

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
CONTRACT REQUIREMENTS  
FOR**

**SELF DETERMINATION IN LONG TERM  
CARE**

**MI CHOICE MEDICAID WAIVER PROGRAM**

**HOME AND COMMUNITY BASED SERVICES WAIVER  
FOR ELDERLY AND YOUNGER ADULTS WITH DISABILITIES**

**October 1, 2011**

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## I. GENERAL INFORMATION

### A. SELF-DETERMINATION IN LONG TERM CARE BACKGROUND

Michigan was one of eleven states selected to receive second round "Cash and Counseling" grants jointly funded by the Robert Wood Johnson Foundation, the U.S. Department of Health and Human Services, Administration on Aging, and Assistant Secretary of Planning & Evaluation. The MI Choice program added the self-determination in long term care (SD in LTC) option as a pilot program in 2006. During the pilot program, the Michigan Department of Community Health (MDCH) chose four waiver agents to serve as pioneer sites for implementing the SD in LTC option in the MI Choice program. During fiscal year 2008, the SD in LTC option expanded statewide.

### B. SELF-DETERMINATION PRINCIPLES

The SD in LTC option allows MI Choice participants direct control over the delivery of MI Choice services, the selection of workers to furnish services, and the approved MI Choice services budget. As part of the Cash and Counseling grant, MDCH developed a self-determination technical advisory titled "Choice Voucher System: Self-Determination in Long Term Care." This advisory is available on the web at <http://www.cashandcounseling.org/resources/20071109-111444>. Waiver agents should consult this advisory as needed for more information on the SD in LTC option.

Participants selecting the SD in LTC option choose and control the providers of their services and supports. Self-determination embodies a set of concepts and values that participants have the right to define their lives and that the system of services should provide them with the freedom to do so and the authority to make decisions about their lives, including the opportunity to responsibly manage the use of needed services and supports.

Person-centered planning (PCP) is an essential component of SD in LTC. Using PCP, the participant and their supports coordinators (SCs) develop a plan of care

(POC) and individual budget. The participant acquires and directs needed services and supports within the allocated budget. The waiver agent maintains accountability for service delivery, the use of Medicaid funds, and to support the participant in self-direction as needed. Participants and waiver agents utilize fiscal intermediaries (FIs) to disburse the funds allocated in the participant's budget to the participant's chosen workers. All workers chosen by participants to furnish needed services and supports must meet specific criteria. MDCH defined the requirements for self-determined service providers in Attachment H of the MI Choice contract.

## **II. WAIVER AGENT REQUIREMENTS FOR SD IN LTC**

MDCH has specific requirements for waiver agents serving participants choosing the SD in LTC option. These requirements help to assure accountability for Medicaid funds, the health and welfare of participants, and to maximize participant control of needed supports and services.

### **A. ENROLLING AND INFORMING PARTICIPANTS**

1. Waiver agents must inform all MI Choice participants of the option to direct those services available through self-determination.
2. Participants choosing the SD in LTC option may enroll directly or use a representative. Representatives do not have to be a power of attorney or guardian. The participant's representative must sign the SD in LTC enrollment agreement.
3. The participant and SCs develop and agree on the POC through the PCP process. The waiver agent authorizes the types of services and number of hours determined in the POC. The participant (with assistance from SCs, allies, or others when necessary) identifies workers and back-up workers.
4. The participant and SCs develop a budget using a template approved by MDCH. The SCs provide the participant with a meaningful copy of the budget or budget worksheet. The participant signs the budget. The SCs and participant revisit the budget when the need arises, or at least every 90 days.

5. The participant signs the Enrollment form or Self-Determination agreement. The Enrollment form or Self-Determination agreement must include participant's name, date of birth, Medicaid number, Social Security number, the enrollment date, and the participant's representative if the participant has designated a representative.
6. An individual worker may not be a legally recognized spouse or guardian of the participant. MDCH may approve the spouse of the participant's designated representative to be an individual worker upon request from the waiver agent.
7. Identified workers sign a release for a criminal background check, employment application, Medicaid provider agreement, and employment agreement. Back-up worker(s) also sign these documents.
8. The participant and SCs determine and arrange training needs for identified workers.
9. The participant, waiver agent, and FI schedule the enrollment, determine the start date for SD in LTC, and sign all agreements and required documents.

