

Self-Determination Implementation Technical Advisory

Michigan Department of Community Health
Behavioral Health and Developmental Disabilities Administration

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Replaces
the Choice Voucher System Technical Advisory

A Technical Advisory includes **recommended** parameters developed by MDCH for PIHPs/CMHSPs related to specific administrative functions as derived from public policy and legal requirements.

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PREFACE

This Self-determination Implementation Technical Advisory provides concrete approaches to support individuals using mental health specialty services and supports to use arrangements that support self-determination. Self-determination is the value that people served by the public mental health system must be supported to have a meaningful life in the community. Michigan's Self-Determination Policy & Practice Guideline (SD Guideline attached as Appendix A) requires that Prepaid Inpatient Health Plans/Community Mental Health Service Programs (PIHP/CMHSPs) offer arrangements that support self-determination, assuring methods for people to exert direct control over how, by whom, and to what ends they are served and supported.

Self-determination is based on four principles. These principles are:

FREEDOM: The ability for individuals, with assistance from significant others (e.g., chosen family and/or friends), to plan a life based on acquiring necessary supports in desirable ways, rather than purchasing a program. This includes the **freedom** to choose where and with whom one lives, who and how to connect to in one's community, the opportunity to contribute in one's own ways, and the development of a personal lifestyle.

AUTHORITY: The assurance for a person with a disability to control a certain sum of dollars in order to purchase these supports, with the backing of their significant others, as needed. It is the **authority** to control resources.

SUPPORT: The arranging of resources and personnel, both formal and informal, to assist the person in living his/her desired life in the community, rich in community associations and contributions. It is the **support** to develop a life dream and reach toward that dream.

RESPONSIBILITY: The acceptance of a valued role by the person in the community through employment, affiliations, spiritual development, and caring for others, as well as accountability for spending public dollars in ways that are life-enhancing. This includes the **responsibility** to use public funds efficiently and to contribute to the community through the expression of responsible citizenship.

By themselves, the approaches described in this Technical Advisory are not "self-determination." They are pathways that provide individuals with meaningful authority to control and direct services and supports. Promoting true self-determination for adults with significant service and support needs requires a shift from the approaches that fit people into an existing service array to approaches that are truly person-centered and person-controlled.

This Technical Advisory comprises technical guidance to PIHP/CMHSPs in implementing arrangements that support self-determination. It includes prototype agreements that local PIHP/CMHSPs may adapt to meet local needs with appropriate locally-retained legal or other professional assistance as they may choose. This Technical Advisory is an interpretive statement of the MDCH and not a guarantee by the State or the Attorney General's Office. This Technical Advisory is oriented toward self-determination for adults within the public mental health system. Technical guidance on family-directed service and support arrangements authorized for children is provided in a separate document entitled Choice Voucher System for Children.

Implementing Arrangements That Support Self-Determination

This Technical Advisory provides individuals using mental health specialty services and supports with methods to control and direct how the services and supports in their IPOS are implemented. Individuals with their allies,¹ work with their PIHP/CMHSPs to determine their IPOSs and individual budgets through the person-centered planning process. The individual budget is the **central** way a person exercises control over his or her services and supports.

The individual budget authorized by the PIHP/CMHSP provides a set amount of resources sufficient to implement the person's IPOS, which may be directed by the person to pursue the goals and outcomes identified in the IPOS. Service and support arrangements directly controlled by the person may range from one specific service to all of the services in the person's IPOS. It is the person's choice whether to manage some or all of their services. A person may choose to have his or her family members involved in creating arrangements that support self-determination, but absent legal authorization,² the family member of an adult does not have the right to be involved without the person's consent.

Since individuals receiving Medicaid-funded services may not receive funds directly, mechanisms are needed to purchase the services and supports. The SD Guideline requires PIHP/CMHSPs to "design and implement alternative approaches that people electing to use an individual budget may use to obtain individual-selected and -directed provider arrangements.," (p. 8). One of those alternative approaches is the "Direct Employment Model" in which the individual is the employer of record and has legal responsibilities for all administrative aspects of employment. These legal responsibilities are performed by a fiscal intermediary. "Agency with Choice" is another alternative approach, which is described in the SD Guideline as "access to a provider entity that can serve as employer of record for personnel selected by the consumer," (p. 9). (See *also* **Crosswalk between Direct Employment of Workers and Agency with Choice**). Both approaches are described within this Technical Advisory.

Arrangements that support self-determination are more than authentic person-centered planning that result in a choice of services and supports as well as a choice of providers. All individuals receiving support from the public mental health system have the right to develop their individual plan of service (IPOS) through the person-centered planning process. In addition, all Medicaid beneficiaries have rights defined by federal law including the right to choose the providers of the services and supports they need.³ These rights are in place regardless of whether individuals choose to direct their services.

¹ An individual's allies are chosen by the individual and may include: family members, friends, paid staff, other professionals, and community members, etc.

² A person may choose to use a power of attorney to authorize a family member or trusted friend to handle matters for him or her; some persons may have a legal guardian whose responsibility is to act in place of the person in certain matters.

³ See Provider Qualifications and Training on page 6.

Directing services under arrangements that support self-determination means exercising authority to responsibly control and manage the use of needed services and supports. The person exercises decision-making authority and management responsibility for an individual budget from which the participant authorizes the purchase of supports and services that are authorized in the IPOS. The person also has the flexibility to shift funds among authorized services within the individual budget without PIHP/CMHSP approval. The participant exercises choice and control over who provides services and supports and how they are provided.

To implementing arrangements that support self-determination, PIHPs/CMHSPs must ensure that individual and organizational self-interests do not compete with the opportunity of people to have authority over the services and supports they need to live the lives they want to live. This Technical Advisory describes specific tools including a Self-Determination Agreement, the Direct Employment Model (with use of a qualified fiscal intermediary), the Agency with Choice Model, and direct contracting with other providers.

Conflicts of interest between priorities of a PIHP/CMHSP, its staff and provider agencies, and the priorities of a person tend to be reduced through use of arrangements that support self-determination. The person, not the PIHP/CMHSP or its provider agencies, controls the selection of providers, as well as directs specific details about how, when and for how long those services are utilized. The person has the authority to terminate or replace a worker, when in his or her judgment, doing so is necessary.

These approaches for implementing arrangements that support self-determination are applied within the framework of Michigan's public mental health system, including the specialty services Medicaid managed care plan for individuals operated through the PIHP/CMHSPs.⁴ The elements of the system have been designed to meet the requirements of the Medicaid program, including the requirements of the Freedom of Choice (1915(b)) waiver and the Habilitation Supports Waiver, and the Michigan Mental Health Code. The Technical Advisory components make consumer control possible by creating mechanisms to maintain PIHP/CMHSP accountability for service delivery and the use of public funds, particularly Medicaid funds, and to assist the individual in using arrangements that support self-determination.

Roles and Responsibilities

Successful use of arrangements that support self-determination requires that all parties understand their rights and responsibilities. PIHPs/CMHSPs are responsible for implementing arrangements that support self-determination pursuant to the SD Guideline. The PIHP/CMHSP has a responsibility to support persons in using

⁴ PIHP/CMHSP may contract with a Host Agency to administer the Choice Voucher System in a given area. In this document, the term PIHP/CMHSP designates both PIHP/CMHSPs and Host Agencies.

arrangements that support self-determination in their efforts to understand and apply the essential components of the system.

Implementing arrangements that support self-determination is a partnership between the PIHP/CMHSP and the people using mental health specialty services and supports. Once a IPOS and an individual budget have been developed through person-centered planning and agreed to, the person signs a Self-Determination Agreement with the PIHP/CMHSP. Each person must have an Employment Agreement with each worker and a Purchase of Services Agreement with every other provider of services or supports. To ensure that Medicaid requirements are met, each provider must sign a Self-Determination Provider Agreement with the PIHP/CMHSP. Each of these components is described in detail within this document.

People and their allies shall inform the PIHP/CMHSP of issues that affect their ability to successfully understand, interpret and implement arrangements that support self-determination. Issues might include completion of the required agreements or finding, selecting, and managing workers. The PIHP/CMHSP shall address these issues as they arise and is encouraged to schedule regular forums in which individuals using these arrangements and their allies may gather to discuss and resolve common concerns and issues. The PIHP/CMHSP is expected to develop and implement the approaches described in this Technical Advisory in a person-friendly manner, making the methods as easy to use as possible.

People using arrangements that support self-determination have several responsibilities when using arrangements that support self-determination:

- Manage the use of funds so that expenditures in the aggregate do not exceed the amounts identified in the individual budget and notify the PIHP/CMHSP and FI about any change in circumstances that may require a modification of IPOS or the individual budget.
- Complete all requirements for documentation of Medicaid services in the format proscribed by the PIHP/CMHSP.
- Provide all necessary information regarding all providers of services and supports and ensure that all required documentation and written agreements are in place.
- Assure that each service provider retained by meets the provider qualifications.
- Provide the fiscal intermediary or agency with choice with necessary authorization and documentation (such as timesheets and invoices) to support use of the funds in the individual budget.

The Self-Determination Agreement

The SELF-DETERMINATION AGREEMENT is a contract between the PIHP/CMHSP and the individual receiving services. It is an essential component in arrangements that support self-determination. The agreement outlines the relationship between the person and the PIHP/CMHSP and describes the obligations and responsibilities of each party involved in arrangements that support self-determination. It confirms that the individual is using in arrangements that support self-determination voluntarily and consents to such the arrangement. The individual agrees to handle the all of the responsibilities of participation. It also confirms that the PIHP/CMHSP agrees to the participation, delegates the authority to manage the funds in the budget to the person, and agrees to support the individual to successfully use arrangements that support self-determination. The person's IPOS and individual budget are referenced within, provided to the individual along with a copy of the agreement, and updated as the IPOS changes. The IPOS must address issues of wellness and well-being, such as the need for an emergency back-up plan to provide support in the event that regular workers have scheduled or unscheduled absences. The person agrees to follow specific requirements outlined by the PIHP/CMHSP including assuring that selected providers meet applicable provider qualifications and requirements for the service they are providing.⁵ If the person chooses, the fiscal intermediary or another agency may assist the person in carrying out this task. The prototype Audit Form (See Appendix C) is a checklist to assure that each piece is in place for an individual person.

Use of Medicaid Funds

Medicaid is one funding source for mental health services and supports. The use of Medicaid funds places special accountability requirements on the provision of services and supports. All requirements for documenting that Medicaid services and supports have been provided, as described in the Michigan Medicaid Provided Manual, must be completed. That documentation must be provided to the PIHP/CMHSP. Every provider must execute a separate agreement, called the SELF-DETERMINATION PROVIDER AGREEMENT, with the PIHP/CMHSP. In this agreement, the provider agrees that it will:

1. Accept payment, in form of check(s) or direct deposit, from the fiscal intermediary;
2. agree that no additional payments will be accepted;
3. Agree to keep records of the service(s) or purchase(s) provided as required by the individual(s) using arrangements that support self-determination or the PIHP/CMHSP.
4. Provide only the service(s) or item(s) described in the employment or purchase-of-service agreement with the employer and not exceed the hours set forth in the employment or purchase-of-service agreement except in emergency situations or with authorization from the PIHP/CMHSP.
6. Upon request, provide information regarding the service(s) or purchase(s) for which payment was made to and to provide such information and any related invoices or billings, upon request, to the individual using arrangements that support self-determination, PIHP/CMHSP, the State Medicaid Agency, the Secretary of the Department of Health and Human Services or the State Medicaid fraud control unit.

⁵ Provider requirements are to be determined by the PIHP/CMHSP and communicated to the person, and are derived from such sources as the Medicaid Provider Manual.

Provider Qualifications and Training

One of the benefits of using arrangements that support self-determination is directly employing or contracting with providers chosen by the individual. That greater freedom of choice does not mean that the individual can choose any provider. All providers must meet the provider requirements for the service that they are providing. Provider qualifications can be found in the Michigan Medicaid Provider Manual. <http://www.michigan.gov/mdch/0,1607,7-132--87572--,00.html>

Provider Qualifications

Generally, the required provider qualifications 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.)

Information about provider qualifications and training requirements can be found in a document called **Michigan Provider Qualifications Per Medicaid Service and HCPCS/CPT Code**. This document provides the following information in chart form: Service definition, HCPCS Code or Codes, Reporting Code Description from HCPCS and CPT Manuals, Coverages and Provider Qualifications or and Minimum Training Requirements. The minimum training requirements for someone providing aide level services and supports is basic first aid procedures and training in the person's IPOS.

Choice of Provider Requirements

The federal Balanced Budget Act (BBA) of 1997 included protections for Medicaid beneficiaries who receive their Medicaid covered services through managed care organizations. One such protection is that Medicaid beneficiaries have the choice of providers of their Medicaid covered services. (See 42 CFR 438.6). In Michigan, all Medicaid beneficiaries who receive mental health or developmental disability services through the public mental health system have a right under the BBA to choose the providers of the services and supports that are identified in their individual plan of service “to the extent possible and appropriate.” PIHPs or their subcontractors must provide information to beneficiaries regarding any restrictions on the individual’s freedom of choice among providers in the network. (See 42 CFR 438.10(f)(6)(ii)) Qualified providers chosen by the beneficiary but are not currently in the network or on the provider panel, should be placed on the provider panel.

Within the PIHP, choice of providers must be maintained at the provider level. The individual must be able to choose from at least two providers of each covered support and service; and must be able to choose an out of network provider under certain circumstances (See 42 CFR 438.52(b)). Choice of providers is essential to ensuring that individuals are satisfied with their services and supports and who provides them. For example, most people have strong preferences about who provides their most intimate personal care; and most individuals with serious mental illness have preferences about the psychiatrist who will treat them.

Provider choice, while critically important, must be distinguished from arrangements that support self-determination. The latter arrangements extend individual choice to his/her control and management over providers (i.e., directly employs or contracts with providers), service delivery, and individual budget development and implementation.

Supporting Successful Use of Arrangements that Support Self-Determination

People who successfully use arrangements that support self-determination do not do it alone. They use informal support from others to assist them to implement arrangements that best meet their needs. There are a number of ways for a person to obtain and facilitate the informal support of the others in this process.

The involvement of informal supports starts in the person-centered planning process. Through this process, IPOSs, individual budgets, and the methods for their implementation are developed. The person chooses which of his or her allies to involve in the person-centered planning process. These individuals provide input and support to the planning process and the IPOSs that result.

When arrangements that support self-determination are being used, the person-centered planning process must address the person's need for information, guidance and support regarding:

- control of the individual budget,
- directly contracting with chosen providers,
- directly employing staff,
- the requirements and responsibilities of the employer role,
- opportunities to learn how to direct and supervise support workers, and
- ways that allies can provide informal support to assist the person with the tasks involved.

The goal of arrangements that support self-determination is to provide the means and methods to enable people to have meaningful lives in their communities. Most people living in their community already have the involvement of family members, friends, and co-workers (if employed), who constitute their informal support network. They may also have important relationships with paid support workers or other professionals. Each person's situation and relationships are unique; some people may have more support than others. Very few people will have no informal support at all.

The Role of Informal Supports

A discussion of possibilities for informal support must start with this legal fact: All individuals, regardless of their abilities and disabilities, are presumed competent under state law unless there is a legal determination otherwise. That legal determination may be in the form of a guardian under the Mental Health Code for a person with a developmental disability or a guardian or conservator under the Estates and Protected Individuals Act for a person with a mental illness. In cases where the person has a legal guardian with authority over contracts, the guardian must be the managing employer in the self-determination arrangement.⁶

⁶ 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

While some people have guardians, many persons in arrangements that support self-determination successfully use informal supports and representatives to assist them in managing their services and supports.

In its guidance on personal care options in the State Medicaid Manual, the federal Centers for Medicare and Medicaid Services endorses arrangements that support self-determination when the individual expresses the desire and has the ability to do so. It recognizes the role of informal supports and representatives: “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.”⁷ This guidance is applicable to all arrangements that support self-determination.

The general directive—that the person have the desire and the ability to be the employer—must be considered in context of the life situation of each person. Some individuals may possess the legal right 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 one or more involved family and friends, or even trusted staff, who are able and willing to assist by providing needed support and guidance. For others without this or comparable support, it will not be realistic or prudent for the PIHP/CMHSP to authorize use of its funds for the person him/herself to directly control the services and supports they use until the person has cultivated friends, family and community members who can serve as informal supports.

Choosing a Representative

A person who does not have a guardian may designate another person to help him or her with the arrangements either formally, by executing a power of attorney, or informally, by asking them. Through the person-centered planning process, the person and his or her allies may determine the best person to serve as representative. A representative must be able and willing to honor the choices and preferences of the person and support him or her to take as active role in the process as possible.

The PIHP/CMHSP has input in this process through the involvement of the supports coordinator and must concur in the use of a representative relating to arrangements authorized and funded by the PIHP/CMHSP. Appropriate documentation of the issues discussed and the resulting agreements and decisions are expected to be found in the person’s record and IPOS.

