

**Michigan Department of Community Health  
Frequently Asked Questions on Self-Determination and  
Choice Voucher for Children**

Based Upon Questions Submitted by PIHP/CMHSPs

Note: The following questions and the department’s responses are part of an ongoing dialogue within the public mental health system on how to develop and implement arrangements that support self-determination. This document represents another step in the our efforts to think through – with individuals receiving services, families, advocates, PIHP/CMHSPs - different conceptual, policy, regulatory and technical considerations related to implementation of arrangements that support self-determination.

The public system is moving inexorably toward greater freedom, support, control and empowerment for persons of the system. We have learned a great deal about how to promote, develop and implement different models and approaches to arrangements that support self-determination, but there is still much to be discovered, resolved, and applied. In our answers, MDCH has tried to retain this spirit of inquiry and dialogue, recognizing that our answers will spark new discussion and lead us to further refinements in our answers, our policies and our implementation strategies.

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**Section A: Requirements for Implementing Self-Determination**

- 1. Will the department require all PIHP/CMHSPs to do things exactly the same way to implement arrangements that support Self-Determination and the Choice Voucher for Children<sup>1</sup>?**

It is not expected that all PIHPs/CMHSPs will, or should, do things exactly the same

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<sup>1</sup> The use of the Choice Voucher System with the Children’s Waiver and the Habilitation Supports Waiver is a specific method to allow and support family control over the selection and direction of provider staff. It is not the same as self-determination, and it entails use of a specific set of arrangements in a fee-for-service system. The elements of this system are the same for both self-determination and for the Children’s Waiver.

way when implementing policies and practices promoting self-determination. The Self-Determination Policy and Practice Guideline sets broad parameters and identifies options that should be present in a PHP/CMHSP's local system. Elements of this system should be constructed in ways that work best for the people served and the particular local structure. The spirit and central intent of the policy principles and practice statements need to be evident in the local policies and methods intended to achieve implementation.

It is necessary to provide real and workable options for individuals to use to have meaningful authority over the resources allotted for their services and support arrangements. The PHP/CMHSP must make available a range of direct control options.

Evolution towards self-determination is a slow process; it requires deliberate planning to bring along stakeholders.

- Leadership that explicitly supports the direction of self-determination, and approves the development of local policies, methods, and practices that support self-determination is central to achieving and maintaining meaningful progress.
- At a local system level, the PHP/CMHSP must develop the knowledge and attitudes at all levels of staff, providers and board members about the principles of self-determination, and about methods of developing and applying arrangements that support true self-determination.
- MDCH does not anticipate that large numbers of persons will seek the route of self-determination at the outset of local implementation. Even in places that have offered arrangements that support self-determination for the past 13 years, the change process has been slow. Those agencies with organized strategies have had the most success.

## **2. Are Choice Voucher Arrangements required for all children?**

The use of the Choice Voucher System for Children is required in the Children's Waiver Program and for children on the Habilitation Supports Waiver (HSW). Each PIHP/CMHSP can decide whether or not to offer the Choice Voucher for Children to other children receiving services and supports. The Choice Voucher for Children is a specific method to allow and support family control over the selection and direction of provider staff. It is not the same as self-determination, and it entails use of a specific set of arrangements. However, the elements of this system are the same for both self-determination and for the Choice Voucher System for Children...

## **3. Who will make the ultimate decision on how Self-Determination should be implemented - will this come from MDCH or will each PIHP/CMHSP make the decision on how to implement arrangements that support self-determination?**

The decision to implement self-determination as a matter of policy for the public mental health system has already been made.

- Self-Determination is a contractual requirement.
- With recognition that all PIHPs and their affiliates are not in the same place with their implementation efforts, there should be observable progress being made toward accomplishment of the policy, as determined by each PIHP's internal review process and feedback from persons receiving services and advocates.
- MDCH expects and will help facilitate a good-faith local effort to pursue and achieve implementation.
- Local implementation efforts need to include significant involvement of people using services, family members and advocates in the process of design, participation and evaluation of these efforts.
- People using services, family members and advocates will be queried about their views and their experiences with local system efforts as a part of any assessment of local implementation outcomes.