**B. FISCAL INTERMEDIARIES**

1. Each waiver agent must contract with at least one FI that meets the service standards defined in the Choice Voucher System: Self-Determination in Long-Term Care advisory and Minimum Operating Standards for MI Choice Waiver Program Services (Attachment H of the MI Choice contract.) Waiver agents are responsible for annual reviews of the FI.
2. The FI provides employment forms for workers.
3. The FI provides monthly budget reports to the waiver agent and participant. The SCs follow up with the participants when budget reports indicate that budgets are more than 10% over or under the approved amount.

## C. AGENCY WITH CHOICE MODEL

### 1. Introduction

Agency with Choice (AWC) is one model for supporting individuals in the MI Choice Waiver who are aged or have disabilities. The AWC model supports individuals in arrangements that support self-determination by enabling them to select and manage their workers and personal assistants. Self-determination incorporates a set of concepts and values that individuals who obtain services and support through MI-Choice Waiver must have freedom to not only define their lives, but also to be supported to control and direct the assistance they require in pursuit of those lives.

The AWC model splits the employer duties between the AWC provider and the participant. The AWC provider serves as employer of record. *Employer of record* is a term that describes an agency or individual that handles the administrative aspects of being an employer (such as payroll, withholding and paying income and unemployment taxes, and paying worker's compensation insurance). The participant serves as managing employer.<sup>1</sup> In the AWC model, the participant recruits, hires, supervises, and, if necessary fires, his or her own worker(s). The AWC and the participant enter into a three-party agreement with each support worker that explicitly lays out the duties and responsibilities of each party.

### 2. Advantages

The AWC model has several advantages:

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<sup>1</sup> See Medstat, *Promising Practices in Home and Community Based Services, Kansas—Providing Choice among Providers of Financial Management Services, Issue: Consumer-Directed Care—Agency with Choice Model*, <http://www.cms.hhs.gov/promisingpractices/ksawc.pdf>

- a) Participants may value the additional layer of emergency back-up.
- b) The AWC may have the potential to offer fringe benefits, such as vacation time or health insurance to workers.
- c) Participants who are new to being employers may want to have another entity take responsibility for the complex human resources and administrative functions.
- d) Workers may be able to obtain full-time employment by working for several participants.

AWC is an important option for those who do not want to employ workers directly or who want to transition into direct employment. Consistent with the principles of self-determination (freedom, authority, support, and responsibility) SCs should provide participants the information, opportunity and freedom to manage the resources allocated for their services and supports, and support the participant to implement the methods that best meet their needs.

### **3. The Role of the Agency with Choice Provider**

An AWC provider must develop a system and written policies and procedures that incorporate the philosophy and practice of self-determination, for guiding participants and/or their chosen legal representatives to recruit, interview, and select workers and refer them to the AWC for employment.<sup>2</sup> Within that system, both the participant and the AWC have defined roles and functions.

In its role as the employer of record of workers, the AWC provider handles many of the employer duties.<sup>3</sup>

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<sup>2</sup> Id.

<sup>3</sup> Susan Flanagan, *Suggested Promising Practice Policies and Procedures for Agency with Choice Providers*, [http://www.pacounties.org/mhmr/lib/mhmr/Suggested\\_Promising\\_Practice\\_Policies\\_and\\_Procedures\\_for\\_Agency\\_with\\_Choice\\_Providers.doc](http://www.pacounties.org/mhmr/lib/mhmr/Suggested_Promising_Practice_Policies_and_Procedures_for_Agency_with_Choice_Providers.doc)

a) Financial Management

- (1) Processing payroll and timesheets
- (2) Withholding, filing, and paying federal and state income tax withholding, FICA, FUTA, and SUTA to the appropriate taxing authorities
- (3) Paying workers' compensation insurance premiums
- (4) Issuing Forms W-2
- (5) Maintaining complete current financial records, copies of all agreements, and supporting documentation for each participant

b) Human Resources

- (1) Facilitating the completion of criminal background and reference checks
- (2) Confirming that prospective workers have U.S. Citizenship or legal alien status
- (3) Confirming that prospective workers meet provider requirements defined in the Medicaid Provider Manual
- (4) Providing training to workers, as required by the waiver agent and/or the AWC provider and/or directed by the participant
- (5) Handling fringe benefits (such as health insurance) for workers

The AWC provider can set policies for the types of criminal backgrounds that would preclude employment and the types that would not. If the waiver agent has specific policies regarding criminal background, this can be part of the contract negotiating process. It can also set forth reasonable personnel policies that both the participants and the workers must follow. However, the AWC provider cannot penalize the participant or the worker financially if they decide that direct employment would be preferable and decide to leave the AWC arrangement.