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.

7 Section 4480 State Medicaid Manual, Center for Medicare and Medicaid Services

Typically, where a person has a representative performing the managing employer function, the representative is a parent or family member. However, friends and others may take on this role. Regardless of whether the person is the managing employer or has a representative performing that function, the PIHP/CMHSP is expected to support the person to take the lead in responsibly expressing preferences and goals and directing support workers. When the person appoints a representative to handle some functions, both the person and representative sign the relevant agreement (e.g., the Self-Determination Agreement or the agreements with providers or employees).

Factors to Consider

The person-centered planning process is the forum for determining whether an individual desires and possesses the abilities—with or without support—to use arrangements that support self-determination. The person-centered planning process must produce a consensus regarding the appropriateness of particular arrangements.

In determining which sorts of arrangements are to be used, the person and others involved in the person-centered planning process should consider:

- The person's preference;
- The person's ability to manage the desired arrangement. Ability is gauged by considering the support available from chosen family and friends to assist with managing the preferred arrangement. Some individuals with very significant disabilities have the support to enable them to directly control provider arrangements, even though they would be unable to do so themselves;
- Evidence that a particular arrangement would pose a significant risk to the person that cannot be balanced with available support;
- Other related factors that appear to impinge on or assist the potential success of a given approach.

There is a distinction between the legal right any individual may have to enter into a contract (including an employment contract) and his or her authority to direct funds under the stewardship of the PIHP/CMHSP to pay for that arrangement. While the individual's right to enter into agreements under common law cannot be terminated except by a Probate Court Judge acting on a Petition for Guardianship, the use of the PIHP/CMHSP's funds to directly arrange for and control providers of services must be authorized by the PIHP/CMHSP for the sole purpose of accomplishing the IPOS. If use of arrangements that support self-determination is beyond the ability of the person, even with the provision of available support, authorizing such arrangements is inappropriate. This is especially true where there is a significant potential for harm to the individual. When the use of arrangements that support self-determination are deemed to be inappropriate for an individual, given his or her current circumstances, the PIHP/CMHSP must document the basis for the decision and work with the individual and his or allies to determine how he or she can reach the goal of self-determination.

It is unacceptable for the PIHP/CMHSP to arbitrarily determine whether or not a person may use arrangements that support self-determination simply for the convenience of the PIHP/CMHSP. For example, a PIHP/CMHSP may not deny individual persons the right to select, employ and manage their own qualified providers simply because existing arrangements with traditional providers may be affected.

Clear information and guidance must be provided by the PIHP/CMHSP to the person and/or their representative so that they understand the nature of the arrangements and the responsibilities involved with controlling public funds and employing workers. It must be made clear that these responsibilities could be accompanied by problems, if they are not handled properly. The PIHP/CMHSP should provide for support mechanisms to ensure that tasks the person will not directly handle are properly performed.

Addressing Wellness and Well-Being

During the planning process, issues of wellness and well-being specific to the individual must be brought up, discussed and resolved. Overall, persons should not, by virtue of using arrangements that support self-determination find themselves in a situation where they are physically at risk without a plan for addressing the potential risk. While this sort of dialogue and planning is already standard practice in the person-centered planning process, many arrangements that are directly determined and controlled by the person (or his/her representative) do not include the contingency plans that may be built into traditional provider arrangements. Chief among these needs is planning for a workable back-up system for providing support in the event that directly employed support workers are unable to work. The prototype Article I of the Self-Determination Agreement (in Appendix C), Section 7.b, requires the PIHP/CMHSP to work with the person to develop and assure a back-up plan for the provision of essential services. Other risk management issues present in the individual's circumstances must be identified and resolved through the person-centered planning process. Risk management solutions must assure the wellness and well-being of the person in ways that support attainment of his or her goals while maintaining the greatest feasible degree of personal control and direction.

Summary

An individual's allies can play an informal, but critical, role supporting the individual. Some people with very significant support needs successfully participate in arrangements that support self-determination due in part to the high level of informal support they have. Sometimes, these informal supports are developed and fostered through meaningful participation in the community. The extent to which a person may be able to successfully use arrangements that support self-determination may depend on the extent of his or her informal supports.

Developing and Implementing Individual Budgets for Individuals Using Arrangements that Support Self-Determination

Introduction

The Michigan Department of Community Health's (MDCH) Self-Determination Policy and Practice Guideline (SD Guideline) is attached to its contracts with community mental health services programs (CMHSPs) and prepaid inpatient health plans (PIHPs). (See Contract Attachment 3.4.4 attached as Appendix I to this Technical Advisory). The guideline identifies control over an individual budget as an important way that individuals using arrangements that support self-determination exercise meaningful control over their mental health specialty services and supports. This Technical Advisory provides further guidance on the development, use, and monitoring of individual budgets.

An Individual budget, for the purpose of this document, is the expected or estimated costs of a concrete approach to obtaining the mental health specialty services and supports in the IPOS **for which an individual is choosing to use arrangements that support self-determination**. An individual budget does not include mental health services and supports not obtained through arrangements that support self-determination or other funding sources.⁸ An individual budget also must be differentiated from the estimated costs of providing mental health specialty services and supports that must be provided to all individuals who receive services and supports in the public mental health system. (See MDCH/Prepaid Inpatient Health Plan (PIHP) Contract § 6.3.3. Information Requirements, B.2.f.)

The person-centered planning process is used to develop the IPOS that the individual needs and the individual budget necessary to implement that IPOS. The IPOS includes the amount, scope and duration for each medically necessary service and support. The individual and the PIHP/CMHSP agree to both the IPOS and the individual budget. If the individual's needs change, the person-centered planning process is used to revisit the IPOS and individual budget. The individual uses the funding in the individual budget to acquire and pay for the services and supports in his or her IPOS that he or she is obtaining through arrangements that support self-determination. The individual budget cannot be used to obtain mental health specialty services and supports not authorized for the individual or other services and supports not available through the public mental health system.

PIHP/CMHSPs (including their sub-contracted entities) are responsible for offering arrangements that support self-determination and working with each individual to develop those arrangements including an individual budget. These arrangements are partnerships between the PIHP/CMHSP and the individual in which PIHP/CMHSP

⁸ Some PIHP/CMHSPs have included services and supports and from other funding sources (e.g. Home Help, Michigan Rehabilitation Services) and even the individual's own income to develop a complete financial picture of the individual's life. For the purposes of the technical assistance in this document, individual budget is more narrowly defined.

delegates authority for the funding in the individual budget to the individual. That means that the individual is responsible for using the funding solely for the services and supports in the IPOS consistent with Medicaid and other requirements. The scope of authority and limitations on it are set forth in a Self-Determination Agreement that is signed by both the PIHP/CMHSP and the individual. The PIHP/CMHSP retains responsibility for monitoring and ensuring that the individual obtains the services and supports in his or her IPOS.

All individuals using arrangements that support self-determination have been determined to be eligible to receive medically necessary mental health services and supports. Their right to services and supports does not translate into either a right, or a requirement, that they obtain those services and supports at a certain cost. Each PIHP/CMHSP must have a uniform, transparent process for costing out services and supports that comports with the prudent purchasing framework and best value orientation and yet provides sufficient resources to enable the individuals to find qualified and capable providers.

Developing the Individual Budget

Michigan uses a retrospective zero-based method for developing an individual budget. That means that the individual budget is based solely on the services and supports determined to be necessary. The budget is based on the IPOS rather than the IPOS being based on a targeted budget amount. After an IPOS that meets the individual's needs and goals has been developed, the amount of the individual budget is determined collectively by the individual, the PIHP/CMHSP, and others involved through the person-centered planning process. The individual budget is determined by costing out the services and supports in the IPOS (for example, a reasonable number of hours at a reasonable rate). The rate for directly-employed workers must include Medicare and Social Security Taxes (FICA), Unemployment Insurance, and Worker's Compensation Insurance. The individual budget must include the fiscal intermediary fee if the individual is directly employing workers and/or using the fiscal intermediary to process payments to other providers.

The individual budget should be developed for a period of time that allows the individual to exercise flexibility (usually one year). Therefore, if an individual uses more hours one week or month and less the next, it averages out. The individual is responsible to ensuring the use of service and supports does not exceed the individual budget authorization for the budget period. As set forth in the SD Guideline and the Fiscal Intermediary Technical Requirement, the fiscal intermediary is a fiscal agent for the PIHP/CMHSP that provides monitoring and safeguards to ensure that the individual budget is not overspent. Both documents also address the methods for addressing situations where an individual is not obtaining services and supports consistent with the IPOS and individual budget.

Elements of the Individual Budget

An individual budget must meet three criteria to support each individual in implementing the arrangements that support self-determination. The budget must be *accessible*, *flexible* and *portable*. As described below, information on the amount of the individual budget and monthly reports on the use of the individual budget are critical for an individual to be able to direct and control the arrangements. When this information is provided in both a clear format and timely manner, the potential for budget overutilization is greatly reduced.

Accessible means that the individual is provided with amount and purpose of the budget in an easy-to-understand format. To the greatest extent possible, the individual and his or her allies are involved in the budget development process. Options and limitations for using the funds in the individual budget to obtain the services and supports in the IPOS are set forth in the Self-Determination Agreement.

Portable means that the individual is able to transfer budget resources from one provider arrangement to another without prior approval from the PIHP/CMHSP. However, the individual must still follow the process set by the PIHP/CMHSP for assuring the provider meets provider qualifications and the credentialing process for applicable providers.

Flexible means that the PIHP/CMHSP describes in writing the options for modifying the budget components within the overall individual budget in accordance with the IPOS to the individual.

The PIHP/CMHSP must inform individuals in writing of the options for, and limitations on, flexibility and portability, for example, how, when and what kind of changes they can make in the use of the individual budget, and when such changes need to be communicated and/or to the PIHP/CMHSP.

Documenting the Individual Budget (Accessibility)

As described above, The PIHP/CMHSP is responsible for ensuring that an individual budget is accessible to the individual using it. Components of accessibility include providing easy-to-understand information on:

- the amount, scope and duration for each service and support
- the dollar amount tied to each service and support (and how that might break down in terms of average monthly or weekly usage).
- the dollar amount for the entire individual budget.

Authority over an individual budget is a big responsibility. The PIHP/CMHSP must discuss the nature and scope of this responsibility with the individual during the person-centered planning process and describe it in writing in the Self-Determination Agreement including any limitations on the use of the individual budget. A copy of the individual's IPOS and individual budget must be provided to the individual with the Self-Determination Agreement (SD Guideline II.E.) and provided to the individual. The PIHP/CMHSP must include the framework for making an adjustment in the use of funds

in the individual budget in the Self-Determination Agreement or in a separate writing attached to that agreement (SD Guideline II.E.4.c).

Changing Providers and Monitoring the Individual Budget (Portability)

Portability means that an individual budget is portable—in other words, an individual can easily switch to a different provider without the approval of the PIHP/CMHSP as long as the provider meets provider qualifications for the service or support (the individual must follow the procedures for establishing that the provider meets provider qualifications including the credential process for applicable providers). The PIHP/CMHSP should clearly set forth the procedure for assuring that potential providers meet provider requirements. Sometimes, this checking is done by the PIHP/CMHSP; other agencies contract with the fiscal intermediary to do this work. The ability to change providers is one of the hallmarks of meaningful control of the individual budget.

Another key to portability is having information about budget utilization. The fiscal intermediary must provide both the individual and the PIHP/CMHSP a monthly report of expenditures within 15 days after the end of the month. The monthly budget report is the central mechanism for monitoring implementation of the budget. Over- or under-utilization identified in the monthly report can be addressed by the PIHP/CMHSP and individual informally or through the person-centered planning process. In addition, the PIHP/CMHSP contract with the Fiscal Intermediary should require the FI to contact an individual's supports coordinator or case manager if there is an over- or underutilization of a specified amount or percentage (for example, ten percent). If a FI is not used, then the PIHP/CMHSP must provide the monthly budget report to the individual and his or her supports coordinator or case manager.

Modifying the Individual Budget (Flexibility)

The individual budget must be written to allow the individual flexibility in its use: an individual can decide when services and supports are used and make some adjustments between budget line items. The SD Guideline describes types of flexibility (SD Guideline II.E.4) considered.

Adjustments That Do Not Require a Modification to the Individual Budget

The IPOS and individual budget can set forth adjustments that do not deviate from the goals and objectives in the IPOS, and that do not require additional authorization from the PIHP/CMHSP or advance notification of an intended adjustment:

“When a person makes adjustments in the application of funds in an individual budget, these shall occur within a framework that has been agreed to by the person and the PIHP/CMHSP, and described as an attachment to the person-self-determination agreement. (SD Guideline II.E.4.a.)

The IPOS must be written in a way that contemplates and plans for the manner in which the individual may use the services and supports:

- Specific goals in the IPOS are tied to flexible objectives that can be expanded or contracted, as the services are used day-to-day.
- Amounts, scopes, and durations should be written in a length of time that makes flexibility across the budget period (quarterly or annually) possible.
- Services and supports that are similar and may be substituted for one another should be identified in the IPOS and individual budget (for example, services and supports with the same provider qualifications).
- Services and supports for which there is no substitution should be identified.

When adjustments are made that are consistent with the framework set forth in the IPOS, the PIHP/CMHSP should develop a mechanism for individuals to use to communicate these adjustments back to the PIHP/CMHSP.

Adjustments that Require a Modification to the Individual Budget

Sometimes, an individual wants to make an adjustment that fundamentally alters the IPOS (for example, substituting one service for another service that is not similar, forgoing services and supports, or using services and supports not authorized):

“If a person desires to exercise flexibility in a manner that is not identified in the IPOS, then the IPOS must be modified before the adjustment may be made. The PIHP/CMHSP shall attempt to address each situation in an expedient manner appropriate for the complexity and the scope of the change.” (SD Guideline II.E.4.c).

In this situation, a modification can often be made over the phone between the individual and his or her supports coordinator or case manager. The change should be accomplished as expeditiously as possible. More substantial changes may need to be made through the person-centered planning process. The PIHP/CMHSP must provide the individual with information on grievance procedures when the individual’s request for a budget adjustment is denied or the amount of the budget is reduced.

Conclusion

Ultimately, the amount of an individual budget is the sum of the costs of those support and supports that are medically-necessary and agreed upon as desirable, achievable and prudent. Self-determination entails the principle of responsibility, involving, among other things, the expectation that the individual will use the public dollars in his or her individual budget wisely. The experience in Michigan to date has demonstrated very successful shared responsibility.

Budget Scenario Examples:

1. Kathy is a talented artist. The goals in her IPOS include:

- (1) Expanding ways to display and sell her art and finding other jobs/job training.
- (2) Losing weight and being active
- (3) Increasing opportunities to make new friends (especially opportunities to meet potential boyfriends)

The only approved services in her budget are Supports Coordination, Fiscal Intermediary and Community Living Supports (CLS). Within the 56 units (14 hours per week) of CLS, each goal is assigned a number of units. Kathy is not allowed to transfer units from one goal to another goal. For example, she has two hours for social opportunities, if she wants to do more than that within a week, she cannot use her CLS support to assist her.

Question: Should Kathy be able to use to CLS units, as she desires?

Answer: Yes, Kathy's goals can be rewritten so that there are a smaller number of goals with broader themes and several objectives within each goal.

2. Steve has been receiving skill-building services 3 hours a week to help him learn hard and soft job skills so that he can get a job. He has obtained a job 10 hours a week. He now needs job coaching (supported employment) and transportation to and from his job.

Questions: What is the process for Steve to amend his IPOS? Does he need to convene a person-centered planning meeting? What is the timeframe for doing so?

Answer: Steve should contact his supports coordinator or case manager to develop an addendum to his IPOS and individual budget to update the changes to his life and resulting changes to the IPOS and individual budget. Usually, this addendum can be accomplished over the phone. Steve does not need to convene a person-centered planning meeting unless he wants to do so. The addendum needs to be completed before the new services start.

The Direct Employment & Contracting Model

People who use arrangements that support self-determination directly hire their workers or directly contract with other providers (e.g. agencies and professional providers) of the services or supports identified in their IPOSs with support and consultation from allies. The person has the choice to directly hire needed workers or contract with an agency or professional provider to provide services and supports. The person must enter into an EMPLOYMENT AGREEMENT with each person he or she directly employs. This agreement outlines the terms and conditions of employment and clearly states that the person is the sole employer. Similarly, a person must directly enter into a PURCHASE OF SERVICES AGREEMENT with an agency providing services and supports or a qualified individual professional practitioner providing services and supports. Both types of agreements state that the person or his or her representative has authority to terminate the contract. Neither the PIHP/CMHSP nor the fiscal intermediary is a party to these agreements.

People who directly employ workers through arrangements that support self-determination must use a fiscal intermediary to handle the individual budget. A fiscal intermediary is an independent legal entity that acts as the fiscal agent of the PIHP/CMHSP for the purpose of assuring financial accountability for the funds in the person's individual budget. The fiscal intermediary: makes payments as authorized by the person to providers of services, supports or equipment; and minimizes and eliminates conflicts of interest.