**4. What is the recommended arrangement to provide supports to the persons through self-determination?**

There is no one option or arrangement that will work for everyone at any given point in time.

- Arrangements should be those that fit best with the person's goals and preferences, flowing from the policy and the elements of the practice guideline.
- They also must be arrangements that are easily navigated by the person (or, as applicable, his/her chosen representative).
- There is a range of options that can provide greater control and direction for a person.
- It is not be expected that each and every person who is deemed to be "in" a self-determination arrangement would always choose to be directly employing support staff and using a fiscal intermediary.

**5. What is the recommendation for using a fiscal intermediary?**

The requirements for the fiscal Intermediary are set forth in the contract attachment Fiscal Intermediary Technical Requirement. Additional technical guidance is provided in the Self-Determination Implementation Technical Advisory referenced above

## Section B: PIHP/CMHSP Responsibilities

**6. What responsibility do PIHP/CMHSPs, being these are capitated dollars that are being used?**

PIHP/CMHSPs must assure that Medicaid funds are expended for services/supports that are necessary to accomplish the goals, objectives and/or outcomes that the PHP/CMHSP has agreed to support through the use of its funds, as delineated in the person's IPOS. PIHP/CMHSPs must also assure that the funds are paid to a qualified provider of the Medicaid covered or alternative services/supports. PIHP/CMHSPs must assure that such transactions are based upon purchase of service or employment agreements. Since these are Medicaid funds, the Center for Medicaid & Medicare Services (CMS) has required that a separate "provider agreement" between the provider furnishing services and the PHP/CMHSP be in place.

**7. How do we assure that there is parity amongst the persons using arrangements that support self-determination for cost (payment) of services rendered and requirements for use of family and/or community resources?**

There is no exact formula for making such a determination. Part of the issue with making a judgment about cost parity that is objective and fair is the fact that what is deemed to be of value to one individual is not the same for another individual. It is entirely possible that there could be wide variance in cost from one situation to another, but the "objective" observer would not necessarily see that there was any difference in value or outcome. This matter is not unique to self-determination.

**8. Should natural supports be provided prior to any PIHP/CMHSPs' supports?**

Yes. But it is important to remember that, in the case of an adult, only their spouse has a legal obligation to provide care.

**9. How should we determine the baseline of what would naturally be supported before capitated funds are used?**

This would be specific to each individual's situation, and cannot be determined outside of the person-centered planning process. There are no hard and fast guidelines or standards that can be imposed.

**10. Are there any reporting responsibilities of the PIHP/CMHSP staff, especially a Supports Coordinator, regarding poor quality of care or failure to provide care as specified in the plan or budget?**

One of the functions of Supports Coordination and Case Management is monitoring the delivery of services/supports. Whether there is an arrangement that supports self-determination or not, the monitoring function is an essential aspect of accountability that the PHP/CMHSP assumes. In addition, it would be expected that a fiscal intermediary, acting on behalf of the PHP/CMHSP to make payments to an individual or provider organization for services rendered in accordance with the

individual's IPOS, would establish mechanisms to make certain that no such payments are made unless there is a current, written agreement in place. There must also be documentation that the service to be paid for was provided and that the person or representative has verified that fact (e.g., by approving a worker's time sheet.) Without these safeguards being made explicit as a matter of contract with a fiscal intermediary, the PHP/CMHSP may risk having its funds paid out for work that is not eligible for such payment.

The PHP/CMHSP may end an arrangement that supports self-determination at its option. Prior to taking this action, however, and unless the person's health and welfare are at imminent risk of harm, the PHP/CMHSP is expected to use the person-centered planning process to raise concerns, achieve a joint understanding, and pose alternatives for resolution of the problem situation. See Section II.E.5 of the Self-Determination Policy and Practice Guideline.