The AWC provider may also provide supportive services aimed at achieving a successful outcome as determined by the waiver agent and the needs of the participant.<sup>4</sup> For example, the participant can seek and obtain support from the AWC provider in recruiting, selecting, and hiring workers. In some situations, family, friends, or the SC may provide that support.

#### **4. The Role of the Participant**

Although the AWC provider serves as the legal employer of workers, the participant is the managing employer of all of the workers that provide supports and services to him or her. As the managing employer, the participant is responsible for recruiting candidates and referring them for employment by the AWC provider. The AWC may offer assistance with recruiting workers. In addition to selecting workers, the participant assures that all training and guidance is provided to the worker including any special training related to the participant's unique situation. The participant supervises workers on an ongoing basis.

The participant may choose any support worker who meets the provider requirements.<sup>5</sup> The AWC may assist by offering training to the chosen workers as part of their services. The participant is free to select qualified friends or family members or can recruit workers through word of mouth, advertisements, or other means. The participant determines the work schedule and job duties, and authorizes payment by the AWC providers to the support worker by signing timesheets.<sup>6</sup> When the participant deems it necessary, the participant is responsible for terminating her/his workers. The participant may not terminate the worker on the basis of race, religion, sex, age, disability, or other protected statuses under federal or Michigan law.

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

5The provider requirements do not allow a participant to hire a guardian or representative.

6 Id.

## 5. Role of the Waiver Agent

Waiver Agent provides information about the AWC option to participants. They are responsible for PCP sessions that lead to an individual budget for participants in Self Determination. The waiver agent authorizes the POC as well as the individual budget. The waiver agent ensures that all AWC participants have a meaningful copy of the POC and the individual budget. The waiver agent also ensures the provision of a monthly spending report based on the individual budget and services used. The waiver agent follows up with participants when spending is above or below 10% of monthly budget.

The waiver agent is responsible for the Self Determination agreement with the participant and sending enrollment information and a copy of the individual budget to MDCH.

## 6. Requirements

### a) The Agreement between the AWC Provider and the Participant

The Agreement between the AWC provider and the participant defines the roles and responsibilities of each of the parties, the assistance and support available to the participant, and the methods available for problem resolution. The agreement should specifically state that the participant may select any qualified provider that he or she chooses and terminate any worker at any time, for any legal reason (workers are at-will employees). The agreement must prohibit any practices by the AWC that impose penalties or fines when a worker leaves the AWC to work directly for a participant. The agreement must account for how the participant will go about handling these managing employer tasks. It must be clear that the role of the AWC is not to co-supervise the support worker, or to monitor the participant's management of the worker.

b) The Employment Agreement

The AWC and participant must execute a three-party agreement with each worker that describes the roles and responsibilities of each party. The employment agreement must explicitly state the participant is the managing employer and has the ability to terminate employment. In fact, candidates should receive in writing a description of the nature of the interrelationship between the AWC provider, participant, and candidate during the interview process, if not beforehand. It is essential that each party clearly understands these interrelationships for the participant to successfully supervise and manage their support worker.

c) Use of a FI

A hallmark of arrangements that support self-determination is control over the individual budget, usually accomplished by entrusting the funds in the participant's individual budget with a FI. An FI is a neutral and independent entity that acts as a fiscal agent of the waiver agent for assuring fiduciary accountability for the funds comprising a participant's individual budget. In addition to accountability, the FI provides an important monitoring and communication function by furnishing a monthly budget report to the participant and his or her SC. Without such reporting, it is not possible for the participant to manage meaningfully an individual budget. Therefore, to achieve self-determination, best practice is that the funds are entrusted with a FI.

In addition to the payment to the agency with choice, the FI will provide a monthly budget report to the participant so that he or she can effectively monitor and manage his or her individual budget.

When the AWC is the sole provider, another option is for the waiver agent to pay the AWC provider directly without using a FI. In this situation, the waiver agent must be prepared to assure that this portion of budgeted

funds is easily transferable. The waiver agent must maintain portability of the participant's individual budget to the greatest degree possible to enable the participant to choose another agency or method for employing workers if he or she chooses to do so. In addition, the waiver agent or the AWC must develop a monthly reporting mechanism so that the individual can exercise his or her responsibility to manage the individual budget.

d) Selection Criteria

Each waiver agent may select one or more Agencies with Choice to provide MI Choice services. The waiver agent must assure that the AWC has the capacity to complete required duties. If the waiver agent contracts with more than one AWC provider, the participant may choose between or among the agencies.