The fiscal intermediary has four basic areas of performance:

- serves as fiscal agent for the PIHP/CMHSP to ensure accountability for the funds in the individual budgets;
- ensure compliance with requirements related to management of public funds and the direct employment of workers by persons;
- provide employer agent services for persons directly employing workers; and
- offers supportive services to enable persons to participate in self-determination and direct the services and supports they need.

The requirements related to Fiscal Intermediaries are set forth in the Fiscal Intermediary Technical Requirement (attached as Appendix B).

The Employer Agent Role

When people using arrangements that support self-determination directly hire workers, they are the employer of those workers and responsible for hiring, managing and, when necessary, firing those workers. However, the fiscal intermediary is needed not only to handle the funds in the individual budget, but to handle the complex legal aspects of employment. The fiscal intermediary serves as the person's employer agent to handle the payroll, tax and unemployment insurance filings and securing worker's compensation insurance.

Employer Agent is a term developed by the Internal Revenue Service (IRS) to describe entities that provide the service of handling all of the employer-related duties for an individual or organization. These tasks include those required by the IRS⁹, state and local income tax jurisdictions, and unemployment insurance regulators. In this role, the fiscal intermediary is providing a service to persons and not serving as their agent as that term is traditionally defined in law.

The fiscal intermediary neither contracts directly for services and supports on behalf of the person, nor acts as the employer of workers. If a person chooses to hire workers directly, the person is the employer and is responsible for hiring and managing the workers. The fiscal intermediary is not a party to Employer Agreements or Purchase of Services Agreements between the person (or his/her representative) and each provider.

The fiscal intermediary may also perform functions that enable the person to direct needed services and supports. These functions include employee verification to check provider qualifications and conducting reference and background checks. The fiscal intermediary also will be expected to perform other functions such as collecting and reporting data related to service delivery to the PIHP/CMHSP. The range of roles of an Intermediary is more fully explored in a publication describing the various roles of an intermediary services organization, available from the Federal Government.¹⁰

Key Elements Of The Relationship Between The PIHP/CMHSP And The Fiscal Intermediary

The PIHP/CMHSP is responsible for selecting one or more fiscal intermediaries to serve the persons using arrangements that support self-determination in its area. The FISCAL INTERMEDIARY READINESS REVIEW (attached as Appendix IV) provides a mechanism for the fiscal intermediary to measure its capacity to handle all necessary functions; similarly, the PIHP/CMHSP can use it as an instrument for assessing readiness to provide FI services and monitoring performance. The PIHP/CMHSP has great flexibility to construct a unique relationship with the fiscal intermediary provided that all technical requirements are met. Each PIHP/CMHSP may contract for other specific services that meet its or the persons' needs, such as employee verification functions. The Fiscal Intermediary Technical Requirement provides a list of criteria for the PIHP/CMHSP to use in developing and implementing its fiscal intermediary arrangements. The PIHP/CMHSP must involve persons using services and their allies in the development and implementation of the FI arrangement. The PIHP/CMHSP must construct its contractual arrangements with the fiscal intermediary in terms that clearly

⁹ See Section 3504 of the Internal Revenue Code, IRS Revenue Procedure 70-6 and 80-4 and IRS Notice 2003-70. These documents deal explicitly with employer PIHPs/CMHSPs who handle required IRS tasks for employers.

¹⁰ "Consumer-Directed Personal Assistance Services: Key Operational Issues for State CD-PAS Programs Using Intermediary Service Organizations" by Susan A. Flanagan and Pamela S. Green, October 24, 1997, Developed for the US Department of Health & Human Services, Assistant Secretary for Planning and Evaluation. This report can be downloaded from: <http://aspe.hhs.gov/daltcp/reports/cdpases.htm>. Please note that you must click on each section of the report separately to read that section.

define the fiscal intermediary and PIHP/CMHSP's roles, responsibilities, and reporting requirements through a Fiscal Intermediary Agreement.

The PIHP/CMHSP derives many benefits from the fiscal intermediary arrangement. It shifts the responsibility for handling the administrative and employer agent roles to the fiscal intermediary. The fiscal intermediary provides a guarantee that it will properly handle and account for public funds, particularly Medicaid funds. If properly constructed, the arrangement provides a buffer for the PIHP/CMHSP and insulates the PIHP/CMHSP from liability for all of the functions that are handled by the fiscal intermediary.¹¹ As the potential for PIHP/CMHSP liability is directly related to the specific contractual arrangement with the fiscal intermediary, local counsel should be actively involved in developing this arrangement.

Fiscal intermediaries must be carefully selected to ensure they have the capacity to perform the required functions and maintain accountability for the allocated funds. Putting the fiscal intermediary arrangement into place requires planning at the administrative level by the PIHP/CMHSP. The PIHP/CMHSP must map out the specifics of the model it will use to support implementation of the Arrangements that support self-determination. Local legal and accounting professional consultation should be sought to verify that the proposed administrative arrangements between the PIHP/CMHSP and the fiscal intermediary are properly constructed. Issues concerning potential conflicts of interest need to be identified and managed.

The PIHP/CMHSP must develop and implement a plan for assessing and monitoring fiscal intermediary performance to ensure that the fiscal intermediary is properly performing its functions. The PIHP/CMHSP must actively involve persons and their allies in its assessment plan that includes focus groups, performance loops, and satisfaction surveys (dissemination of surveys by mail is insufficient).

If a fiscal intermediary fails to fulfill its functions properly (especially the functions of accounting for Medicaid funds and handling the employer agent duties) and the PIHP/CMHSP does not discover the situation through its monitoring process and take corrective action, the PIHP/CMHSP may be held responsible and exposed to liability

¹¹ While the use and proper functioning of the fiscal intermediary insulates the PIHP/CMHSP from liability for those functions, the PIHP/CMHSP has potential employer liability if it fails to separate itself from the person's role in directly contracting with workers and providers. The person using arrangements that support self-determination is the sole employer in charge of hiring and managing his or her employees. As such, persons, with their allies, must fully and independently select, orient and direct chosen workers. In general, the PIHP/CMHSP provides support as well as information and guidance to persons directly employing workers rather than performing the selection and management duties itself. While the design of Technical Advisory is intended to limit the potential for liability, the particular realities of a relationship between a person, service provider, FI and PIHP/CMHSP may result in liability. For more information, consult "Addressing Liability Issues in Consumer-directed Personal Assistance Services" by Charles J. Sabatino and Sandra L. Hughes, January 2004, Developed for the U.S. Department of Health and Human Services, Office of Disability, Aging and Long-Term Care Policy. This report can be downloaded from <http://aspe.hhs.gov/daltcp/reports/cdliab.htm>.

Please note that you must click on each section of the report separately to read that section.

and potential financial penalties. The PIHP/CMHSP must require the fiscal intermediary to carry adequate insurance and obtain performance bonding to safeguard against losses that could result from the errors of the fiscal intermediary.

The fiscal intermediary is compensated separately from the individual budgets it manages. Compensation for its services on a flat fee or case-mix rate basis is recommended. The PIHP/CMHSP and the fiscal intermediary may negotiate a volume-based rate structure, but they cannot base compensation on a percentage or factor of individual budgets. Factoring has the potential to create incentives that may run counter to the interests of both the PIHP/CMHSP and the persons.

The Value Of Using An Independent Intermediary

In order for the Direct Employment Model to be successful, people who have arrangements that support self-determination must see the fiscal intermediary as an independent entity that works in partnership with them as they consider and try out creative, non-standard approaches to obtaining support and making meaningful community connections. To facilitate successful outcomes for persons, a fiscal intermediary should work to develop a relationship based on trust, respect and partnership with each person and be oriented to individually respond to each person's needs. To best facilitate this partnership, the PIHP/CMHSP should offer a choice of intermediaries located in the person's community, when it is able to do so.

The fiscal intermediary has the unique role of administering the individual budget directed by the person. In this role, the fiscal intermediary cannot deny or terminate services. Because it is not a provider of services, it does not have any interests or investments in particular programs, services or providers that may conflict with person choices. Free from such conflicts of interest, the fiscal intermediary can provide each person with an individualized response. As a result, persons perceive the fiscal intermediary as a partner in implementing their supports in a way that meets their needs and preferences identified during the person-centered planning process.

Putting It All Together

The fiscal intermediary is a central component to use of the Direct Employment Model. As a central matter, the PIHP/CMHSP must enlist the involvement of persons and their allies when it begins planning to establish arrangements with a fiscal intermediary. As systems are defined and developed, the PIHP/CMHSP should walk through them with representative persons and their allies to assure that they can be used easily. The best fiscal intermediaries properly handle the administrative management tasks required by the PIHP/CMHSP, while making their complexities invisible to the person. Once the fiscal intermediary arrangement is implemented, the PIHP/CMHSP should use survey methods, focus groups, and/or an ongoing person oversight process to obtain feedback on how the system is working. When the person is properly supported by a successful fiscal intermediary arrangement, the opportunity for identifying and obtaining the choices of supports that best fit the needs of a person are more likely to become reality.

The Agency With Choice Model

Introduction

Agency with Choice (AWC) is one option for individuals using arrangements that support self-determination within the public mental health system to choose and employ workers to provide their services and supports. A hallmark of self-determination is assuring people the opportunity to direct their individual budgets that enable them to control the funding for their services and supports so that they can direct how the funding is used and directly hire or contract with providers.

In the AWC model, individuals serve as managing employers¹² who have the sole responsibility for selecting, hiring, managing and firing their workers. The agency (described in this document as “AWC provider”) serves as employer of record and is solely responsible for handling the administrative aspects of employment (such as processing payroll; withholding and paying income, FICA, and unemployment taxes; and securing worker’s compensation insurance). In the AWC model, individuals may get help with selecting their workers (for example, the AWC provider may have a pool of workers available for consideration by individuals). The AWC provider may also provide back-up workers when the individual’s regular worker is not available. Like traditional staffing agencies, the AWC provider may be able to provide benefits to workers from its administrative funding (such as paid vacation, sick time, and health insurance) that individuals directly employing workers cannot provide. The AWC model is an important option for individuals who do not want to directly employ workers or who want to transition into direct employment.

Selection Criteria

Note: The following agencies may not be AWC providers: fiscal intermediaries, PIHPs, CMHSPs, and their subsidiaries or affiliated agencies.

Each PIHP may select one or more AWC providers according to the requirements in the Contract between MDCH and the Prepaid Inpatient Health Plans (PIHP) regarding procurement and credentialing of providers (Sections 7.0, 6.4.1 and 6.4.3, and attachments referenced within those sections). In PIHP affiliations, these requirements are delegated to the CMHSPs in the affiliate contract between the PIHP and the affiliate. The PIHP/CMHSP must assure that each AWC provider has the capacity to complete required AWC duties.

AWC providers may be traditional staffing agencies that choose to also offer AWC services. AWC providers should meet all provider requirements as determined by the PIHP/CMHSP. AWC providers may not be established by family and friends of an individual receiving services solely for the purpose of receiving the agency rate for directly employing workers who provide services and supports.

¹² See Medstat, *Promising Practices in Home and Community Based Services, Kansas—Providing Choice among AWC providers of Financial Management Services, Issue: Consumer-Directed Care—Agency with Choice Model*, <http://www.cms.hhs.gov/promisingpractices/ksawc.pdf>

The PIHP/CMHSP may directly select and contract with AWC providers or place qualified AWC providers on its provider panel. If the PIHP/CMHSP contracts with more than one AWC provider, the individual may choose between or among the AWC providers.

In addition, individuals may directly contract with providers that meet AWC requirements by using a Purchase of Service Agreement and a fiscal intermediary. The roles and requirements for the AWC model apply when an individual is directly contracting with an AWC provider.

The Role of the PIHP/CMHSP

The PIHP/CMHSP shall have an agreement with each AWC provider it selects that clearly defines the expectations of both the PIHP/CMHSP and the AWC provider and incorporates the assurances of the Self-Determination Provider Agreement (see prototype agreement in Appendix C). The PIHP/CMHSP must have mechanisms for obtaining and acting upon feedback from individuals and their allies to monitor the quality of the AWC provider functions. If the PIHP/CMHSP contracts with an AWC provider to offer additional support to individuals, such as assistance in finding workers, the PIHP/CMHSP must provide guidance as to how to provide such support and it must monitor individual satisfaction with the support provided.

Just as with all other services and supports, the supports coordinator or case manager (described in this document as “supports coordinator”) has a duty to monitor AWC arrangements, provide assistance to each individual as necessary, and intervene when an individual’s health or welfare is at risk.¹³

The Role of the AWC Provider

The AWC provider handles the administrative aspects of employment and serves as employer of record.¹⁴ (See Minimum Functions.) The AWC provider must be a staffing agency that is properly oriented as a business, meets all applicable AWC provider requirements, and maintains all required professional and business liability insurance. The AWC provider can set policies for the types of criminal backgrounds that would preclude employment and the types that would not. The AWC provider may decline to hire a worker selected by the individual if the AWC provider believes that the worker is unable to complete the required duties. The AWC provider may also set forth reasonable personnel policies that both individuals and workers must follow. The AWC provider shall not penalize the individual or the worker financially if they decide that direct employment would be preferable and choose to leave the AWC arrangement.

¹³ Under a new federal rule, an individual can also choose not to have a supports coordinator or case manager. If an individual chooses not to have a supports coordinator or case manager, someone at the PIHP/CMHSP must be designated to be responsible for obtaining authorization for and monitoring the individual’s services and supports.

¹⁴ Susan Flanagan, *Suggested Promising Practice Policies and Procedures for Agency with Choice AWC providers*, http://www.pacounties.org/mhmr/lib/mhmr/Suggested_Promising_Practice_Policies_and_Procedures_for_Agency_with_Choice_AWC_providers.doc

The Role of the Individual

The individual is the managing employer of all workers who provide supports and services to him or her. The individual may choose any support worker who meets the Michigan Medicaid Provider Manual provider qualifications and any additional requirements established by the AWC provider. Potential workers may include qualified friends or family members¹⁵ or workers recruited through word-of-mouth, ads or other means.

The individual is solely responsible for supervising and evaluating workers. The individual determines the work schedule and job duties, and authorizes payroll by signing timesheets for each worker. The individual handles any issues that arise with worker performance of duties.

If an individual is unable to handle the duties of the managing employer, the AWC provider should contact the individual's supports coordinator. The supports coordinator may discuss additional training or support needs with the individual. If such intervention is ineffective, the supports coordinator is authorized to terminate the Self-Determination Agreement pursuant to the SD Guideline.

The Employment Agreement

The AWC Provider and the individual must execute a three-party agreement with each worker that describes the roles and responsibilities of each party. (See prototype agreement in Appendix C). The employment agreement must explicitly state the individual is the managing employer and has the sole responsibility to manage, evaluate, and fire the worker. It is essential that the interrelationship between the AWC provider, the individual, and the worker be clearly understood in order for the individual to successfully supervise and manage the worker.

Control and Monitoring of the Individual Budget

A hallmark of arrangements that support self-determination is control over the individual budget, which is accomplished by monthly budget reports and by the ability for the individual to change providers. Without such reporting and portability, it is not possible for the individual to meaningfully control and manage his or her individual budget. For most individuals using arrangements that support self-determination, the monthly reports are prepared by the fiscal intermediary who manages the funds in an individual budget and pays for the services and supports as identified in the individual budget upon authorization from the individual.

There has been a question about whether the funds for the AWC provider should be lodged with a fiscal intermediary, as are funds for other services and supports for individuals in arrangements that support self-determination. If the AWC provider is only one of several providers identified in the individual budget lodged with the fiscal

¹⁵The AWC provider requirements do not allow an individual to hire a legally responsible relative or guardian.

intermediary, there is no additional cost. If the AWC provider is the sole provider for an individual, there are two options for monitoring the individual budget. For a minimal cost, the fiscal intermediary may handle the individual budget and provide a single payment to the AWC provider and a budget report to the individual and supports coordinator on a monthly basis. Another option is for the PIHP/CMHSP to directly pay the AWC provider. With this option, the PIHP/CMHSP must be prepared to assure portability of the individual's individual budget so that he or she may choose another agency or method for employing workers if he or she chooses to do so. In addition, the PIHP/CMHSP or the AWC provider must develop a monthly reporting mechanism so that the individual can manage the individual budget.

Implementation Issues and Conflicts of Interest

The AWC model poses a potential conflict between the business interests of the AWC provider and the choice and control of the individual. The more the AWC provider supports the individual, especially in terms of recruiting, scheduling or managing workers, the greater the possibility that the individual's freedom and control could be eroded. The AWC provider must be vigilant that its support enables the individual to direct and control rather than substituting itself in that role. The PIHP/CMHSP and the person's supports coordinator need to monitor the AWC services to assure that the roles are clear.

The AWC Provider must be clear about its role with both the worker(s) and the individual. It must be cautious to refrain from intruding upon the individual's role in managing workers. Instead, its role is to support the individual by making him or her aware of challenges, offering assistance in problem solving, and alerting the supports coordinator as appropriate to the individual circumstance.