**11. What would be the reporting and documentation responsibilities of the employer to the PIHP/CMHSP regarding services/supports received?**

Services and supports provided through arrangements that support self-determination have the same reporting requirements as any other Medicaid-funded services and supports. These reporting requirements and the local procedures are to be specified by the PHP/CMHSP in the self-determination agreement with the person or his or her representative. Medicaid documentation requirements must meet the general requirements of the contract between the Department and the PHP/CMHSP. However, the emphasis ought to be upon taking a conservative approach to documentation requirements. For example, while time reporting may need to be made to the nearest 15-minute increment that does NOT mean that personal assistant workers should be expected to document their activities every fifteen minutes.

**12. When an individual is using arrangements that support self-determination, is the PIHP/CMHSP responsible for providing 24-hour care, regardless of natural supports?**

In the case of an individual who is an adult, natural supports are not required to provide assistance. When a person is seeking to live outside of a licensed residential setting, there are Medicaid service authorization issues, such as accessing Home Help assistance, that are not currently under the authority of the PHP/CMHSP. The PIHP/CMHSP can work with the person to determine how to maximize use of available resources (including Home Help), how to create efficiencies by sharing staff with another person, and what other monitoring mechanism may be appropriate for the individual (such as personal response system (PERS)). While the PIHP/CMHSP is required to assure the health and welfare of the individual, it is not required to provide the services and supports exactly how the person or his or her family wants them if a less costly alternative is available that assures the person's health and safety.

**13. What actions can a PIHP/CMHSP take when fraud/abuse of funds is occurring by workers directly employed by the person?**

There are a number of actions that a PIHP/CMHSP can take when there is fraud and abuse of funds by workers. The first step is education of employers and their employees about what Medicaid fraud is and how it can be avoided. If that education does not prevent or correct Medicaid abuse, then there are other steps the PIHP/CMHSP can take. When at all possible, these actions should be done in collaboration with the employer. The PIHP/CMHSP can determine that the worker is not qualified to provide services and require that another worker be used. As a last result, the PIHP/CMHSP has authority to terminate the arrangement that support self-determination and provide traditional arrangements to the person. Any criminal activity should be reported to the proper legal authorities.

**14. What actions may a PIHP/CMHSP take when a person or his or her guardian knowingly overspends the funds in the individual budget?**

There are many action steps that the PIHP/CMHSP must take to address this issue. First, the PIHP/CMHSP must ensure that the people using arrangements that support self-determination and those assisting them understand the limitations on the use of funding (both what the funding may be used for—the services and supports in the IPOS—and how much funding is available). The potential for Medicaid fraud should also be discussed with both employers and those supporting them and with employees. The people and those assisting them must also understand that if they authorize additional hours or services, beyond those in the plan or budget, they are the legally responsible party, not the PIHP/CMHSP or the fiscal intermediary. Employees should be made aware of these limitations as well as consequences for Medicaid fraud in writing, preferably in the Employment Agreement (see prototype in the Self-Determination Implementation Technical Advisory).

To protect itself, The PIHP/CMHSP must ensure that there are safeguards in place so that the fiscal intermediary does not pay for services and supports not authorized in the IPOS. In addition, the PIHP/CMHSP can require that the fiscal intermediary be financially responsible for any payments not authorized within the individual budget. See the Fiscal Intermediary Technical Requirement.

**Section C: Legal and Financial Impacts on People Using Arrangements that Support Self-Determination**

**15. Please provide written guidance on how this arrangement addresses the concerns of:**

**a. The IRS regarding whether these monies are considered income for the persons;**

If the appropriate and documented arrangements are used, no funds will be paid to the person (i.e. the use of funds for one's services and supports is not

accessible to the person in the form of a cash grant), and therefore the IRS would not consider these funds to be income to the person.

**b. How would this affect the person's Medicaid status?**

If constructed properly, the person will not be the recipient of income, and there would be no effect on their Medicaid eligibility status.

**16. Would there have to be verification of withholdings and payment of federal or state income taxes, social security tax payments for both the employee and employer share?**

Yes, the Fiscal Intermediary, as employer agent, handles these functions.

