responsibility of the employee to keep all training current during the duration of employment.
  - Background Checks are required for all potential employees prior to beginning employment. The screening is processed by the FMS organization.

- Costs for Requirement (Self Directed Supports (SDS) Handbook, 2014)
  - The services from the FMS are provided as an administrative service and not as a waiver service and do not come out of your individual budget.
  - Employees are responsible for the cost of training requirement.

**3. Ohio**

- Requirement
  - Individuals who wish to be certified are treated as independent contractors and must be qualified in order to be approved to deliver waiver services.
  - Each employee shall meet the following requirements (Ohio Revised Code 5123:2-2-01):
    a) Hold valid "American Red Cross" or equivalent certification in first aid.
    b) Hold valid "American Red Cross" or equivalent certification in cardiopulmonary resuscitation ("CPR").
    c) Have completed, prior to application for initial certification in the case of an independent provider and prior to providing services in the case of an employee, contractor, or employee of a contractor of an agency provider, eight hours of training in accordance with guidelines established by the department.
  - Background checks are required for each employee (Ohio Revised Code 5123:2-2-01)

- Costs for Requirement
  - An individual who is a participant using the self-directed waiver may hire individuals directly, who must be certified as independent contractors (employees) and so must be responsible for their own training.
  - The individual with a waiver does not have any financial obligation for the costs of DSP training.
  - Meanwhile, independent contractors or individuals not associated with agencies can find training opportunities through their local county agencies that assist families with finding available and qualified providers.
  - Often the trainings are free and paid for by counties and in some cases, as in for CPR, the counties make available a list to providers of available trainers so that the rule requirements can be maintained.
  - Each independent provider has financial responsibility for a criminal record check (ORC 5164.341).

4. **West Virginia**
   - Requirement
     - All Qualified Support Workers (QSW) must have documentation of initial and renewal of training requirements (WV Section 513.9.2.2.1) :
       a) Documented training on Emergency Procedures, Emergency Care, and Infectious Disease Control;
       b) Documented training on First Aid and in Cardiopulmonary resuscitation (CPR) by a certified trainer;
       c) Documented training on Member-specific needs (including special needs, health and behavioral health needs);
       d) Documented training in Recognition of, Documentation of and Reporting of suspected Abuse/Neglect and Exploitation

   - Costs for Requirement
     - The QSW may be responsible for the certain costs, i.e. CPR and First Aid certifications, CIB/NCIC background checks (WV Section 513.9.2.2.1).
     - The employer of record may pay these trainings, but does not have to. If the employer of record does not wish to pay for requirements, then it is the responsibility of the employee to do so.

**II. Other States**

1. **Alabama**
   - Requirement
     - The self-directed employees need to meet the requirements of the waiver. This includes:
       a) A 10th grade education at minimum;
       b) Minimum 1 year experience;
       c) Background check and drug testing.
     - Meanwhile, the certification requirements for a contract provider include the CPR training, TB Skin Test, background check, and drug screening.

   - Costs for Requirement
     - Financial Management Services Agency reviews all requirements and runs the background screenings on behalf of the self-directed participant.

- The family could require more than the minimum, but they would have to bear the costs of this.

**2. Arkansas**

- Requirement
  - A criminal background check has been initiated. The Division of Developmental Disabilities Services (DDS) requires criminal background checks for all direct care staff (DHS Policy 1082).
  - Caregivers must submit to a drug screen upon employment and to subsequent random drug screens (DHS Policy 1082).
  - Training Requirements for direct care staff (DDS Certification Standards 301.5):
    a) CPR (Initial Certification, renewed as required by American Heart Association, Medic First Aid, or Red Cross);
    b) Medication—Implications, Side Effects, Legality of Administering medication;
    c) Twelve (12) hours minimum completed within (30) days of employment (does not include First Aid and CPR training).

- Costs for Requirement
  - Caregivers must pay all costs and fees for the required criminal background checks.

**3. Colorado**

- Requirement
  - The Consumer Directed Attendant Support Services program has only a few requirements for employees (Managing Employer Training Handbook):
    a) Must complete a criminal background check and board of nursing background check on all workers and the person must pass both checks to be employable by PPL CO (Public Partnership LLC – Colorado);
    b) Must be 18 years old.
  - An attendant[2] (employee) is hired through the contracted FMS[3] organization.

- Costs for Requirement

[2] Attendant means the individual who meets qualifications in § 8.510.8 who provides CDASS as determined by § 8.510.3 and is hired through the contracted FMS organization (CCR 2505-10 Section 8.510).

[3] Fiscal Management Services organization (FMS) means the entity contracted with the Department as the employer of record for Attendants, to provide personnel management services, fiscal management services, and skills training to a client/AR receiving CDASS (CCR 2505-10 Section 8.510).

- The prospective employee will need to fill out the Criminal Background and Board of Nursing form in order for PPL CO to run the background check. The check identifies the person's criminal history in Colorado.
- If the attendant has worked in other states, an individual who self-direct services would need to run this additional background check at individual's expense.

**4. Florida**

- Requirement
  - The Consumer-Directed Care Plus (CDC+)[4] Program has a requirement for employees: Background Screening that is a criminal history check and must include, but not be limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement, and national criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies (CDC+ Handbook, 2012).

- Costs for Requirement
  - The prospective employee or the CDC+ employer is responsible for the cost of background screening. The CDC+ employer cannot use the CDC+ monthly budget to pay for background screenings (Background Screening, 2010).

**5. Hawaii**

- Requirement
  - The Hawaii's Medicaid waiver program includes a requirement for a personal assistant (employee): Background Checks including criminal conviction record check and reference checks (Consumer Directed Personal Assistance Handbook, 2013).