The AWC provider can support an individual in recommending worker candidates who meet characteristics identified in the Individual Plan of Service. The individual can interview worker candidates to determine the best match for his or her needs. In assisting the individual to choose their workers, the AWC provider should never make a choice for, or on behalf of, the individual.

Conclusion

PIHP/CMHSPs must provide individuals with a range of options to direct and control resources. The AWC model can take care of many of the complex aspects of being an employer, while supporting the individual as the managing employer. As more individuals discover the AWC option, the demand for it will increase.

Minimum Responsibilities AWC Providers

- **Financial Management**
 - Processing payroll and timesheets
 - Confirming and authenticating work schedule and job description with individual
 - Withholding, filing and paying federal and state income tax withholding, FICA, FUTA and SUTA to the appropriate taxing authorities
 - Paying workers' compensation insurance premiums
 - Issuing Forms W-2
 - Maintaining complete current financial records, copies of all agreements and supporting documentation for each individual

- **Human Resources**
 - Completing criminal background and reference checks
 - Confirming that prospective workers have U.S. Citizenship or legal alien status
 - Confirming that prospective workers meet AWC provider requirements defined by Medicaid Provider Manual
 - Providing training to workers, as required by the PIHP/CMHSP and/or the AWC provider and/or directed by the individual
 - Handling fringe benefits (such as health insurance) for worker

**Crosswalk Between The Direct Employment of Workers Model
and the Agency With Choice Model**

Feature	Direct Employment Model (Fiscal Intermediary Model)	Agency With Choice Model
Choice	Individual chooses worker, subject to Medicaid requirements.	Individual chooses worker, subject to Medicaid and AWC provider requirements.
Setting Wage Rate	Individual sets wage rate.	AWC provider sets wage rate.
Control: Hiring, Managing, Firing Employees	Individual is the managing employer.	Individual is the managing employer. AWC provider can intervene in extreme circumstances.
Payroll & Taxes	Individual is the employer of record and uses FI to perform these functions. (Key—Individual has ultimate responsibility).	AWC provider is employer of record and has responsibility for these functions.
Worker’s Compensation	FI secures insurance on behalf of individual. Cost is incorporated into individual budget.	AWC provider secures insurance on all workers. Cost is included in hourly agency rate.
Recruiting Workers	FI rarely helps with worker recruitment (if so, must be included in contract between PIHP/CMHSP and FI).	AWC provider can assist with recruitment.
Back-Up Workers	FI does not provide back-up workers. Individual must have back-up plan.	AWC provider can provide back-up workers pursuant to the individual’s back-up plan.
Worker Qualifications	Worker must meet Medicaid qualifications.	Worker must be meet Medicaid and AWC provider qualifications.
Criminal Background Checks	FI processes background check. Individual and the PIHP/CMHSP together determine whether a criminal background is relevant, subject to PIHP/CMHSP policies.	AWC provider processes background check. AWC provider and individual determine whether a criminal background is relevant.
Training	Individual is responsible for training (with help from CMHSP).	AWC provider is responsible for training.
Portability—To change workers and providers	Individual has maximum ability to change workers and providers.	Individual can change workers and AWC providers.

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
Behavioral Health and Developmental Disabilities
SELF-DETERMINATION POLICY & PRACTICE GUIDELINEⁱ
October 1, 2012

INTRODUCTION

Self-determination is the value that people served by the public mental health system must be supported to have a meaningful life in the community. The components of a meaningful life include: work or volunteer activities that are chosen by and meaningful to person, reciprocal relationships with other people in the community, and daily activities that are chosen by the individual and support the individual to connect with others and contribute to his or her community. With arrangements that support self-determination, individuals have control over an individual budget for their mental health services and supports to live the lives they want in the community. The public mental health system must offer arrangements that support self-determination, assuring methods for the person to exert direct control over how, by whom, and to what ends they are served and supported.

Person-centered planning (PCP) is a central element of self-determination. PCP is the crucial medium for expressing and transmitting personal needs, wishes, goals and aspirations. As the PCP process unfolds, the appropriate mix of paid/non-paid services and supports to assist the individual in realizing/achieving these personally defined goals and aspirations are identified.

The principles of self-determination recognize the rights of people supported by the mental health system to have a life with freedom, and to access and direct needed supports that assist in the pursuit of their life, with responsible citizenship. These supports function best when they build upon natural community experiences and opportunities. The person determines and manages needed supports in close association with chosen friends, family, neighbors, and co-workers as a part of an ordinary community life.

Person-centered planning and self-determination underscore a commitment in Michigan to move away from traditional service approaches for people receiving services from the public mental health system. In Michigan, the flexibility provided through the Medicaid 1915(b) Managed Specialty Supports and Services Plan (MSSSP), together with the Mental Health Code requirements of PCP, have reoriented organizations to respond in new and more meaningful ways. Recognition has increased among providers and professionals that many individuals may not need, want, or benefit from a clinical regimen, especially when imposed without clear choice. Many provider agencies are learning ways to better support the individual to choose, participate in, and accomplish a life with personal meaning. This has meant, for example, reconstitution of segregated programs into non-segregated options that connect better with community life.

Self-determination builds upon the choice already available within the public mental health system. In Michigan, all Medicaid beneficiaries who services through the public mental health system have a right under the Balanced Budget Act (BBA) to choose the providers of the services and supports that are identified in their individual plan of service “to the extent possible and appropriate.” Qualified providers chosen by the beneficiary, but who are not currently in the network or on the provider panel, should be placed on the provider panel. Within the PIHP, choice of providers must be maintained at the provider level. The individual must be able to choose from at least two providers of each covered support and service and must be able to choose an out-of-network provider under certain circumstances. Provider choice, while critically important, must be distinguished from arrangements that support self- determination. The latter arrangements extend individual choice to his/her control and management over providers (i.e., directly employs or contracts with providers), service delivery, and budget development and implementation.

In addition to choice of provider, individuals using mental health services and supports have access to a full-range of approaches for receiving those services and supports. Agencies and providers have obligations and underlying values that affirm the principles of choice and control. Yet, they also have long-standing investments in existing programs and services, including their investments in capital and personnel resources. Some program approaches are not amenable to the use of arrangements that support self-determination because the funding and hiring of staff are controlled by the provider (for example, day programs and group homes) and thus, preclude individual employer or budget authority.

It is not anticipated that every person will choose arrangements that support self-determination. Traditional approaches are offered by the system and used very successfully by many people. An arrangement that supports self-determination is one method for moving away from predefined programmatic approaches and professionally managed models. The goals of arrangements that support self-determination, on an individual basis, are to dissolve the isolation of people with disabilities, reduce segregation, promote participation in community life and realize full citizenship rights.

The Department of Community Health supports the desire of people to control and direct their specialty mental health services and supports to have a full and meaningful life. At the same time, the Department knows that the system change requirements, as outlined in this policy and practice guideline, are not simple in their application. The Department is committed to continuing dialogue with stakeholders; to the provision of support, direction and technical assistance so the system may make successful progress to resolve technical difficulties and apparent barriers; and to achieve real, measurable progress in the implementation of this policy. This policy is intended to clarify the essential aspects of arrangements that promote opportunity for self-determination and define required elements of these arrangements.

PURPOSE

- I. To provide policy direction that defines and guides the practice of self-determination within the public mental health system (as implemented by Prepaid Inpatient Health Plans/Community Mental Health Services Programs (PIHP/CMHSPs)¹ in order to assure that arrangements that support self-determination are made available as a means for achieving personally-designed plans of specialty mental health services and supports.

CORE ELEMENTS

- I. People are provided with information about the principles of self-determination and the possibilities, models and arrangements involved. People have access to the tools and mechanisms supportive of self-determination, upon request. Self-determination arrangements commence when the PIHP/CMHSP and the individual reach an agreement on an individual plan of services (IPOS), the amount of mental health and other public resources to be authorized to accomplish the IPOS, and the arrangements through which authorized public mental health resources will be controlled, managed, and accounted for.
- II. Within the obligations that accompany the use of funds provided to them, PIHP/CMHSPs shall ensure that their services planning and delivery processes are designed to encourage and support individuals to decide and control their own lives. The PIHP/CMHSP shall offer and support easily-accessed methods for people to control and direct an individual budget. This includes providing them with methods to authorize and direct the delivery of specialty mental health services and supports from qualified providers selected by the individual.
- III. People receiving services and supports through the public mental health system shall direct the use of resources in order to choose meaningful specialty mental health services and supports in accordance with their IPOS as developed through the person-centered planning process.
- IV. Fiscal responsibility and the wise use of public funds shall guide the individual and the PIHP/CMHSP in reaching an agreement on the allocation and use of funds comprising an individual budget. Accountability for the use of public funds must be a shared responsibility of the PIHP/CMHSP and the person, consistent with the fiduciary obligations of the PIHP/CMHSP.
- V. Realization of the principles of self-determination requires arrangements that are partnerships between the PIHP/CMHSP and the individual. They require the active commitment of the PIHP/CMHSP to provide a range of options for

¹ Both PIHPs and CMHSPs are referenced throughout the document because the both have contractual obligations to offer and support implementation of arrangements that support self-determination. However, it is understood that, on an individual basis, self-determination agreements are executed at the CMHSP level.

CORE ELEMENTS, continued

individual choice and control of personalized provider relationships within an overall environment of person-centered supports.

- VI. In the context of this partnership, PIHP/CMHSPs must actively assist people with prudently selecting qualified providers and otherwise support them with successfully using resources allocated in an individual budget.
- VII. Issues of wellness and well-being are central to assuring successful accomplishment of a person's IPOS. These issues must be addressed and resolved using the person-centered planning process, balancing individual preferences and opportunities for self-determination with PIHP/CMHSP obligations under federal and state law and applicable Medicaid Waiver regulations. Resolutions should be guided by the individual's preferences and needs, and implemented in ways that maintain the greatest opportunity for personal control and direction.
- VIII. Self-determination requires recognition that there may be strong inherent conflicts of interest between a person's choices and current methods of planning, managing and delivering specialty mental health services and supports. The PIHP/CMHSP must watch for and seek to minimize or eliminate either potential or actual conflicts of interest between itself and its provider systems, and the processes and outcomes sought by the person.
- IX. Arrangements that support self-determination are administrative mechanisms, allowing a person to choose, control and direct providers of specialty mental health services and supports. With the exception of fiscal intermediary services, these mechanisms are not themselves covered services within the array of state plan and mental health specialty services and supports. Self-determination arrangements must be developed and operated within the requirements of the respective contracts between the PIHPs and CMHSPs and the Michigan Department of Community Health and in accordance with federal and state law. Using arrangements that support self-determination does not change an individual's eligibility for particular specialty mental health services and supports.
- X. All of the requirements for documentation of Medicaid-funded supports and services, financial accountability for Medicaid funds, and PIHP/CMHSP monitoring requirements apply to services and supports acquired using arrangements that support self-determination.
- XI. Arrangements that support self-determination involve mental health specialty services and supports, and therefore, the investigative authority of the Recipient Rights office applies.

POLICY

- I. Opportunity to pursue and obtain an IPOS incorporating arrangements that support self-determination shall be established in each PIHP/CMHSP, for adults with developmental disabilities and adults with mental illness. Each PIHP/CMHSP shall develop and make available a set of methods that provide opportunities for the person to control and direct their specialty mental health services and supports arrangements.
 - A. Participation in self-determination shall be a voluntary option on the part of each person.
 - B. People involved in self-determination shall have the authority to select, control and direct their own specialty mental health services and supports arrangements by responsibly controlling the resources allotted in an individual budget, towards accomplishing the goals and objectives in their IPOS.
 - C. A PIHP/CMHSP shall assure that full and complete information about self-determination and the manner in which it may be accessed and applied is provided to everyone receiving mental health services from its agency. This shall include specific examples of alternative ways that a person may use to control and direct an individual budget, and the obligations associated with doing this properly and successfully.
 - D. Self-determination shall not serve as a method for a PIHP/CMHSP to reduce its obligations to a person or avoid the provision of needed specialty mental health services and supports.
 - E. Each PIHP/CMHSP shall actively support and facilitate a person's application of the principles of self-determination in the accomplishment of his/her IPOS.
- II. Arrangements that support self-determination shall be made available to each person for whom an agreement on an IPOS along with an acceptable individual budget has been reached. A person initiates this process by requesting the opportunity to participate in self-determination. For the purposes of self-determination, reaching agreement on the IPOS must include delineation of the arrangements that will, or may, be applied by the person to select, control and direct the provision of those services and supports.
 - A. Development of an individual budget shall be done in conjunction with development of an IPOS using a person-centered planning process.
 - B. As part of the planning process leading to an agreement about self-

POLICY Section II. continued

determination, the arrangements that will, or may, be applied by the person to pursue self-determination shall be delineated and agreed to by the person and the PIHP/CMHSP.

- C. The individual budget represents the expected or estimated costs of a concrete approach to accomplishing the person's IPOS.
- D. The amount of the individual budget shall be formally agreed to by both the person and the PIHP/CMHSP before it may be authorized for use by the person. A copy of the individual budget must be provided to the person prior to the onset of a self-determination arrangement.
- E. Proper use of an individual budget is of mutual concern to the PIHP/CMHSP and the person.
 - 1. Mental Health funds included in an individual budget are the assets and responsibility of the PIHP/CMHSP, and must be used consistent with statutory and regulatory requirements. Authority over their direction is delegated to the individual, for the purpose of achieving the goals and outcomes contained in the individual's IPOS. The limitations associated with this delegation shall be delineated to the individual as part of the process of developing the IPOS and authorizing the individual budget.
 - 2. An agreement shall be made in writing between the PIHP/CMHSP and the individual delineating the responsibility and the authority of both parties in the application of the individual budget, including how communication will occur about its use. The agreement shall reference the IPOS and individual budget, which shall all be provided to the person. The directions and assistance necessary for the individual to properly apply the individual budget shall be provided to the individual in writing when the agreement is finalized.
 - 3. An individual budget, once authorized, shall be provided to the individual. An individual budget shall be in effect for a specified period of time. Since the budget is based upon the individual's IPOS, when the IPOS needs to change, the budget may need to be reconsidered as well. In accordance with the Person-Centered Planning Policy and Practice Guideline, the IPOS may be reopened and reconsidered whenever the individual, or the PIHP/CMHSP, feels it needs to be reconsidered.
 - 4. The individual budget is authorized by the PIHP/CMHSP for the purpose of providing a defined amount of resources that may be

POLICY Section II.E.4 continued

directed by a person to pursue accomplishing his/her IPOS. An individual budget shall be flexible in its use.

- a. When a person makes adjustments in the application of funds in an individual budget, these shall occur within a framework that has been agreed to by the person and the PIHP/CMHSP, and described in an attachment to the person's self-determination agreement.
 - b. A person's IPOS may set forth the flexibility that an individual can exercise to accomplish his or her goals and objectives. When a possible use of services and supports is identified in the IPOS, the person does not need to seek prior approval to use the services in this manner.
 - c. If a person desires to exercise flexibility in a manner that is not identified in the IPOS, then the IPOS must be modified before the adjustment may be made. The PIHP/CMHSP shall attempt to address each situation in an expedient manner appropriate for the complexity and scope of the change.
 - d. Funds allotted for specialty mental health services may not be used to purchase services that are not specialty mental health services. Contracts with providers of specialty mental health services should be fiscally prudent.
5. Either party—the PIHP/CMHSP or the person—may terminate a self-determination agreement, and therefore, the self-determination arrangement. Common reasons that a PIHP/CMHSP may terminate an agreement after providing support and other interventions described in this guideline, include, but are not limited to: failure to comply with Medicaid documentation requirements; failure to stay within the authorized funding in the individual budget; inability to hire and retain qualified providers; and conflict between the individual and providers that results in an inability to implement IPOS. Prior to the PIHP/CMHSP terminating an agreement, and unless it is not feasible, the PIHP/CMHSP shall inform the individual of the issues that have led to consideration of a discontinuation or alteration decision, in writing, and provide an opportunity for problem resolution. Typically resolution will be conducted using the person-centered planning process, with termination being the option of choice if other mutually-agreeable solutions cannot be found. In any instance of PIHP/CMHSP discontinuation or alteration of a self-determination arrangement, the

POLICY Section II.E.5 continued

local processes for dispute resolution may be used to address and resolve the issues.

6. Termination of a Self-Determination Agreement by a PIHP/CMHSP is not a Medicaid Fair Hearings Issue. Only a change, reduction, or termination of Medicaid services can be appealed through the Medicaid Fair Hearings Process, not the use of arrangements that support self-determination to obtain those services.
7. Discontinuation of a self-determination agreement, by itself, shall neither change the individual's IPOS, nor eliminate the obligation of the PIHP/CMHSP to assure specialty mental health services and supports required in the IPOS are provided.
8. In any instance of PIHP/CMHSP discontinuation or alteration, the person must be provided an explanation of applicable appeal, grievance and dispute resolution processes and (when required) appropriate notice.