**Section D: Questions Regarding Employer of Record**

**17. Can the person be the employer of record?**

Yes, the person who is using the services should also be the employer of record. Employer of record is the person who is legally responsible for the tax aspects of employment; it is the person in whose name the tax identification number is obtained. That person is legally responsible, meaning that if something does wrong, his or her assets are at risk. In practice, the fiscal intermediary handles these responsibilities on behalf of the individual and the financial liability is minimized. However, if a guardian or representative is the employer of record (meaning the tax identification number is obtained in guardian's name), then that liability extends to his or her assets.

A distinction needs to be made between employer of record and managing employer. A person may choose to have a representative be the managing employer. In cases where the person has a legal guardian with authority over contracts, the guardian must be the managing employer and handle the employer responsibilities for the person.

**18. If the person is to be the employer, are there any required criteria to determine competence as an employer?**

The presumption is that an adult person is competent, unless a court has deemed otherwise. There are no precise legal or other standards that give one a yardstick by which to measure the ability to handle employer responsibilities, either for people with disability labels or for those who do not possess such labels. A distinction needs to be drawn between the legal right any individual may have to enter into a contract (including an employment contract), and their authority to apply the funds under the stewardship of the PHP/CMHSP to underwrite the costs of that contractual arrangement. A distinction must also be drawn between the fact that a person may have a guardian or representative who enters into contracts and the fact that the contracts are entered into on the person's behalf. A guardian is signing those agreements in his or her role as guardian of a person, not in his or her individual capacity.

In the State Medicaid Manual, a document developed by the Center for Medicare and Medicaid Services (CMS) that provides policy direction on the Medicaid program, in the section on the personal care optional state plan coverage (Section 4480) there is guidance provided to states as follows in section 2: *“Person-Directed Services.--A State may employ a person-directed service delivery model to provide personal care services under the personal care optional benefit to individuals in need of personal assistance, including persons with cognitive impairments, who have the ability and desire to manage their own care. In such cases, the Medicaid beneficiary may hire their own provider, train the provider according to their personal preferences, supervise and direct the provision of the personal care services and, if necessary, fire the provider. . .Where an individual does not have the ability or desire to manage their own care, the State may either provide personal care services without person direction or may permit family members or other individuals to direct the provider on behalf of the individual receiving the services.”*

This general directive--that the person has the desire and the ability to be the employer--must be considered in context of the life situation of each person. That is, some individuals may possess the legal potential under common law to be an employer, but cannot perform those functions without assistance or support. For some of these individuals, there may be a group of involved family and friends or even trusted staff, who can assist by providing needed support and guidance.

A more detailed discussion of this issue is available in the Self-Determination Implementation Technical Advisory, Section on Supporting Participant Success.

## **Section E: Employer/Employee Issues**

### **19. What about employee rights such as equal employment opportunity, sexual harassment protection, overtime, etc.**

Employee rights should be addressed during the process of assisting and supporting the person, family member or representative to conduct the hiring process. Information about how to conduct the hiring process should be a part of an overall orientation to being an employer, and should be made available to those who will be conducting the hiring process or supporting the person.

Overtime requirements are part of the Fair Labor Standards Act. Generally, in the development and implementation of the individual budget, the arrangements and workers should be scheduled so as to avoid use of overtime on a regular basis. In the rare circumstances where use of overtime may be necessary (usually in an emergency situation where a worker is sick or absent), the managing employer should be aware of the requirements for overtime compensation and should either be able to track, or be assisted in tracking the use of overtime as part of the monitoring and utilization of the individual budget or allotment of funds. Since the fiscal intermediary is delegated the responsibility to conduct the payroll functions on behalf of the employer, it would be expected to assure that overtime compensation is properly handled as part of the payroll agent process.



Sexual harassment and equal employment opportunity are elements of the Elliot-Larsen Civil Rights Act. It is advised that in developing support arrangements to guide and assist individuals on how to be the employer of their staff, there should be guidance on the requirements of law that apply to them in their role as an employer.