There are three methods for the waiver agent to select and contract with AWC providers:

1. Direct selection and contracting by the waiver agent;
2. Selection by the participant as long as the waiver agent verifies that the agency meets the criteria identified herein and can be a Medicaid provider;
3. Placement of AWC providers that meet demonstrated competency in required functions and provider network requirements on the provider network.

The waiver agent should identify criteria for AWC, and select and contract with agencies that meet those criteria. The AWC provider understands and embraces the philosophy of self-determination and has a history of supporting individual choice and control. The contract should clearly define the expectations of both the waiver agent and the AWC provider and should incorporate the assurances of the Medicaid Provider Agreement. Neither waiver agents, nor its subsidiaries or affiliated

agencies, can serve as an AWC. The waiver agent must have a mechanism for monitoring and documenting the quality of the AWC functions so that it can obtain and act upon feedback from participants and allies.

## **7. Implementation Issues & Conflicts of Interest**

The AWC model poses a potential conflict between the business interests of the agency and the choice and control of the participant. One challenge in implementing the AWC model is balancing the duties of the employer of record (the agency) and the managing employer (the participant). The more support the AWC provides to the participant, especially in terms of recruiting, scheduling, or managing workers, the greater the possibility that support could erode the participant's freedom and control. The AWC provider must be vigilant that its support enables the participant to direct and control rather than substituting itself in that role.

Another challenge is how the workers view the relationship they have with the AWC provider versus the participant as "managing employer." If an employee works for multiple participants, at the same time or successively, she or he may have a tendency to view the AWC as the managing employer and attempt to resolve on-the-job difficulties through the AWC, rather than through communication with the participant. The AWC must be clear about its role with both the worker(s) and the participant. It must be cautious to refrain from intruding upon the participant's role in managing workers. Instead, its role is to support the participant by making him or her aware of challenges, offering assistance in problem solving, and alerting the supports coordinator when appropriate to the individual circumstance.

The AWC provider can support a participant in recommending worker candidates that meet worker characteristics identified for a specific participant during the person-centered planning process. The participant can interview

the candidates to determine the best match for his or her needs. In supporting the participant in choosing their workers, the AWC provider should never make a choice for or on behalf of the participant.

With respect to employment tenure, when a worker who was employed through the AWC provider has lost an employment situation, AWC staff may feel obligated to find the worker a new position. The placement of such workers must be balanced with the central purpose of the AWC model in supporting participants to be successful in their role as managing employers and having choice of and control over their workers. However, a certain amount of brokering and placement work may go a long way toward assisting participants with obtaining workers who “fit” with their needs and preferences.

## **8. Conclusion**

As more participants discover the AWC option, the demand for it will increase. Traditional provider agencies may want to respond to this demand by becoming AWC providers. These agencies may find that this model reduces the responsibilities of the agency by shifting responsibility for recruiting, “hiring,” and managing workers to participants.

Waiver agents must provide participants with a range of options to direct and control resources. The AWC model can assist with many of the complex aspects of being an employer, while supporting the participant as managing employer. Participants with significant support needs have an additional layer of back-up support with the model. In addition, the participants may be able to offer their workers benefits, such as vacation and health insurance, which would not be economically feasible in direct employment. Thus, AWC provides an important option for supporting MI Choice waiver participants who choose self-determined arrangements to select and manage workers.

## D. DEVELOPING AND IMPLEMENTING INDIVIDUAL BUDGETS

### 1. Introduction

SD in LTC provides the option for participants to hire their own workers and self manage services. Use of an individual budget is essential for participants in SD in LTC to exercise meaningful control over their supports and services arrangements. An individual budget is the expected costs of a concrete approach to accomplishing the individual's plan for supports and services. The participant and waiver agent develop both the service plan and the individual budget through the PCP process. The participant and the waiver agent agree to the amounts of the individual budget before the waiver agent authorizes it for use by the participant. The participant uses the funding in the budget to acquire and pay for waiver services and supports. The waiver agent explores options in terms of preferences as well as costs with the participant with the aim for arrangements that improve value. The waiver agent assures arrangements that promote the participant's authority.

Authority over an individual budget has four components:

- a) The participant is able to determine the amount paid for each service and support according to waiver policies.
- b) The participant schedules the provision of services and supports.
- c) The participant identifies service providers who meet requirements for the services they provide.
- d) The participant reviews and approves provider invoices.