- Costs for Requirement
  - Employers will need to pay for the criminal conviction record check or require their applicant to pay for this (Consumer Directed Personal Assistance Handbook, 2013).

**6. Idaho**

- Requirement

[4] CDC+ is a Florida Medicaid program that permits certain Consumers to self-direct their own Personal Assistance Services (Developmental Disabilities Medicaid Waivers Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook, 2012).

- Individuals who provide direct care or services (employees) must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06.
- Otherwise, the Consumer Directed Services rules do not specifically identify provider qualifications that must be met to deliver the supports.
- It is the responsibility of the participants (employers) to ensure their employees have the skills necessary to deliver supports in a safe and appropriate manner; however, the Consumer Directed Services rules do state if the identified supports require specific licensing or certification within the state of Idaho, the identified community support workers must obtain the applicable license or certification.

- Costs for Requirement
  - Employees are responsible for those costs.
  - Additional funds are not available to defray the costs associated with ensuring that an employee meets those qualifications required by rule or necessary to ensure safe and appropriate care provision to a participant.
  - A participant's individualized budget may not specifically be used to pay the cost of criminal history checks for employees, assist the employee to meet licensure or certification requirements, obtaining testing and/or attend training courses to develop the needed skill sets to provide safe and appropriate care.

**7. Louisiana**

- Requirement (Self-Direction Option Employer Handbook, 2014)
  - The potential employee/applicant must pass criminal history background and direct services worker registry checks.
  - It is the responsibility of the employer to complete follow up background checks every 6 months after hire; The employer is required to:
    a) Complete a search of the Direct Service Worker (DSW) Registry;
    b) Complete a search on the Office of Inspector General's List of Excluded Individuals/Entities.

- Costs for Requirement (Self-Direction Option Employer Handbook, 2014)
  - The initial background check and a criminal conviction history check will be completed by the fiscal/employer agent[5]. The follow up background checks are available at the websites.

[5] The Fiscal/Employer Agent is a required component of the Self-Direction option. The fiscal/employer agent will assist participants in managing some of the financial responsibilities of being an employer. The fiscal/employer

- Fiscal/Employer agent is responsible for monitoring employment related costs.

**8. Michigan**

- Requirement
  - The MI Choice waiver program requires CPR training and background checks for individuals hired directly by the program participant through the self-determination option.
  - There are no specific requirements for TBI Skin Testing through the waiver program itself.

- Costs for Requirement
  - The requirement of CPR training is met in various ways. Some waiver agencies have purchased CPR training tapes or DVDs, and Michigan has the potential employee sign a statement indicating that they have watched and understand the content of the video.
  - Some waiver agencies have staff who are trained CPR instructors and will periodically offer CPR instruction. Other potential employees will take courses offered through the Red Cross or other organization.
  - In addition, Michigan has training as one of the waiver services and, in the definition of this service, Michigan includes training self-determined workers, so can assist with paying for this requirement through that service.
  - Background checks can be done for free by a non-profit agency. If there is a cost, this would be part of the administration for the program.

**9. Minnesota**

- Requirement (Consumer Handbook and Agency Manual)
  - The Consumer Directed Community Support (CDCS) waiver program requires participants to have a case manager/care coordinator through the lead agency and a Fiscal Support Entity (FSE) who is responsible to approve all expenditures requested on an individual's community support plan.
  - The person providing assistance does not need a license, certificate or credentialing unless required by the consumer. Background checks are also optional[6].

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agent will also notify participants once their potential employees are clear for hire including the criminal history background and direct services worker registry checks.

[6] Consumers (employers) must include information in their plan on which support workers they choose to do background checks on and which ones they will not do background checks on (Consumer Handbook, p.13).

- The person can also define additional provider qualifications such as knowledge of sign language or completion of CPR training.

- Costs for Requirement (Consumer Handbook and Agency Manual)
  - If the participant is the employer of the support worker, the cost of paid or unpaid support staff training and education comes out of the participant's annual CDCS budget; when a consumer defines additional provider qualifications, the consumer could hire a person and pay for this training for the individual.
  - Background checks are optional, and FSE can help an employer get the background check done and will bill for the cost of the background check. The cost of the background check does not come out of the employers' budget when they choose to have a background check done.
    a) On the other hand, if employers choose to use an agency as their agency with choice that requires background checks, the cost of the background check is included in the administrative rate for that agency, which comes out of their budget.
    b) If employers select a waiver or Alternative Care service that requires a formal provider to have a background check, then the cost of the background check is included in the rate for that waiver or Alternative Care service, which comes out of their budget.

**10. Nevada**

- Requirement
  - Nevada requires TB tests, CPR training, and fingerprint based criminal background checks for all potential employees.

- Costs for Requirement
  - It is the individual caregivers who are fiscally responsible for obtaining these requirements. There are no Medicaid or other funds available to offset these costs.

**11. Wisconsin**

- Requirement (IRIS Participant Handbook)

- Everyone in IRIS[7] has an IRIS Consultant. Consultants will help participants design a plan that fits into their allocation, make sure all the paperwork is done, and find workers, service providers and items.
- Background checks are required for all potential employees. The Fiscal/ Employment Agent (F/EA)[8] completes all background checks on the workers for employers.

- Costs for Requirement
  - The services delivered by the IRIS Consultant or the F/EA are provided as an administrative service through the approved HCBS waiver.
  - The participants are responsible for providing all training to their workforce.

[7] IRIS is a Medicaid funded, long-term care program offered by the Wisconsin Department of Health Services. IRIS is grounded in the Principles of Self-Determination.

[8] The Fiscal/Employment Agent is contracted by the Department of Health Services to provide payroll services to participants who choose to serve as the employer of record.

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