As noted previously, it is important that full information be provided to the person and anyone serving as the managing employer. There are various publications available on this general subject. For specific information on people using services and supports being employers, See Hiring and Managing Personal Assistants, [http://www.arcmi.org/pdf/HiringManaging\\_ARC\\_MI\\_test](http://www.arcmi.org/pdf/HiringManaging_ARC_MI_test)

**20. Can a person hire any provider he or she chooses?**

While arrangements that support self-determination do allow greater freedom in choice of provider, all providers must meet the provider requirements for the service that they are providing. Providers of services and supports requiring a license or certification must have that license or certification (for example, occupational therapy must be provided by a licensed occupational therapist or developed and monitored by an occupational therapist).

Generally, the provider requirements are:

- at least 18 years of age;
- able to prevent transmission of communicable disease;
- able to communicate expressively and receptively in order to follow individual plan requirements and beneficiary-specific emergency procedures, and to report on activities performed; and
- in good standing with the law (i.e., not a fugitive from justice, a convicted felon who is either under jurisdiction or whose felony relates to the kind of duty to be performed, or an illegal alien.)

**21. Regardless of who the employer is, what are the exclusions of criminal background for employment for supports that are funded with capitated funds?**

Workers must be in good standing with the law. Application of this requirement is handled differently from PIHP/CMHSP to PIHP/CMHSP. A criminal background check is required. The employee cannot be a not a fugitive from justice, or a convicted felon who is under jurisdiction. When a felony conviction is present, the felony may not relate to the kind of duty to be performed. A check should also be made that the worker is not on the excluded provider list.

**22. How do we determine wages that are fair to all directly employed workers?**

This is a local matter, and apparent “fairness” is not something that can be a matter of group consensus. Clearly, wages paid need to be what is necessary to get the job done, and not more. But some jobs are harder to do than others, and wage differentials are

necessary.

**23. What training is required of workers in arrangements that support self-determination?**

The training requirements for the provider of a specific service or support, are the same regardless of whether the service or support is provided through traditional arrangements or arrangements that support self-determination. For specific requirements, please see MICHIGAN PIHP/CMHSP PROVIDER QUALIFICATIONS PER MEDICAID SERVICES & HCPCS/CPT CODES, [http://www.mi.gov/documents/mdch/PIHP-MHSP\\_Provider\\_Qualifications\\_219874\\_7.pdf](http://www.mi.gov/documents/mdch/PIHP-MHSP_Provider_Qualifications_219874_7.pdf)

The PIHP/CMHSP may add additional requirements, however, care should be taken to not make the training requirements burdensome. People using arrangements may have their own specific training preferences or requirements.

**a. Currently, with the employees under PIHP/CMHSPs payroll, we have required TB testing and CPR training. Would a person/employer have to require these same things?**

TB testing may be one way to demonstrate that a person does not have a communicable disease, but it is not specifically required by MDCH. CPR is only required for the Children's Waiver Program.

**b. PCP training?**

No, currently there is no explicit requirement in any existing provider qualifications that PCP training be administered. However, it would be every PHP/CMHSP's goal to assure that the principles of person-centered planning and practices undergird the process of providing services/supports. Therefore it is in the best interests of the person and the PHP/CMHSP to facilitate this understanding for employees or contractors working in arrangements that support self-determination.

**c. Recipient Rights training?**

MDCH recommends that most providers have training in Recipient Rights. However, the language of the Michigan Mental Health Code is interpreted by some to require training only of PIHP/CMHSP staff and contractors.

**d. Module training?**

If, by "Module Training" you are referring to the Group Home Training Curricula, then no, this would not be an expectation, because the individuals living in group homes don't generally have access to arrangements that support self-determination. In practice, it is relatively meaningless to assert that persons

have control and direction over staff when the arrangement for service provision is a congregate setting. This is particularly true in settings where the provider must be licensed.

**e. Training on confidentiality, HIPPA, etc.?**

Yes, MDCH recommends that workers and contractors receive training confidentiality and HIPAA privacy requirements.

**24. Are PIHP/CMHSP's liable for employees working for people using arrangements that support self-determination?**

Please see the guidance provided in responses to related previous questions. In the final analysis, just as is the case with many, many other activities that come under the purview of a PHP/CMHSP when providing for the needs of persons, there is always a potential for liability.