III. Assuring authority over an individual budget is a core element of self-determination. This means that the individual may use, responsibly, an individual budget as the means to authorize and direct their providers of services and supports. A PIHP/CMHSP shall design and implement alternative approaches that people electing to use an individual budget may use to obtain individual-selected and -directed provider arrangements.

- A. Within prudent purchaser constraints, a person shall be able to access any willing and qualified provider entity that is available to provide needed specialty mental health services and supports.
- B. Approaches shall provide for a range of control options up to and including the direct retention of individual-preferred providers through purchase of services agreements between the person and the provider. Options shall include, upon the individual's request and in line with their preferences:
 1. Services/supports to be provided by an entity or individual currently operated by or under contract with the PIHP/CMHSP.
 2. Services/supports to be provided by a qualified provider chosen by the individual, with the PIHP/CMHSP agreeing to enter into a contract with that provider.
 3. Services/supports to be provided by an individual-selected provider with whom the individual executes a direct purchase-of-services

POLICY Section III.B.3 continued

agreement. The PIHP/CMHSP shall provide guidance and assistance to assure that agreements to be executed with individual-selected providers are consistent with applicable federal regulations governing provider contracting and payment arrangements.

- a. Individuals shall be responsible for assuring those individuals and entities selected and retained meet applicable provider qualifications. Methods that lead to consistency and success must be developed and supported by the PIHP/CMHSP.
- b. Individuals shall assure that written agreements are developed with each provider entity or individual that specify the type of service or support, the rate to be paid, and the requirements incumbent upon the provider.
- c. Copies of all agreements shall be kept current, and shall be made available by the individual, for review by authorized representatives of the PIHP/CMHSP.
- d. Individuals shall act as careful purchasers of specialty mental health services and supports necessary to accomplish their IPOS. Arrangements for services shall not be excessive in cost. Individuals should aim for securing a better value in terms of outcomes for the costs involved. Existing personal and community resources shall be pursued and used before public mental health system resources.
- e. Fees and rates paid to providers with a direct purchase-of-services agreement with the individual shall be negotiated by the individual, within the boundaries of the authorized individual budget. The PIHP/CMHSP shall provide guidance as to the range of applicable rates, and may set maximum amounts that a person may spend to pay providers of specific services and supports.
- f. Conflicts of interest that providers may have must be considered. For example, a potential provider may have a competing financial interest such as serving as the individual's landlord. If a provider with a conflict of interest is used, the conflict must be addressed in the relevant agreements. The Medicaid Provider Manual has directly

POLICY Section III.B.3 continued

addressed one conflict stating that, individuals cannot hire or contract with legally responsible relatives (for an adult, the individual's spouse) or with his or legal guardian.

4. A person shall be able to access one or more alternative methods to choose, control and direct personnel necessary to provide direct support, including:
 - a. Acting as the employer of record of personnel.
 - b. Access to a provider entity that can serve as employer of record for personnel selected by the individual (Agency with Choice).
 - c. PIHP/CMHSP contractual language with provider entities that assures individual selection of personnel, and removal of personnel who fail to meet individual preferences.
 - d. Use of PIHP/CMHSP-employed direct support personnel, as selected and retained by the individual.
 5. A person using self-determination shall not be obligated to utilize PIHP/CMHSP-employed direct support personnel or a PIHP/CMHSP-operated or -contracted program/service.
 6. All direct support personnel selected by the person, whether she or he is acting as employer of record or not, shall meet applicable provider requirements for direct support personnel, or the requirements pertinent to the particular professional services offered by the provider.
 7. A person shall not be required to select and direct needed provider entities or his/her direct support personnel if she or he does not desire to do so.
- IV. A PIHP/CMHSP shall assist a person using arrangements that support self-determination to select, employ, and direct his/her support personnel, to select and retain chosen qualified provider entities, and shall make reasonably available, consistent with MDCH Technical Advisory instructions, their access to alternative methods for directing and managing support personnel.
- A. A PIHP/CMHSP shall select and make available qualified third-party entities that may function as fiscal intermediaries to perform employer

POLICY Section IV.A continued

agent functions and/or provide other support management functions as described in the Fiscal Intermediary Technical Requirement (Contract Attachment P3.4.4), in order to assist the person in selecting, directing and controlling providers of specialty services and supports.

- B. Fiscal intermediaries shall be under contract to the PIHP/CMHSP or a designated sub-contracting entity. Contracted functions may include:
1. Payroll agent for direct support personnel employed by the individual (or chosen representative), including acting as an employer agent for IRS and other public authorities requiring payroll withholding and employee insurances payments.
 2. Payment agent for individual-held purchase-of-services and consultant agreements with providers of services and supports.
 3. Provision of periodic (not less than monthly) financial status reports concerning the individual budget, to both the PIHP/CMHSP and the individual. Reports made to the individual shall be in a format that is useful to the individual in tracking and managing the funds making up the individual budget.
 4. Provision of an accounting to the PIHP/CMHSP for the funds transferred to it and used to finance the costs of authorized individual budgets under its management.
 5. Assuring timely invoicing, service activity and cost reporting to the PIHP/CMHSP for specialty mental health services and supports provided by individuals and entities that have a direct agreement with the individual.
 6. Other supportive services, as denoted in the contract with the PIHP/CMHSP that strengthen the role of the individual as an employer, or assist with the use of other agreements directly involving the individual in the process of securing needed services.

For a complete list of functions, refer to the Fiscal Intermediary Technical Requirement (Contract Attachment P3.4.4),

- C. A PIHP/CMHSP shall assure that fiscal intermediary entities are oriented to and supportive of the principles of self-determination, and able to work with a range of personal styles and characteristics. The PIHP/CMHSP shall exercise due diligence in establishing the qualifications,

POLICY Section IIV.C continued

characteristics and capabilities of the entity to be selected as a fiscal intermediary, and shall manage the use of fiscal intermediaries consistent with the Fiscal Intermediary Technical Requirement and MDCH Technical Assistance Advisories addressing fiscal intermediary arrangements.

- D. An entity acting as a fiscal intermediary shall be free from other relationships involving the PIHP/CMHSP or the individual that would have the effect of creating a conflict of interest for the fiscal intermediary in relationship to its role of supporting individual-determined services/supports transactions. These other relationships typically would include the provision of direct services to the individual. The PIHP/CMHSP shall identify and require remedy to any conflicts of interest of the entity that, in the judgment of the PIHP/CMHSP, interfere with the performance of a fiscal intermediary.
- E. A PIHP/CMHSP shall collaborate with and guide the fiscal intermediary and each individual involved in self-determination to assure compliance with various state and federal requirements and to assist the individual in meeting his/her obligations to follow applicable requirements. It is the obligation of the PIHP/CMHSP to assure that fiscal intermediaries are capable of meeting and maintaining compliance with the requirements associated with their stated functions, including those contained in the Fiscal Intermediary Technical Requirement.
- F. Typically, funds comprising an individual budget would be lodged with the fiscal intermediary, pending appropriate direction by the individual to pay individual-selected and contracted providers. Where a person selected and directed provider of services has a direct contract with the PIHP/CMHSP, the provider may be paid by the PIHP/CMHSP, not the fiscal intermediary. In that case, the portion of funds in the individual budget would not be lodged with the fiscal intermediary, but instead would remain with the PIHP/CMHSP, as a matter of fiscal efficiency.

DEFINITIONS

Agency with Choice

A provider agency that serves as employer of record for direct support personnel, yet enables the person using the supports to hire, manage and terminate workers.

CMHSP

For the purposes of this policy, a Community Mental Health Services Program is an entity operated under Chapter Two of the Michigan Mental Health Code, or an entity under contract with the CMHSP and authorized to act on its behalf in providing access to, planning for, and authorization of specialty mental health services and supports for people eligible for mental health services.

Fiscal Intermediary

A fiscal Intermediary is an independent legal entity (organization or individual) that acts as a fiscal agent of the PIHP/CMHSP for the purpose of assuring fiduciary accountability for the funds comprising an individual budget. A fiscal intermediary shall perform its duties as specified in a contract with a PIHP/CMHSP or its designated sub-contractor. The purpose of the fiscal intermediary is to receive funds making up an individual budget, and make payments as authorized by the individual to providers and other parties to whom an individual using the individual budget may be obligated. . A fiscal intermediary may also provide a variety of supportive services that assist the individual in selecting, employing and directing individual and agency providers. Examples of entities that might serve in the role of a fiscal intermediary include: bookkeeping or accounting firms and local Arc or other advocacy organizations.

Individual/Person

For the purposes of this policy, “Individual” or “person” means a person receiving direct specialty mental health services and supports. The person may select a representative to enter into the self-determination agreement and for other agreements that may be necessary for the person to participate in arrangements that support self-determination. The person may have a legal guardian. The role of the guardian in self-determination shall be consistent with the guardianship arrangement established by the court. Where a person has been deemed to require a legal guardian, there is an extra obligation on the part of the CMHSP and those close to the person to assure that the person’s preferences and dreams drive the use of self-determination arrangements, and that the best interests of the person are primary.

Individual Budget

An individual budget is a fixed allocation of public mental health resources denoted in dollar terms. These resources are agreed upon as the necessary cost of specialty mental health services and supports needed to accomplish a person’s IPOS. The individual served uses the funding authorized to acquire, purchase, and pay for specialty mental health services and supports in his or her IPOS.

IPOS

An IPOS means the individual's individual plan of services and/or supports, as developed using a person-centered planning process.

PIHP

For the purposes of this policy, a Prepaid Inpatient Health Plan (PIHP) is a managed care entity that provides Medicaid-funded mental health specialty services and supports in an area of the state.

Qualified Provider

A qualified provider is an individual worker, a specialty practitioner, professional, agency or vendor that is a provider of specialty mental health services or supports that can demonstrate compliance with the requirements contained in the contract between the Department of Community Health and the PIHP/CMHSP, including applicable requirements that accompany specific funding sources, such as Medicaid. Where additional requirements are to apply, they should be derived directly from the person-centered planning process, and should be specified in the IPOS, or result from a process developed locally to assure the health and well-being of individuals, conducted with the full input and involvement of local individuals and advocates.

Self-Determination

Self-determination incorporates a set of concepts and values that underscore a core belief that people who require support from the public mental health system as a result of a disability should be able to define what they need in terms of the life they seek, have access to meaningful choices, and have control over their lives in order to build lives in their community (meaningful activities, relationships and employment). Within Michigan's public mental health system, self-determination involves accomplishing system change to assure that services and supports for people are not only person-centered, but person-defined and person-controlled. Self-determination is based on four principles. These principles are:

FREEDOM: The ability for individuals, with assistance from significant others (e.g., chosen family and/or friends), to plan a life based on acquiring necessary supports in desirable ways, rather than purchasing a program. This includes the **freedom** to choose where and with whom one lives, who and how to connect to in one's community, the opportunity to contribute in one's own ways, and the development of a personal lifestyle.

AUTHORITY: The assurance for a person with a disability to control a certain sum of dollars in order to purchase these supports, with the backing of their significant others, as needed. It is the **authority** to control resources.

SUPPORT: The arranging of resources and personnel, both formal and informal, to assist the person in living his/her desired life in the community, rich in community associations and contributions. It is the **support** to develop a life

dream and reach toward that dream.

RESPONSIBILITY: The acceptance of a valued role by the person in the community through employment, affiliations, spiritual development, and caring for others, as well as accountability for spending public dollars in ways that are life-enhancing. This includes the **responsibility** to use public funds efficiently and to contribute to the community through the expression of responsible citizenship.

A hallmark of self-determination is assuring a person the opportunity to direct a fixed amount of resources, which is derived from the person-centered planning process and called an individual budget. The person controls the use of the resources in his/her individual budget, determining, with the assistance of chosen allies, which services and supports he or she will purchase, from whom, and under what circumstances. Through this process, people possess power to make meaningful choices in how they live their life.

Specialty Mental Health Services

This term includes any service/support that can legitimately be provided using funds authorized by the PIHP/CMHSP in the individual budget. It includes alternative services and supports as well as Medicaid-covered services and supports.

FISCAL INTERMEDIARY TECHNICAL REQUIREMENT

I. Background

Fiscal Intermediary (FI) services are an essential component of providing financial accountability and Medicaid integrity for the individual budgets authorized for individuals using arrangements that support self-determination. Prepaid Inpatient Health Plans/Community Mental Health Service Programs (PIHP/CMHSPs) have been contractually required to offer arrangements that support self-determination to adults who use mental health services and supports since January 1, 2009 (90 days after the publication of the Choice Voucher System Technical Advisory version 2.0) (dated September 30, 2008) (CVS TA)¹. PIHP/CMHSPs are also required to offer choice voucher arrangements to families of minor children on the Children's Waiver Program (CWP) and the Habilitation Supports Waiver (HSW) and may elect to provide choice voucher arrangements to other families of minor children. Entities that provide FI services also provide critical support to individuals who use arrangements that support self-determination that allow them to control and manage their arrangements effectively.

The primary role of the FI is to provide fiscal accountability for the funds in the individual budget. "The individual budget represents the expected or estimated costs of a concrete approach to accomplishing the person's IPOS." Self-Determination Policy and Practice Guideline (October 1, 2012) (SD Policy), Section II.C. "Development of an individual budget shall be done in conjunction with development of an IPOS using a person-centered planning process. As part of the planning process leading to an agreement about self-determination, the arrangements that will, or may, be applied by the person to pursue self-determination shall be delineated and agreed to by the person and the PIHP/CMHSP." SD Policy II.A & B.² The role of the FI is not to develop the individual budget or direct how services and supports are used, but to ensure that the payments it makes correspond with the IPOS and the individual budget.

FI services were first identified in the SD Policy. "A fiscal Intermediary is an independent legal entity (organization or individual) that acts as a fiscal agent of the PIHP/CMHSP for the purpose of assuring fiduciary accountability for the funds comprising an individual budget.." SD Guideline Glossary. A

¹ The Choice Voucher Technical Advisory is currently being revised and expanded. The revised technical advisory will be known as the Self-Determination Implementation Technical Advisory.

² In arrangements that support self-determination, authority for public funds is delegated to the individual using services and supports. The individual has a responsibility to use the funds consistently with the IPOS and individual budget. If the individual exceeds the authorizations over the course of a budget period (usually six months or a year), the individual is responsible for excess. The Fiscal Intermediary is responsible for amounts that it pays over the budget authorization over the course of the budget period.

PIHP/CMHSP shall select and make available qualified third-party entities that may function as fiscal intermediaries to perform employer agent functions and/or provide other support management functions.” SD Policy IV.A Fiscal Intermediary Services was later made a 1915(b) waiver service (Medicaid Provider Manual, Mental Health/Substance Abuse §17.3.0) and can be billed as an administrative activity for families using choice voucher arrangements under the Children’s Waiver Program.

The purpose of this Technical Requirement is to clarify the qualifications, role and functions of entities that provide FI services as well as the requirements that PIHP/CMHSPs have in procuring and contracting with entities to provide FI services.

II. PIHP/CMHSP Requirements

Each PIHP/CMHSP is required to contract with at least one entity to provide FI services. In procuring and contracting with entities to provide FI services, the PIHP/CMHSP must ensure that the entities meet all of qualifications set forth in this technical requirement. The PIHP/CMHSP also must assure that fiscal intermediaries are oriented to and supportive of the principles of self-determination and able to work with a range of consumer styles and characteristics. PIHP/CMHSPs have an obligation to identify and require remedy to any conflicts of interest that, in the judgment of the PIHP/CMHSP, interfere with the performance of the role of the entity providing FI services (see Section III Qualification for FI Entities below).

Contracts with entities providing FI services must identify the functions and scope of FI services, set forth accounting methods and methods for assuring timely invoicing, service activity and cost reporting to the PIHP/CMHSP for specialty mental health services, require indemnification and professional liability insurance for non-performance or negligent performance of FI duties (general business or liability insurance is insufficient), and identify a contact person or persons at the PIHP/CMHSP and at the FI entity for troubleshooting problems and resolving disputes. The PIHP/CMHSP should provide individuals using FI services and their allies with the opportunity to provide input into the development the scope of the FI services and the implementation of those services. In addition to the required functions identified in Section IV below, PIHP/CMHSPs may choose to contract with the entities to provide other supportive functions (such as verification of employee qualifications (background checks, provider qualification checks, etc.)) that are identified in the Self-Determination Implementation Technical Advisory (SDI TA), Appendix C, List of Fiscal Intermediary Functions, Section II Employment Support Functions. PIHP/CMHSPs may only pay entities that provide FI services on a flat rate basis or another basis that does not base compensation on a percentage of individual budgets.