- The earlier advice provided is aimed at pointing out the importance of placing individuals in arrangements wherein they will be the employer only when:
  - They have been fully informed about what is involved;
  - They are assured a choice of whether or not to participate in any given set of arrangements, and;
  - There is a plan for providing the needed support to enable success with handling the responsibilities of being the employer of record. These need to be outlined in the person's plan of services.
- MDCH understands there is a concern about PIHP/CMHSPs being deemed the co-employer.
  - PIHP/CMHSPs cannot expect MDCH to indemnify PIHP/CMHSPs, due to the fact that PIHP/CMHSPs are separate entities, and MDCH does not have direct control over how PIHP/CMHSPs implements any given set of arrangements.
  - MDCH's perspective on methods and approaches that are advised or recommended are derived from the study of various others' research and analyses.
  - There is little to no evidence that proper use of these alternative methods will result in an adverse ruling by a court.
- The Department can offer no guarantees to this, just as the Department offers no guarantees to immunity for any other actions a PHP/CMHSP might take.
- This area is one that PIHP/CMHSPs is best advised to obtain its own legal guidance as it constructs and puts into place its particular methods.
- When examining potential co-employment, there is no exact set of measures. Rather a court may look at the extent to which PIHP/CMHSPs has:

- Assured the provision of full information to the prospective employer of his/her rights and responsibilities in the employer role;
- Made a judgment that there is a reasonable capability for the individual to be the employer, and then arranged for the sort of support that might be necessary to assist that person with being the employer.
- For more guidance on the elements that comprise what a court might look at if it was asked to rule that the arrangement was actually co-employment, please review IRS Publication 1779 (Rev 3/12). It sets forth a list of specific functions that the IRS uses to determine whether a person is an employee or an independent contractor.
- Counsel will probably advise that, to the extent the PIHP/CMHSP, rather than the individual, is conducting/controlling these functions, the greater the likelihood that are more likely to be determined a co-employer (i.e. incur corporate liability<sup>2</sup>), along with the individual.

**25. Would these employees be considered at-will?**

Yes, employees should be “at-will.” It is advisable to support the employer uses language in the employment agreement that specifies this, and to otherwise assure that there are not elements in the employment agreement (e.g., use of a probationary period, or use of progressive discipline) that conflict with this status. In any event, what determines this is the employment contract between the person/guardian/parent and their worker.

**26. Is it then the sole responsibility of the person to train, complete criminal background checks, etc?**

In theory, you would be expecting the person receiving services/employer to conduct these functions. In practice, there will be other parties who will do this in partnership with the person. For example, the pre-employment background checks are typically conducted by the fiscal intermediary, an advocacy organization, or even the PHP/CMHSP, as part of supporting the individual to be a successful employer. This same practice may be applied to verifying provider qualifications, and/or assuring needed provider training. Depending on the nature of the training, some of it may best be provided by outside parties. Other training may be best performed by the person and those closest to him/her (e.g., specific personal care and health support tasks that revolve around the person’s preferences), and some training may come from the PHP/CMHSP (e.g., recipient rights.)

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<sup>2</sup> Cf. Sabatino & Litvak p. 320

**27. How should potential conflicts of interest or exploitation in employment be determined/handled?**

It is very important that persons and those who love and support them in the use of arrangements that support self-determination be assisted to identify and resolve situations that involve conflicts of interest, and especially, exploitation.

- It is not the intent of the Department that individuals involved in self-determination, including arrangements that afford authority to choose, retain and direct their employees, be left to figure out how to solve these problems on their own.
- Part of the process of people learning to (more) independently manage their own lives should include support to discern and respond to situations such as these.
- Any ongoing support process aimed at assisting people toward independence and an improved capacity to negotiate and direct their support arrangements should be aimed, at least in part, at empowering the person to respond constructively to potential problem situations.

On the other hand, what may appear to be a conflict of interest to one party may actually be a meaningful and even intimate relationship to the party who appears to be being exploited.

- A thoughtful and measured response should be provided by the PHP/CMHSP.
- Using (and reconvening as necessary) the person-centered planning process to bring up and address such potential conflicts is the primary method to address this matter, when it is a concern to a party with interest and involvement in the person's life.
- Being aware but treading softly, unless there is cause (i.e. evidence) for alarm, should be the stance of those charged with monitoring the service delivery process.

There is nothing that obligates the PHP/CMHSP to maintain arrangements that support self-determination when the person is at risk of immediate harm (or otherwise.)

- There is also nothing that obligates the PHP/CMHSP to concur in and therefore support and authorize, arrangements that it believes will be detrimental to the person.
- However, as noted, use of the person-centered process is the method for responding to non-emergency apparent conflicts of interest.

**28. Can a family member, other relative, or someone who shares the same home as the person be an employee for the person?**

It is certainly possible and legal, and often a desirable option for someone who resides with the person, to also work directly for the person. Medicaid-funded personal care-type services cannot be provided by the parent or guardian of a minor or the spouse or guardian of an adult. Other relatives can be hired as providers.

**29. Are overtime wages required for family members who provide care?**

There appear to be no separate standards for family members providing (paid) care, with regard to overtime requirements of the Fair Labor Standards Act (FLSA). It is possible, however, that a home care worker, family member or not, could be exempt from the overtime requirement if the work that s/he performs falls within the “companionship” exemption of the Federal FLSA.<sup>3</sup> There are also limitations for live-in caregivers. In general, providers, family members or non-family members should be scheduled as to minimize the use of overtime (one person working more than 40 hours in a week). Providing this type of care is a difficult and using multiple caregivers ensures that providers are well-rested and able to handle the demands of the job. Overtime should only be used in emergency circumstances.

**30. What standards then apply in labor law for paying overtime, responsibility for the worker's comp, liability coverage, etc.**

Overtime, workman’s compensation and unemployment compensation are established in law and are the same for any employer including employers using arrangements that support self-determination.

“Liability coverage” is a broad term. For example, an employer is liable for worker’s compensation and unemployment, and without insurance the employer would be required to pay claims out of his/her assets. Rather than apply liability as a broad concept, it is better to specify the potential elements of liability and then secure insurance for these.

**31. What about general business liability - who is responsible for addressing areas such as wrongful discharge, overtime issues, liability for someone not trained properly, etc.?**

Wrongful discharge would seem to be non-existent where the employment contract involved at-will employment. Overtime obligations are addressed through accurate payroll processing on the part of the fiscal intermediary, based upon time sheets that are verified by the employee and authorized by the person or his/her representative.

Liability may result for the PHP/CMHSP in terms of a disallowance of the use of Medicaid funds, if an employee is required to meet Medicaid provider qualifications

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<sup>3</sup> Cf. Sabatino & Litvak pp.276-282; Flanagan, p. 58

and is found not to be in compliance. When an employee has not been properly trained and a court determines that an injury or property loss occurred that was the result of the lack of proper training, then, depending on the circumstances, the liability could extend to the party who provided the training including the PHP/CMHSP. The key here is to assure that full information about the obligations and responsibilities has been provided, and that the arrangements chosen are ones that can be properly supported, including meeting training needs.

## **Section F: Specific Question on the Use of Arrangements that Support Self-Determination**

### **32. Can a person living in any setting use arrangements that support self-determination?**

Generally, a person using arrangements that support self-determination must live in his or her own home or apartment or the home of a family member or friend. Individuals living in group homes cannot use arrangements that support self-determination because the funding for the services and supports they receive is bundled in the funds paid to the group home. However, arrangements that support self-determination could be used to assist them in transitioning to an independent living situation with the services and supports that they need.

### **33. Can landlord also be service provider or is there a conflict of interest?**

When the same person or entity provides room and board as well as 24-hour personal care and supervision for compensation to someone unrelated to him or her, the definition of foster care is met and the arrangement must be licensed pursuant to the Adult Foster Care licensing rules. These issues also arise when the same person is the landlord and the provider or the landlord and managing employer (such as the guardian). See Factsheet: The Use of Arrangements that Support Self-Determination in Shared Living Arrangements.