In addition to contracting and procurement, each PIHP/CMHSP must monitor the performance of entities that provide FI services on an annual basis just as it monitors the performance of all other service providers. Minimally, this annual performance monitoring must include:

- Verification that the FI is fulfilling contractual requirements;
- Verification of demonstrated competency in safeguarding, managing and disbursing Medicaid and other public funds;
- Verification that indemnification and required insurance provisions are in place and updated as necessary;
- Evaluation of feedback (experience and satisfaction) from individuals using FI services and other FI performance data with alternate methods for collections data from individuals using services (more than mailed surveys); and
- An audit of a sample of individual budgets to compare authorizations versus expenditures.

III. Required Qualifications for FI Entities

Entities that provide FI services must have a positive track record of managing and accounting for funds. These entities must be independent and free from conflicts of interest. In other words, they cannot be a provider of any other mental health services and supports or any other publicly funded services (such as, but not limited to Home Help services available through the Department of Human Services (DHS)). In addition, FI entities cannot be a guardian, conservator, or trust holder or have any other compensated fiduciary relationship with any individual receiving mental health services and supports except for representative payee³.

IV. Required Fiscal Intermediary Functions

Required FI functions include Financial Accountability functions and Employer Agent functions. Other possible functions are identified within the Administrative Functions and Employment Support Functions in the List of Fiscal Intermediary Functions (SDI TA, Appendix C).

A. Financial Accountability Functions

For all individuals using arrangements that support self-determination and families of minor children using choice voucher arrangements, entities providing FI services must:

- Have a mechanism to crosscheck invoices with authorized services and supports in each individual plan of service (IPOS) and individual budget

³ Other fiduciary relationship such as bookkeeper for microenterprise funds may be approved by MDCH.

- and a procedure for handling invoices for unauthorized services and supports.
- Pay only invoices approved by the individual (or family of a minor child) for services and supports explicitly authorized in the IPOS and individual budget.
 - Have a system in place for tracking and monitoring individual budget expenditures and identifying potential over- and under-expenditures that minimally includes the following:
 - Provide monthly financial status reports to the supports coordinator (and anyone else at the PIHP/CMHSP identified in the contract to receive monthly budget reports) and the individual (or the family of a minor child) by no later than 15 days after the end of month.
 - Contact the supports coordinator by phone or e-mail in the case of an overexpenditure of 10 percent in one month prior to making payment for that expenditure.
 - Contact the supports coordinator by phone or e-mail in the case of underexpenditure of the pro rata share of the individual budget for the month that indicates that the individual is not receiving the services and supported in the IPOS.
 - Have policies and procedures in place to assure adherence to federal and state laws and regulations (especially requirements related to Medicaid integrity) and ensure compliance with documentation requirements related to management of public funds.
 - Have policies and procedures in place to assure financial accountability for the funds comprising the individual budgets, indemnify the PIHP/CMHSP for any amounts paid in excess of the individual budget and maintain required insurance for nonperformance or negligent performance of FI functions
 - Assure timely invoicing, service activity and cost reporting to the PIHP/CMHSP for specialty mental health services as required by the contract between the PIHP/CMHSP and the entity providing FI services.

B. Employer Agent Functions

For all individuals using arrangements that support self-determination and families of minor children using choice voucher arrangements who are directly employing workers, entities providing FI services must facilitate the employment of service workers by the individual or family of a minor child, including federal, state and local tax withholding/payments, unemployment compensation fees, wage settlements, and fiscal accounting. These Employer Agent functions include:

- Obtain documentation from the participants and file it with the IRS so that the FI can serve as Employer Agent for individuals directly employing workers, and meet the requirements of state and local income tax authorities and unemployment insurance authorities.

- Have a mechanism in place to crosscheck timesheets for directly employed workers with authorized services and supports in the IPOS and individual budget and a mechanism to handle over-expenditures that exceed 10 percent of the individual budget prior to making payroll payments (such as contacting the PIHP/CMHSP to determine if an additional authorization is necessary and/or notifying the employer that he or she is responsible for the costs related to approved timesheets in excess of the authorizations in the IPOS and individual budget).
- Issue payroll payments to directly employed workers for authorized services and supports that comport with the individual budget or have approval from the PIHP/CMHSP for payment.
- Withhold income, Social Security, and Medicare taxes from payroll payments and make payments to the appropriate authorities for taxes withheld.
- Make payments for unemployment taxes and worker's compensation insurance to the appropriate authorities, when necessary.
- Issue W-2 forms and tax statements.
- Assist the individual directly employing workers with purchasing worker's compensation insurance as required.

V. References

Michigan Self-Determination Policy and Practice Guideline, July 18, 2003
http://www.michigan.gov/documents/SelfDeterminationPolicy_70262_7.pdf

Michigan Medicaid Provider Manual
<http://www.michigan.gov/mdch/0,1607,7-132--87572--,00.html>

Choice Voucher System Technical Advisory, Version 2.0, September 30, 2008
http://www.michigan.gov/documents/mdch/Choice_Voucher_System_Transmittal_9_30_08_251403_7.pdf

Self-Determination Implementation Technical Advisory, January 1, 2013

Appendix C: Prototype Agreements & Documents

The prototype agreements provided in Appendix C should not be used, “as is.” They are presented as technical guidance only for the PIHPs/CMHSPs and individuals using services to use as starting points for the parties, with their local counsel, to develop individualized and locally viable agreements.

Prototype Self-Determination Agreement

The Self-Determination Agreement is a contract that defines the roles and responsibilities of the parties of the PIHP/CMHSP and a person using arrangements that support self-determination. This prototype agreement can be used as a template for PIHPs/CMHSPs to create local agreements that meet their unique needs.

The purpose of Self-Determination Agreement is:

- Describe the responsibilities of the PIHP/CMHSP, including ways that the PIHP/CMHSP can support the person in creating and using arrangements that support self-determination;
- Describe the authority and responsibilities of the person;
- Describe how the agreement, the IPOS, or the individual budget can be changed
- Describe the fiscal intermediary arrangements;

Prototype SELF-DETERMINATION AGREEMENT

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the person, his or her name should be substituted for the term “person” throughout the document.

This agreement is made on ***[insert date]*** between ***[insert name of PIHP/CMHSP]*** (“PIHP/CMHSP”) and ***[insert name of person]*** (“person”). The PIHP/CMHSP authorizes services and supports to persons receiving mental health specialty services and supports and the person is using arrangements that support self-determination to access those supports. These arrangements include using the person-centered planning process to determine the appropriate service and supports, develop a IPOS, and authorize an individual budget.

The purpose of this agreement is to define the responsibilities of the parties using arrangements that support self-determination. This agreement may be changed only through a written agreement by both parties. Termination of this agreement does not affect the person’s right to access services and supports through the PIHP/CMHSP. The person has the right to local dispute resolution processes provided by the PIHP/CMHSP.

Funds in the individual budget are the responsibility of the PIHP/CMHSP and must be used consistently with Medicaid requirements. Providers must meet provider

requirements and sign a Self-Determination Provider Agreement with the PIHP/CMHSP. The authority over control and direction of the funds is delegated by the PIHP/CMHSP to the person to enable the person to use his or her services and supports in a way that best meets his or her needs.

The individual budget will be administered by the fiscal intermediary (FI) **[insert name and contact information for the fiscal intermediary]**, which will be responsible for completing and submitting paperwork for billing, payment for services and supports when authorized by the person, and handling the employer agent function. The fiscal intermediary will provide a monthly spending report to the person and the PIHP/CMHSP supports coordinator.

ARTICLE I—PIHP/CMHSP RESPONSIBILITIES

The PIHP/CMHSP agrees to the following responsibilities:

1. Fund services and supports in the IPOS and the individual budget (see attachments A and B).
2. Inform the person of the Medicaid requirements for providers (such as age, and relationship to person).
3. Assist the person with obtaining required agreements from each provider.
4. Provide information on the documentation and reporting requirements for services and supports obtained through arrangements that support self-determination.
5. Provide monthly assistance in monitoring expenditures and reviewing financial reports.
6. Provide the person with information on applicable dispute resolution procedures.
7. The supports coordinator from the PIHP/CMHSP will:
 - a. Work with the person to develop an IPOS and an individual budget through a person-centered planning process.
 - b. Work with the person to develop a back=up plan for essential services in case of worker absences, emergencies or unforeseen circumstances.
 - c. [Insert other specific supports coordination roles to be provided by the PIHP/CMHSP.]

Article II—Person’s Responsibilities

The person agrees to:

1. Directly manage a portion or all of his or her services and supports.
2. Directly hire or contract with workers or providers who meet provider requirements.
3. Use services and supports consistent with the goals in the IPOS.
4. Provide the PIHP/CMHSP and/or the Fiscal Intermediary with all necessary documentation supporting expenditures of funds authorized in the individual budget.
5. Manage the use of funds so that expenses over the course of the year do not go over individual budget.
6. Let the PIHP/CMHSP know of a change in circumstance or an emergency that may require a change in the IPOS or the individual budget.
7. When requested to do so, the person agrees to provide feedback to the fiscal intermediary or PIHP/CMHSP to enable them to improve fiscal intermediary services.

The PIHP/CMHSP and person agree to the terms and conditions of this agreement.

Person [¹]

Date

PIHP/CMHSP

Date

¹ Some individuals may have a guardian or a chosen legal representative. If the person has a guardian or a chosen legal representative, a place should be inserted for that person to sign and the appropriate documentation verifying that person’s authority should be attached to that agreement.

FISCAL INTERMEDIARY AGREEMENT

The purpose of this contract is to define the roles and responsibilities of the PIHP/CMHSP and the fiscal intermediary in the use of the fiscal intermediary to perform a number of essential tasks that support individuals using arrangements that support self-determination to access mental health specialty services and supports while assuring accountability for the public funds allotted to support those arrangements. The use of a fiscal intermediary assures the opportunity for persons using arrangements that support self-determination to control and direct the use of funds allocated in their individual budgets in order to acquire supports and services to accomplish the goals and purposes of their IPOSs developed through the person-centered planning process. This prototype should be used to develop a specific agreement for use locally.

This Agreement:

- Explains the role of the fiscal intermediary in supporting self-determined arrangements for persons;
- Describes the duties of the PIHP/CMHSP; and
- Describes the duties of the fiscal intermediary.

Prototype

FISCAL INTERMEDIARY AGREEMENT

Notes in bold, italics and brackets are places where specific information must be inserted.

This agreement is made on [Insert date between ***[Insert name of PIHP/CMHSP]*** (the “PIHP/CMHSP”) and ***[Insert name of fiscal intermediary]*** (the “fiscal intermediary”). The purpose of this contract is to define the roles and responsibilities of the parties in the use of the fiscal intermediary’s services to assure the opportunity for persons using arrangements that support self-determination to control and direct the use of funds allocated in their individual budgets in order to acquire supports and services to accomplish the goals and purposes of their individual plans of service developed through the person-centered planning process.

This contract shall remain in effect until it is terminated or modified. Any party can initiate a termination or modification by providing 30 days written notice to the other party.

This agreement supersedes any previous agreements between these two parties. This agreement is entered into under authority granted by Public Act 258 of 1974, as amended, and in accordance with the rules and regulations of the Michigan Department of Community Health adopted and promulgated under Act 258. The PIHP/CMHSP policies shall govern in any area not specifically covered in this Agreement and are available from the PIHP/CMHSP for review upon request.

The requirements for Fiscal Intermediaries are described in the Fiscal Intermediary Technical Requirement (PIHP/CMHSP Contract Attachment 3.4.4)

ARTICLE I
PIHP/CMHSP RESPONSIBILITIES

The PIHP/CMHSP agrees to the following:

1. To designate a liaison person, who shall be the primary contact person with the fiscal intermediary, and a procedure for the fiscal intermediary to use to obtain and access the funds necessary to implement the individual budget for each person who using arrangements that support self-determination through the PIHP/CMHSP using this fiscal intermediary.
2. To provide the fiscal intermediary with funds to be expended by each person, in accordance with the IPOS and individual budget.
3. To perform the PIHP/CMHSP functions described in the Fiscal Intermediary Technical Requirement.

ARTICLE II
FISCAL INTERMEDIARY RESPONSIBILITIES

The fiscal intermediary agrees to the following:

1. To designate a liaison person, who will be the primary contact person and have responsibility for monitoring and ensuring that the terms of this contract are fulfilled.
2. To receive, safeguard, manage and account for funds provided by the PIHP/CMHSP on behalf of each person and maintain complete and current financial records and supporting documentation verifying expenditures paid by the fiscal intermediary and a chart of accounts [Reference and attach approved verification forms, and chart of accounts format].
3. To assist persons using arrangements that support self-determination to understand billing and documentation responsibilities.
4. To perform the financial accountability functions and provide employer agent services to the person directly employing workers described in the Fiscal Intermediary Technical Requirement. The fiscal intermediary shall abide by all federal and state laws regarding payroll taxes and shall remain current with all payroll tax requirements. Both the PIHP/CMHSP and the person shall provide copies of all required employment documents including the Self-Determination Provider Agreement to the fiscal intermediary.
5. To safeguard all confidential information including the results of any background checks, and/or other documents pertaining to providers of services as needed or requested by the person and/or PIHP/CMHSP.

The Parties also agree to the following

1. That the role of the fiscal intermediary is that of an agent of the PIHP/CMHSP, through this contract, for the purpose of assuring for each assigned person maximum control over services and supports, within the framework of the person's IPOS and his or her individual budget.
2. The fiscal intermediary is not an employer of workers directly employed by the person or a party to any contract in which the person enters.
3. That the fiscal intermediary shall be kept informed of any changes such as a change in the employment status of an employee or a contract modification or termination.
4. This agreement is subject to and governed by the laws of the State of Michigan.
5. Any notice to amend or terminate this contract shall be in writing by receipt of personal delivery or by first class mail, postage prepaid as follows:

[Insert contact information and person for the PIHP/CMHSP.]

[Insert contact information and person for fiscal intermediary.]

This agreement, with its attachments, sets forth the entire understanding and agreement between the parties regarding the provision of fiscal intermediary services. This agreement supersedes any and all other agreements, either oral or in writing between the parties. No modification of the terms of this contract is valid unless it is in writing and signed by the parties.

Fiscal Intermediary Representative

Date

PIHP/CMHSP Executive Director

Date

Prototype

EMPLOYMENT AGREEMENT

This agreement should be used as a prototype for developing an agreement between an individual using mental health specialty services (or his or her chosen legal representative²) who is a person using arrangements that support self-determination and a person directly employed by the person to provide services or supports. It outlines and describes the duties and responsibilities of the parties to the contract.

The provisions of this agreement:

- Describe the nature of arrangements that support self-determination, the nature of the employment relationship, and the structure of service authorization and payment mechanisms;
- Describe the duties required of the employee;
- Detail the employee's compensation and benefits;
- Outline the rules and regulations affecting the employee's employment;
- Explain the importance of the Self-Determination Provider Agreement;
- Outline the requirements that the employee must meet.

² A person may choose to use a power of attorney to authorize a family member or trusted friend to handle matters for him or her; some persons may have a legal guardian whose responsibility to act in place of the person in certain matters.

PROTOTYPE

EMPLOYMENT AGREEMENT

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the person, his or her name and the employee's name should be used throughout the document.

This agreement is made on ***[Insert date]*** between ***[Insert name of person directly employing the worker]*** ("employer") and ***[Insert name of employee]*** ("employee") to describe the supports that the employee will provide to the employer and the terms and conditions of employment.