### **34. What are self-determination homes?**

“Self-determination homes” is a term used by some people to describe congregate living situations in which people use arrangements that support self-determination to pay for personal care and other needed services and supports. These arrangements are likely to be considered group homes that need to be licensed according to the Adult Foster Care Licensing Laws. In addition, it is difficult in any group living situation to separate out the individual needs of the persons living there with the needs of the home. While MDCH appreciates that there are efficiencies and benefits to people living together and sharing expenses and staff, the principles of self-determination must be maintained when someone is using arrangements that support self-determination.

- 35. Do supports and services provided through arrangements that support self-determination need to follow guidelines as set forth in the Medicaid Provider Manual? Can vacations or computers that are not part of assistive technology paid for using capitated funds?**

Services and supports provided with Medicaid funds through a self-determination arrangement must comply with all Medicaid requirements including medical necessity. The person must purchase only the services and supports authorized in his or her IPOS.

- 37. Do people who use arrangements that support self-determination have to comply with Medicaid documentation requirements and share records with the PIHP/CMHSP?**

Yes, the requirements for Medicaid documentation do not change because someone is using arrangements that support self-determination. Section 15.7 of the General Information for Providers Chapter of the Michigan Medicaid Provider Manual states that the "clinical record "must be sufficiently detailed to allow reconstruction of what transpired for each service billed" and that "documentation for services provided must be signed and dated by the rendering health care professional." In addition, section 15.4 of the General Information for Providers states, "Health plans contracting with the MDCH must be permitted access to all information relating to services reimbursed by the health plan."

Finally, when delegating authority to individuals receiving services so that they can use arrangements that support self-determination, the PIHP/CMHSP has a right to a copy of all agreements (such as Employment Agreements and Purchase of Service Agreements).

- 38. Can assets be purchased using capitated funds, such as vehicles?**

The general answer is, no. Medicaid prohibits the purchase of vehicles. However, environmental modifications and prescribed adaptive equipment can be purchased.

- 39. a. Can we use capitated funds to pay vehicle leases, or vehicle insurance/plates/gas/maintenance, etc. for vehicles used to assist the person receiving services to access the community?**

No. However, if a person is authorized for transportation as a service, mileage for approved transportation could be paid to a provider or gas cards could be provided to the person receiving services if he or she is using his or her own vehicle.

- b. What about mileage reimbursement to people who provide CLS when they use their personal vehicles while directly providing CLS?**

Yes, mileage can be paid to CLS provider if mileage is an approved service identified



in the person's IPOS.

**c. We are currently paying mileage for employees as they travel to the person receiving services home to work. Is this allowable?**

The rate for CLS workers can include reimbursement for mileage for the cost of traveling to and from work.

**40. If a person is approved for Private Duty Nursing, does he or she need to get a prescription for that service?**

Yes, if a prescription is required for a service or support, then a prescription is required when the service or support is provided through arrangements that support self-determination.

**41. What is the future of arrangements that support self-determination for people with serious mental illness?**

The Self-Determination Policy and Practice Guideline applies to adults with serious mental illness as well as those with developmental disabilities. The philosophy of self-determination is in harmony with the Recovery Policy. Both efforts focus on hope, individual choice and control, and community inclusion.

In practice, there have been several challenges with implementing arrangements that support self-determination for people with serious mental illness. These include the general orientation and approaches to treatment that are held by the mainstream of mental health services treatment professionals and administrators; the differences in the nature of public program expenditures for responding to the needs of person with serious mental illness, and the varying nature of a person's support needs, over a given time period. In addition, unspecified fear about the impact of a large number of people using arrangements that support self-determination has hindered the ability to make these arrangements available to people with serious mental illness.

However, just as with people who have developmental disabilities, self-determination for people with serious mental illness is developed, through the person-centered planning process, one person at a time. While some services and supports may be more conducive to arrangements that support self-determination, MDCH does not want to put up barriers to the use of arrangements that support self-determination by people with mental illness. When a person and a PIHP/CMHSP can come to an agreement that the person desires to self-direct a service or support and has identified a qualified, willing provider, arrangements that support self-determination are not only appropriate, they are prudent. Just as the system has evolved for people with developmental disabilities, it will evolve for people with serious mental illness, one person and one arrangement at a time.