ARTICLE I

EMPLOYEE RESPONSIBILITIES

I, ***[Insert name of employee]*** (employee) am aware and agree that my employment is conditioned on my employer's use of arrangements that support self-determination administered by the PIHP/CMHSP. If my employer stops using arrangements that support self-determination, my employment may end. I agree to the following terms of employment:

1. During the term of this Agreement, I shall provide support to my employer by performing the duties outlined in this agreement and any attachments to it.
2. I agree to assist my employer in maintaining the documentation and records required by my employer or the PIHP/CMHSP. I agree to complete all necessary paperwork to secure mandatory payroll deductions from my pay. All records I may have or assist in maintaining are the property of my employer. I will keep these records confidential, release them only with the consent of my employer, and return them to my employer if my employment ends. In addition, I will complete illness and incident reports when necessary as required or requested by the PIHP/CMHSP or my employer.
3. ***[Optional Provision: I shall immediately notify (insert the name and contact information of the contact person chosen by the employer (for example, it may be an ally) if my employer experiences a medical emergency or illness. I will also notify (insert name of contact person) before taking my employer to the physician, except in case of an emergency.]***

4. I agree to abide by all of my employer's rules and PIHP/CMHSP regulations (described below) regarding my employment duties to the employer and I acknowledge receipt of the following rules and regulations
 - a. Attachment A to this Agreement, which outlines the supports that I will provide to my employer.
 - b. ***[Employer should insert rules he or she may have (such as rules regarding phone usage or smoking in his or her home)].***
 - c. ***[The PIHP/CMHSP shall insert its policies and/or procedures for use of arrangements that support self-determination or other policies that the employee needs to understand and follow].***
 - d. ***[Insert reporting and documentation requirements for verifying hours worked].***
5. I understand that this is an employment at will relationship, which can be terminated by me or by my employer at any time. However, my employer cannot terminate my employment on the basis of my race, religion, sex, disability or other protected status under federal or Michigan law. In addition, I agree to give [insert number of days] days written notice to my employer if I terminate my employment.
6. I understand and acknowledge that my employer is my sole employer and that I am not an employee of the PIHP/CMHSP, which authorizes the supports I provide, or the fiscal intermediary, which is the financial administrator of funds used to pay me.
7. I agree to assist my employer in filing Recipient Right complaints upon request. I also understand that I have a responsibility to report rights violations of which I am aware or any potential abusive or neglectful situations I observe. I understand that I may be requested to cooperate with a recipient rights investigation and/or assist my employer with exercising his or her rights.
8. I agree to not to sue the fiscal intermediary for its role as the financial administrator of my employer's individual budget and the PIHP/CMHSP for its role in administering arrangements that support self-determination,
9. **I agree to execute a Self-Determination Provider Agreement with the PIHP/CMHSP and acknowledge that this agreement does not alter the fact that the PIHP/CMHSP is only the administrator of the funds used through arrangements that support self-determination, and that my employer is *[insert name of employer]*. I understand that my employment is contingent on completing this agreement.**

ARTICLE II
EMPLOYER RESPONSIBILITIES

I, ***[insert name of Employer]*** (“Employer”) agree to the following:

1. I will provide my fiscal intermediary with the necessary documentation to assure timely compensation of my employee.
2. I will compensate my employee in the following manner: \$ ***[Insert hours wage]*** an hour. ***[Insert specific information about any benefits the employee shall receive and describe benefits that will be excluded.]*** Payroll will be handled by my fiscal intermediary ***[Insert name of fiscal intermediary]***, which will withhold all necessary tax, unemployment and other withholdings from the employee’s paychecks.
3. I will assure my employee receives appropriate training.
4. I will evaluate the performance of my employee and provide appropriate feedback to assure that I am receiving quality supports.
5. **I will assure that my employee executes a Self-Determination Provider Agreement with the PIHP/CMHSP.**

Employee Signature

Date

Employer Signature³

Date

³ Some individuals may have a guardian or a chosen legal representative. If the employer has a guardian or a chosen legal representative, a place should be inserted for that person to sign and the appropriate documentation verifying that person’s authority should be attached to that agreement.

Prototype

PURCHASE OF SERVICES AGREEMENT

This agreement should be used as a model for designing a locally sanctioned agreement to be used between the individual using arrangements that support self-determination (or his/her chosen legal representative⁴) and a provider agency from which they choose to purchase services. This agreement can be modified and used when the agency is providing all or some supports coordination to the individual. A modification of this agreement format may also be used to contract with an independent licensed/certified professional, or an entity that provides other goods or services. The format does not allow for the sort of arrangements necessary to define an employer-employee relationship, and should not be used as such.

The provisions of this agreement:

- Describe the duties required of the service provider;
- Detail the service provider's compensation and benefits;
- Outline the rules and regulations affecting the provision of services;
- Explain the importance of the Self-Determination Provider Agreement.

⁴ A person may choose to use a power of attorney to authorize a family member or trusted friend to handle matters for him or her; some persons may have a legal guardian whose responsibility to act in place of the person in certain matters.

PROTOTYPE

PURCHASE OF SERVICES AGREEMENT

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the person, his or her name and the service provider's name should be used throughout the document.

This agreement is made on ***[Insert date]*** between ***[Insert name of person]*** ("person") and ***[Insert name of service provider]*** ("service provider"), a provider of ***[Insert type of services]*** to describe the services or supports the person is purchasing from the service provider and how the service provider will be compensated for providing such services.

This contract shall remain in effect until it is terminated or modified. Any party can initiate a termination or modification by providing 15 days written notice to the other party. The other party shall respond to any such notice within seven (7) working days by accepting the modification or termination or proposing an alternative modification.

The parties acknowledge and agree that this contract is conditioned on the person's use of arrangements that support self-determination administered by the PIHP/CMHSP. If the person ends participation in arrangements that support self-determination, this contract may be terminated.

1. During the term of this Agreement, the service provider shall provide support to the person by performing the following duties ***[Insert detailed description of duties]***.
 - ***There can be different types of services, different rates by service or shift, and it could outline which employee of the provider agency will provide which services, or cover which shift.***
 - ***This will be different in each situation. The individual, with support from their allies⁵ and supports coordinator, should determine what services they want to purchase and how they should be delivered. This should be determined prior to approaching providers so the individual can shop around. The provider should not determine this. The provider can always turn down the contract if it does not feel comfortable with what the individual wants to purchase.***
 - ***Keep in mind, as with all contracts, the terms of the contract result from negotiation between the parties to the contract.***

⁵ An individual's allies include chosen: family members, friends, paid staff, other professionals, and community members, etc.

- *If all supports coordination and/or personal agent functions are to be provided by the agency, those should be specifically outlined. This will be very important if some of the supports coordination and/or the functions of a personal agent will be provided by another party, for example the PIHP/CMHSP).*
2. The person agrees to authorize his or her fiscal intermediary to pay the service provider for the provision of the services described on a **[insert appropriate period such as weekly or monthly]**. Payment will be made only when authorized by the person. If the service provider has a question about payment, it must contact the person to clarify the issue. If more information is necessary, the service provider may contact the fiscal intermediary directly to process payment under this agreement and to understand requirements of arrangements that support self-determination. If further clarification is still needed, then the service provider may contact the PIHP/CMHSP for information.
 3. **[If the service provider is providing direct care staff, insert the following provisions:** The service provider is an independent contractor of the person. **The service provider shall provide staff to perform the services or supports described above in a manner consistent with this agreement. The service provider is the sole employer of the staff members and shall fulfill all federal and state employment obligations including, but not limited to:**
 - **maintaining worker’s compensation insurance;**
 - **complying with minimum wage standards and overtime regulations; withholding and payment of employment taxes; complying with occupational health and safety standards;**
 - **and all other reasonable employer responsibilities.**

The service provider has the legal responsibility to recruit, screen, hire, manage and supervise the staff in accordance with all applicable federal and state laws. The provider shall, make every effort to meet the person’s preferences when employing and scheduling its employees. This includes involving the person in the employee selection and assuring re-assignment of employees when they are not acceptable to the person. The person will have the maximum amount of control over staff as allowed by law.]

4. The parties agree and specifically acknowledge that the services may be performed in the person's home. The service provider agrees that its staff will abide by all of the person's rules and PIHP/CMHSP regulations and the service provider acknowledges receipts of the following rules and regulations:
 - a. **[person should insert can rules he or she may have (such as rules regarding phone usage or smoking in his or her home)].**
 - b. **[The PIHP/CMHSP shall insert its policies and/or procedures for people using arrangements that support self-determination or other policies that the employee needs to understand and follow].**
 - c. **[Insert reporting and documentation requirements for verifying hours worked].**
5. If the person has a complaint regarding the provision of services under this contract, it should inform the service provider and the service provider shall respond to the complaint within seven days. If the complaint cannot be resolved directly by the parties, the person shall inform his or her supports coordinator.
6. If a dispute arises concerning an invoice or the authorization of payment on an invoice, the following procedure should be followed: **[Insert Applicable Dispute Resolution Procedure].**
7. **[Optional Provision: The service provider shall immediately notify [insert the name and contact information of the contact person chosen by the person [for example, it may be an ally] if the person experiences a medical emergency or illness. The service provider will also notify [insert name of contact person] before taking the person to the physician, except in case of an emergency.]**
8. The service provider agrees to complete illness and incident reports when necessary as required or requested by the PIHP/CMHSP or the person.
9. The service provider understands and acknowledges that this contract is with the person only and that the PIHP/CMHSP, which authorizes the supports provided, and the fiscal intermediary, which is the financial administrator of the funds used to fund the services or support, are not parties to this contract.
10. The service provider agrees not to sue the fiscal intermediary for its role as the financial administrator of the person's individual budget and not sue the PIHP/CMHSP in its role in administering arrangements that support self-determination.
11. The service provider agrees to assist the participant in filing Recipient Right complaints upon request. The service provider also understands that it has a responsibility to report rights violations of which it is aware or any potential abusive or neglectful situations it observes. The service provider understands that it may be requested to cooperate with a recipient rights investigation

and/or assist the individual with exercising his or her rights. The parties agree to comply with all Recipient Rights protections and other rights in applicable state and federal law.

12. The service provider agrees to the following compensation for the services performed: **[\$[Insert hourly wage]** an hour. The payment shall be paid within fourteen (14) business days of receipt of authorization at the following address **[insert service provider address]**.
13. The service provider agrees to execute a Self-Determination Provider Agreement with the PIHP/CMHSP and acknowledges that this agreement does not alter the fact that the PIHP/CMHSP is only the administrator of arrangements that support self-determination, and that this contract for services or supports is solely with the person. The service provider acknowledges that payment for services is contingent on completing this agreement.
14. This agreement represents the entire understanding and contract between the parties, and supersedes any and all prior agreements, whether written or oral that may exist between the parties. Any modification to this agreement must be made in writing.

Service Provider's Signature

Date

Person Signature^[6]

Date

⁶ Some individuals may have a guardian or a chosen legal representative. If the person has a guardian or a chosen legal representative, a place should be inserted for that person to sign and the appropriate documentation verifying that person's authority should be attached to that agreement.

**Prototype
Self-Determination Provider Agreement**

The purpose of the Self-Determination Provider Agreement is to assure that all providers of services and supports funded by Medicaid agree to comply with the federal Medicaid Requirements. Every Medicaid provider must sign the Self-Determination Provider Agreement, and this agreement must be on file with the fiscal intermediary prior to the first payment for services.

**Prototype
Self-Determination Provider Agreement**

The Self-Determination Provider is a provider directly employed by or contracted by a person using arrangements that support self-determination. The sole purpose of this agreement is to assure compliance with federal Medicaid requirements. This agreement shall remain in effect until such time it must be terminated or modified. Any party can initiate a termination or modification by providing written notice to the other of the desire to terminate or modify this agreement.

Upon receipt of this agreement, the PIHP/CMHSP will certify the Self-Determination Provider as available to provide services to individuals who receiving services and/or supports in accordance with their individual plans of services (IPOS) developed in a person-centered planning process, authorized by the PIHP/CMHSP or one of its subcontractors, and financed through Michigan’s Medicaid Specialty Pre-paid Mental Health Plan.

The Medicaid Provider stipulates that it will do the following

1. Accept payment, in form of check(s) or direct deposit, from (Name of Fiscal Intermediary), doing business in the State of Michigan) as payment in full for service(s) or item(s) purchased..
2. No additional payments (beyond payment agreed to in the employment or purchase-of-service agreement and paid by the fiscal intermediary) will be accepted directly from individuals using arrangements that support self-determination.
3. Agree to keep records of the service(s) or purchase(s) provided as required by the individual(s) using arrangements that support self-determination or the PIHP/CMHSP.
4. Provide only the service(s) or item(s) described in the employment or purchase-of-service agreement with the employer (as authorized in the person’s IPOS) and do not exceed the hours set forth in the employment or purchase-of-service agreement except in emergency situations or with authorization from the PIHP/CMHSP.
5. Upon request, provide information regarding the service(s) or purchase(s) for which payment was made to and to provide such information and any related invoices or billings, upon request, to the individual using arrangements that support self-determination, PIHP/CMHSP, the State Medicaid Agency, the Secretary of the Department of Health and Human Services or the State Medicaid fraud control unit.

Self-Determination Provider Agency/Individual

Date

PIHP/CMHSP Representative

Date

**Prototype
Agency With Choice Agreement**

Notes in bold, italics and brackets are places where specific information must be inserted.

This agreement is made on [Insert date] between ***[Insert name of PIHP/CMHSP]*** (the “PIHP/CMHSP”) and ***[Insert name of AWC provider]*** (“AWC provider”). The purpose of this contract is to define the roles and responsibilities of the parties in the use of the AWC provider’s services to assure the opportunity for individuals in arrangements that support self-determination to directly hire workers who provide services and supports to them.

This contract shall remain in effect until it is terminated or modified. Any party can initiate a termination or modification by providing 30 days written notice to the other party. The PIHP/CMHSP shall respond to any such notice within seven (7) working days.

This agreement supersedes any previous agreements between these two parties. The PIHP/CMHSP policies shall govern in any area not specifically covered in this Agreement and are available from the PIHP/CMHSP for review upon request.

**Article I
PIHP/CMHSP Responsibilities**

The PIHP/CMHSP agrees to the following:

1. To designate a liaison person, who shall be the primary contact person with the AWC provider.
2. To assist each person using agency with choice to assure that all necessary documentation is in place.
3. To monitor that services and supports.
4. are provided pursuant to the same monitoring processes used for all PIHP/CMHSP services and supports.

Article II
AWC Provider Responsibilities

The AWC provider agrees to the following:

1. To designate a liaison person, who will be the primary contact person and have responsibility for monitoring and ensuring that the terms of this contract are fulfilled.
2. To assist individuals to understand and perform managing employer responsibilities.
3. To perform the financial and administrative duties of employer of record. The AWC provider shall abide by all federal, state and local laws regarding income and payroll taxes, unemployment insurance, and worker's compensation, and shall remain current with all of these requirements.
4. To pay workers only upon receipt of all required agreements and timesheets or invoices approved by the individual or his or her authorized representative.
5. To maintain complete, current financial records, copies of all agreements and supporting documentation verifying expenditures paid by the AWC provider on behalf of each individual. These records shall be retained for seven years from the start of services.
6. To safeguard all confidential information including the results of any background checks, and/or other documents pertaining to workers, as needed or requested by the individual and/or PIHP/CMHSP.
7. To make records regarding individuals available to the PIHP/CMHSP, as requested, and to allow each individual access to his or her own records.
8. To indemnify the PIHP/CMHSP and maintain a valid insurance policy in the amount of \$_____ for its role as employer of record for workers.
9. To provide each individual and his or her supports coordinator (or other assigned CMHSP representative if the person chooses to not use a supports coordinator) with a monthly budget summary.
10. To provide support and assistance to individuals, as needed and requested, in recruiting and interviewing worker candidates.
11. To prohibit any agency policies or practices that penalizes workers or individuals for entering into an employment situation with one another outside of, or instead of, the AWC arrangement.

12. To comply with the following Medicaid Provider Requirements:
 - a. Accept payment, in form of check(s) or direct deposit, from (Name of Fiscal Intermediary), doing business in the State of Michigan) as payment in full for service(s) or item(s) purchased..
 - b. No additional payments (beyond payment agreed to in the employment or purchase-of-service agreement and paid by the fiscal intermediary) will be accepted directly from individuals using arrangements that support self-determination.
 - c. Agree to keep records of the service(s) or purchase(s) provided as required by the individual(s) using arrangements that support self-determination or the PIHP/CMHSP.
 - d. Provide only the service(s) or item(s) described in the employment or purchase-of-service agreement with the employer (as authorized in the person's IPOS) and do not exceed the hours set forth in the employment or purchase-of-service agreement except in emergency situations or with authorization from the PIHP/CMHSP.
 - e. Upon request, provide information regarding the service(s) or purchase(s) for which payment was made to and to provide such information and any related invoices or billings, upon request, to the individual using arrangements that support self-determination, PIHP/CMHSP, the State Medicaid Agency, the Secretary of the Department of Health and Human Services or the State Medicaid fraud control unit.

The Parties also agree to the following:

1. This agreement is subject to and governed by the laws of the State of Michigan.
2. Any notice to amend or terminate this contract shall be in writing by receipt of personal delivery or by first class mail, postage prepaid as follows:
 - a. **[Insert contact information and person for the PIHP/CMHSP.]**
 - b. **[Insert contact information and person for AWC provider.]**
3. This agreement sets forth the entire understanding and agreement between the parties regarding the provision of AWC provider services. This agreement supersedes any and all other agreements, either oral or in writing, between the parties. No modification of the terms of this contract is valid unless it is in writing and signed by the parties.

AWC Provider Representative

Date

PIHP/CMHSP Executive Director

Date

**Prototype
Agency With Choice
Employment Agreement**

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the individual, his or her name and the employee's name should be used throughout the document.

This agreement is made on ***[Insert date]*** between ***[Insert name of the AWC provider]***, ***[Insert name of individual directly employing the worker]*** (“employer”) and ***[Insert name of employee]*** (“employee”) to describe the supports that the employee will provide to the employer and the terms and conditions of employment.

Article I
Employee Responsibilities

I, ***[Insert name of employee]*** (employee) am aware and agree that my employment is conditioned on my employer's participation in arrangements that support self-determination administered by the PIHP/CMHSP. If my employer stops using arrangements that support self-determination, my employment may end. I agree to the following terms of employment:

1. During the term of this Agreement, I shall provide support to my employer by performing the duties outlined in this agreement and any attachments to it.
2. I agree to assist my employer in maintaining the documentation and records required by my employer, the AWC provider or the PIHP/CMHSP. I agree to complete all paperwork required by the AWC provider. All records I may have or assist in maintaining are the property of my employer. I will keep these records confidential, release them only with the consent of my employer, and return them to my employer if my employment ends. In addition, I will complete illness and incident reports when necessary, as required or requested by the ***[AWC provider]*** or my employer.
3. ***[Optional Provision: I shall immediately notify (insert the name and contact information of the contact person chosen by the employer (for example, it may be an ally) if my employer experiences a medical emergency or illness. I will also notify (insert name of contact person) before taking my employer to the physician, except in case of an emergency.]***
4. I agree to participate in any meetings if requested to do so by my employer.

5. I agree to abide by all of my employer's rules and **[AWC provider]** regulations (described below) regarding my employment duties to the employer and I acknowledge receipt of the following rules and regulations:
 - a. Attachment A to this Agreement, which outlines the supports that I will provide to my employer.
 - b. **[Employer should insert rules he or she may have (such as rules regarding phone usage or smoking in his or her home)].**
 - c. **[The AWC provider shall insert its policies and/or procedures that the employee needs to understand and follow].**
 - d. **[Insert reporting and documentation requirements for verifying hours worked].**
6. I understand that this is an employment-at-will relationship, which can be terminated by me or by my employer at any time. However, my employer cannot terminate my employment on the basis of my race, religion, sex, disability or other protected status under federal or Michigan law. In addition, I agree to give **[insert number of days]** days written notice to my employer if I terminate my employment.
7. I understand and acknowledge that my employer is my managing employer and I should address any questions or concerns with my employer. The **[AWC provider]** is my employer of record that handles legal and tax aspects of my employment.
8. I agree to the following compensation for the services I shall perform: **[\$[insert hourly wage]** an hour. **[Insert specific information about any benefits the employee shall receive and describe benefits that will be excluded].**

Article II Employer Responsibilities

I, **[insert name of Employer]** ("Employer") agree to the following:

1. I will provide the **[AWC provider]** with the necessary documentation to assure timely compensation of my employee.
2. I will compensate my employee in the following manner: \$ **[Insert hourly wage]** an hour. **[Insert specific information about any benefits the employee shall receive and describe benefits that will be excluded.]** Payroll will be handled by the **[AWC provider]**, which will withhold all necessary tax, unemployment and other withholdings from the employee's paychecks.
3. I will evaluate the performance of my employee and provide appropriate feedback to assure that I am receiving quality supports.

**Article III
AWC Provider**

The AWC provider will perform the following functions:

1. Issue payroll payments to workers hired directly by the individuals.
2. Withhold income, Social Security, and Medicare taxes from payroll payments and make payments to the appropriate authorities for taxes withheld.
3. Make payments for unemployment taxes and worker's compensation insurance to the appropriate authorities, when necessary.
4. Issue W-2 forms and tax statements.

Employee Signature

Date

Employer Signature

Date

AWC Provider
Representative

Date

Prototype Agency With Choice Purchase of Services Agreement

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the individual directly employing the worker, his or her name and the AWC provider's name should be used throughout the document.

This agreement is made on **[Insert date]** between **[Insert name of individual]** ("individual") and **[Insert name of AWC provider]** ("AWC provider"), a provider of [Insert type of services] to describe the services or supports the individual is purchasing from the AWC provider and how the AWC provider will be compensated for providing such services.

This contract shall remain in effect until it is terminated or modified. Any party can initiate a termination or modification by providing [insert number] days written notice to the other party. The other party shall respond to any such notice within [insert number] working days by accepting the modification or termination or proposing an alternative modification.

The parties acknowledge and agree that this contract is conditioned on the individual's use of arrangements that support self-determination administered by the Prepaid Inpatient Health Plan/Community Mental Health Services Program (PIHP/PIHP/CMHSP). If the individual ends participation in the Choice Voucher System, this contract may be terminated.

Article I: Responsibilities of the AWC Provider

During the term of this Agreement, the AWC provider shall provide support to the individual by performing the following duties:

1. To designate a liaison person, who will be the primary contact person and have responsibility for monitoring and ensuring that the terms of this contract are fulfilled.
2. To assist individuals to understand and perform managing employer responsibilities.
3. To perform the financial and administrative duties of employer of record. The AWC provider shall abide by all federal, state and local laws regarding income and payroll taxes, unemployment insurance, and worker's compensation, and shall remain current with all of these requirements.
4. To pay workers only upon receipt of all required agreements and timesheets or invoices approved by the individual or his or her authorized representative.
5. To maintain complete, current financial records, copies of all agreements, and supporting documentation verifying expenditures paid by the AWC provider on

behalf of each individual. These records shall be retained for seven years from the start of services.

6. To safeguard all confidential information including the results of any background checks, and/or other documents pertaining to workers, as needed or requested by the individual.
7. To allow the individual access to his or her own records.
8. To maintain a valid insurance policy for its role as employer of record for workers.
9. To provide support and assistance to individuals, in recruiting and interviewing worker candidates.
10. To prohibit any agency policies or practices that penalizes workers or individuals for entering into an employment situation with one another outside of, or instead of, the AWC arrangement.

Article II: General Provisions

1. The individual agrees to authorize his or her fiscal intermediary to pay the AWC provider for the provision of the services described on a [insert appropriate period such as weekly or monthly]. Payment will be made only when authorized by the individual. If the AWC provider has a question about payment, it must contact the individual to clarify the issue. If more information is necessary, the AWC provider may contact the fiscal intermediary directly to process payment under this agreement and to understand requirements related to using arrangements that support self-determination. If further clarification is still needed, then the AWC provider may contact the PIHP/CMHSP for information.
2. If the individual has a complaint regarding the provision of services under this contract, it should inform the AWC provider and the AWC provider shall respond to the complaint within seven days. If the complaint regarding cannot be resolved directly by the parties, the individual shall inform his or her supports coordinator.
3. If a dispute arises concerning an invoice or the authorization of payment on an invoice, the following procedure should be followed: [Insert Applicable Dispute Resolution Procedure].
4. The AWC provider agrees to assist the individual in filing Recipient Right complaints upon request. The AWC provider also understands that it has a responsibility to report rights violations of which it is aware or any potential abusive or neglectful situations it observes. The AWC provider understands that it may be requested to cooperate with a Recipient Rights investigation and/or assist the individual with exercising his or her rights. The parties agree to comply with all Recipient Rights protections and other rights in applicable state and federal law.

5. The AWC provider understands and acknowledges that this contract is with the individual only and that the PIHP/CMHSP, which authorizes the supports provided, and the fiscal intermediary, which is the financial administrator of the individual budget funds used to provide the services or support, is not a party to this contract.
6. The AWC provider agrees not to sue the fiscal intermediary in its role as the financial administrator of the person's individual budget and the PIHP/CMHSP in its role in administering arrangements that support self-determination, and acknowledges that its contract is solely with the individual.
7. The AWC provider agrees to the following compensation for the services performed: **#[Insert hourly wage]** an hour. The payment shall be paid within **[Insert Number]** business days of receipt of authorization by the fiscal intermediary.
8. The AWC provider agrees to execute a Self-Determination Provider Agreement with the PIHP/CMHSP and acknowledges that this agreement does not alter the fact that the PIHP/CMHSP is only the administrator of arrangements that support self-determination, and that this contract for services or supports is solely with the individual. The AWC provider acknowledges that payment for services is contingent on completing this agreement.
9. This agreement is subject to and governed by the laws of the State of Michigan.
10. Any notice to amend or terminate this contract shall be in writing by receipt of personal delivery or by first class mail, postage prepaid as follows:
 - a. [Insert contact information and person for the Individual.]
 - b. [Insert contact information and person for AWC provider.]
11. This agreement represents the entire understanding and contract between the parties, and supersedes any and all prior agreements, whether written or oral that may exist between the parties. Any modification to this agreement must be made in writing.

AWC Provider signature

Date

Individual signature**[7]**

Date

7 Some individuals may have a guardian or a chosen legal representative. If the individual has a guardian or a chosen legal representative with authority over contracts, that person should sign instead of the individual and the appropriate documentation verifying that person's authority should be attached to that agreement.

**Self-Determination Compliance with Employer Role Requirements
SAMPLE**

Person: _____ **Supports Coordinator:** _____

FISCAL INTERMEDIARY INFORMATION:

1. Is there a signed employment agreement between the person & each worker he or she employs?
2. Does the fiscal intermediary have a copy of each?
3. Is there a current worker's compensation insurance policy in effect for each worker?
4. Where is this policy located?
5. Has the Self-Determination Provider Agreement been executed between the PIHP/CMHSP and each worker employed by the person and each provider with which the person directly contracts as applicable?
6. Does the fiscal intermediary possess a copy of each of these?

PROVIDER REQUIREMENTS:

1. Have criminal background checks been conducted for each worker?
2. Where is this documentation located?
3. Is there evidence that each worker is able to prevent the spread of communicable diseases?
4. Where is this documentation located?
5. Is there evidence that each worker is trained in first aid & CPR?
6. Where is this documentation located?
7. Are there any specialized training requirements which are indicated or required, and specified in the individual plan of services and supports, which relate to the individual's health or welfare?
8. Is there evidence that each worker is aware of these requirements?
9. Is there evidence that each worker has been trained as indicated in the person's IPOS?
10. Where is this documentation located?
11. Does the IPOS include an emergency back-up plan?
12. Does each worker possess a copy of his or her Employment Agreement?
13. Does each worker possess a copy of a job and/or tasks description?

Audit Conducted by: _____ Date: _____

REMEDIAL ACTION	ACTIVITY	PARTY RESPONSIBLE	CONFIRMATION BY: (PERSON & DATE)
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FISCAL INTERMEDIARY READINESS REVIEW BASE PROBES

Adapted from Protocol -- Drafted by Sue Flanagan, Ph.D., M.P.H. - The Westchester Consulting Group

Name of Fiscal Intermediary Reviewed:
Address (Street, PO Box, City, State, Zip):
Phone:

I. STATUS OF PHYSICAL PLANT EQUIPMENT, INFORMATION SYSTEMS TECHNOLOGY, AND CUSTOMER SERVICE SYSTEM

<p>Is the physical plant's location, size, equipment (including computer hardware and software) adequate to effectively operate Fiscal Intermediary Services?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Is the FI effectively executing the philosophy of participant direction and being culturally sensitive in all business practices in order to communicate effectively with a diverse population of participants of all ages and with a variety of disabilities and chronic conditions (including the need for large print/alternative formats, telecommunication devices for hearing and speech impaired, and access to translation services and to an interpreter)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Are the necessary technologies and accommodations in place adequate to effectively operate FI services?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> Toll-Free number (or other method for free calls from participants) <input type="checkbox"/> Fax (minimum 28.8 standard)</p> <p><input type="checkbox"/> Internet Web site <input type="checkbox"/> Alternate/Large Print capabilities</p> <p><input type="checkbox"/> E-mail communication option <input type="checkbox"/> Foreign Language/American Sign Language capabilities</p> <p><input type="checkbox"/> TDD line</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI have a communication, corrective action, and complaint tracking system for program participants and workers that addresses the following issues and is automated so that information can be analyzed by program participant, issue and over time?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>

Does the FI notify program participants and PIHP/CMHSP staff in a timely manner in the event a payroll is processed and disbursed late (i.e., over five days)?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

Does the FI obtain and evaluate participant feedback, experience and satisfaction with the receipt of FI services, have alternative methods for collecting this information (e.g., more than mail surveys), and use this information to make improvements to systems, policies, and procedures?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

Are key management staff in place and is the level of staffing (FTEs) and staff qualifications and experience sufficient to provide effective FI services?

Yes If the answer is YES, please Attach job descriptions for all FI management and staff positions and resumes of existing staff.

No If the answer is NO, please explain why and how the FI plans to correct the situation?

II. COORDINATION AND COMMUNICATION WITH PIHP/CMHSP SUPPORT COORDINATORS

Do the FI's policies and procedures clearly describe the FI's and Support Coordinators' role and responsibilities related to arrangements that support self-determination participants and workers?

Yes No If the answer is NO, please explain why and how the FI plans to correct the situation?

Does the FI notify program participants and PIHP/CMHSP staff in a timely manner in the event a payroll is processed and disbursed late (i.e., over five days)?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

Does the FI notify a program participant's Supports Coordinator when FI staff becomes aware of an issue related to a program participant's performance (e.g., untimely timesheet filling or over-reporting of a worker's hours) and/or any incidences of financial fraud/abuse or a program participant's inability to perform required tasks?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

III. ADMINISTRATION – FI POLICIES AND PROCEDURES MANUAL, QUALITY MANAGEMENT PLAN, AND STAYING UP-TO-DATE WITH FEDERAL AND STATE RULES AND REGULATIONS PERTAINING TO VENDOR FIS AND HOUSEHOLD EMPLOYERS AND EMPLOYEES (PLEASE ATTACH A COPY OF THE MANUAL.)

<p>Has the FI developed a comprehensive FI Policies and Procedures Manual that documents all FI tasks, includes all applicable federal and state forms and documented internal controls for each FI task?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI update its FI Policies and Procedures Manual as needed and at least annually in an accurate, complete and timely manner?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI review and update all rules, forms, and instructions for registering and retiring program participants as employers, and for withholding, filing and paying state income tax withholding for each program participant it represents, in accordance with information provided on the Internal Revenue Service Web sites and in IRS regulations and handbooks (Key Web site: www.irs.gov) and on the Michigan Department of Treasury Web sites and in department handbooks/manuals (Key Web site: www.michigan.gov/treasury)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI review and update all IRS forms, instructions, notices, and publications related to FIs, household employers and employees and for withholding, filing and paying federal income tax withholding and employment taxes (FICA and FUTA) and managing advance payments of federal earned income credit (EIC) on behalf of the program participants it represents and their workers (Key Web site: www.irs.gov) and with the Michigan Department of Treasury Web site(s) and in department handbooks/manual(s) (Key Web site: www.michigan.gov/treasury)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI review and update all applicable U.S. Citizenship and Immigration Services (US CIS) rules, forms (i.e. US CIS Form I-9, <i>Employment Eligibility Verification</i>) and instructions (Key Web site: www.uscis.gov)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI review and update all applicable federal Department of Labor rules and all applicable Michigan Department of Labor & Economic Growth rules, forms, and instructions related to household employers and domestic service employees, and Federal Fair Labor Standards/Wage and Hour Rules (Key Web site: www.dol.gov)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>

Does the FI review and update all federal Department of Labor rules and Michigan Department of Labor & Economic Growth Unemployment Insurance Agency rules, forms, and instructions for registering and retiring program participants as employers, and for withholding, filing and paying state unemployment insurance taxes for each participant it represents in accordance with information presented on State Web sites and in department handbooks/manuals (Key Web sit: www.michigan.gov/uia)?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

IV. ADMINISTRATION – RECORD MANAGEMENT PROCESS

Does the FI establish and maintain current and archived program participant, worker, and FI files on-site in a secure and confidential manner as required by federal and state rules and regulations (e.g., program records kept in a secure place with restricted access using a password-protected computer system)?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

Does the FI ensure that access to Medicaid information will be limited to FI office staff and that it will take prudent safeguards to protect unauthorized disclosure of the Medicaid information in its possession and comply with HIPAA, as applicable?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

Has the FI developed a disaster recovery plan for electronic information and the related policies, procedures, and internal controls included in the FI Policies and Procedures Manual?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

V. ADMINISTRATION – PROCESSING PAYROLL AND INVOICES PREPARING AND SUBMITTING REQUIRED REPORTS TO STATE GOVERNMENT AND PROGRAM PARTICIPANTS/REPRESENTATIVES

Does the FI process payroll and pay other invoices in an efficient manner?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

<p>Has the FI developed the format for and submitted a monthly report of financial activities to each program participant with a copy to the PIHP/CMHSP within 15 days after the end of the month (please attach a sample report)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI report the information required by the MDCH to the PIHP/CMHSP?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>

VI. ENROLLMENT OF PARTICIPANTS AND WORKERS

<p>Does the FI have a standard orientation protocol for program participants (by phone or in person), as requested by the program participant or representative, to be implemented by FI staff?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI evaluate all FI orientation materials and its standard orientation protocol?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Has the FI developed program participant enrollment and worker employment packets in a user-friendly format? Please attach a copy of each packet.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Does the FI produce and distribute Program Participant Enrollment and Worker Employment Packets and collect, review, and process the information contained in these packets?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> System in Place <input type="checkbox"/> Written Policies and Procedures in Place <input type="checkbox"/> Internal Controls Documented for Monitoring</p> <p><input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation?</p> <p>_____</p> <p>_____</p> <p>_____</p>

VII. FEIN Process

Does the FI have a separate FEIN specifically to file the IRS Forms 2678, 8821, and selected federal tax forms on program participant's behalf?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?

Does the FI monitor the FEIN process, including attaching and retiring FEINs and making sure all relevant documentation is maintained in each program participant's file?

Yes System in Place Written Policies and Procedures in Place Internal Controls Documented for Monitoring

No If the answer is NO, please explain why and how the FI plans to correct the situation?