The individual budget must:

- a) Contain amounts based on reliable costs and service utilization needs.
- b) Be derived from a consistent methodology.
- c) Provide the individual with flexibility to move money around within the total budget.
- d) Adjust funding to meet individual situations with a process for making adjustments.
- e) Be provided to the participant in an understandable, written form.

## **2. Elements of the Individual Budget**

An individual budget must meet three criteria to support each participant in implementing the arrangements that support self-determination. The budget must be accessible, flexible, and portable.

*Accessible* means that the participant knows and understands the amount and purpose of the budget. The participant knows the waiver agent lodges the budget resources with a FI and is oriented on using the funds.

*Flexible* means the waiver agent provides options for modifying the budget components within the overall amount including; scheduling the quantity of any given service and varying the proportion of resources allotted to specific authorized services, i.e. hours of service and rates paid for services.

*Portable* means that the participant can transfer budget resources from one provider arrangement to another without prior approval from the waiver agent. The participant can change FIs, within a framework defined by the waiver agent.

The participant and his or her allies are fully involved in the budget development process and the participant understands the options and limitations for using the funds in the individual budget to obtain the services

and supports in the service plan. The SC informs participants in writing of the options for, and limitations on, flexibility and portability. Waiver agents must inform participants as to how, when, and what kind of changes they can make to their individual budget without SC approval and when such changes require approval.

### **3. Developing the Individual Budget**

MDCH uses a retrospective zero-based method for developing an individual budget. This means the amount of the individual budget is determined by costing out the services and supports in the service plan, after the development of a POC meeting the individual's needs and goals. The service plan includes identification of each service or support in amount, type, and duration (hours per week or month).

After the development of the service plan, the participant, waiver agent, and others participating in the PCP process collectively determine the amount of funding needed to pay for services and supports. This process determines the cost of services and supports using the hourly rates for the providers chosen by the participant multiplied by the number of hours authorized in the plan. Under the Choice Voucher System, the rate includes Medicare and Social Security Taxes (FICA), Unemployment Insurance, Worker's Compensation Insurance, and the FI fee. The budget also includes other services authorized as self-directed that do not require the employment of workers, such as non-medical transportation and goods and services.

The waiver agent negotiates an up-front amount of 1/12<sup>th</sup> or 2/12ths of the budget as part of the contract to pay the FI to begin services. The budget also includes the FI start-up (if applicable) and annual fee.

Using the AWC model, the agency rate includes the employment related expenses. Additional start-up fees are not part of the budget with the AWC model.

The waiver agent provides the participant with a written, understandable copy of the budget. The waiver agent maintains a copy of the budget signed by the participant in the case file. The budget lists the names of each worker. The participant cannot choose legal spouses, guardians, or representatives of the participant as paid workers. The amount of the budget is annualized. The SC may adjust the budget based on the needs of the participant. The FI can provide budget templates to the waiver agent, or the waiver agent may develop a budget template with the approval of MDCH.

#### **4. Putting It All Together—Monitoring and Modifying the Individual Budget**

The waiver agent transfers funds in an individual budget to the FI. The FI makes payment for services and supports in the service plan upon receipt of invoices and timesheets approved by the participant. The FI provides both the participant and the waiver agent a monthly report of expenditures in a timely manner. This report is the central mechanism for monitoring implementation of the budget and its effectiveness relies upon the FI completing it in a timely manner. In the Choice Voucher System, the FI flags under and over expenditures of ten percent or more to alert the waiver agent. The SC follows up with the participant to make sure she or he is receiving the services in the plan and determine if needs have changed.

The waiver agent may pay the AWC directly with funds designated in the individual budget when the participant chooses the AWC option. The budget includes the hourly agency rate, hourly worker wages, names of each worker and other non-employment related expenses. Either the AWC or the waiver agent provides a monthly report of expenditures to the participant.

The participant can request an adjustment or modification to the POC or budget at any time per policy. The SC and participant can address over or under service utilization identified in the report informally or through the PCP process. The waiver agent must provide the participant with information on how to request a Medicaid Fair Hearing when the waiver agent denies the participant's request for a budget adjustment or reduces the amount of the budget.

The SC retains responsibility for assisting the participant in implementing the individual budget and service arrangements, including instruction on how to interpret the budget report. A participant can use an independent supports broker to assist him or her to implement, manage, and monitor the plan and budget. When a participant uses an independent supports broker, the participant limits the SC's role in assisting the participant in planning, implementing, and managing service arrangements. Thus, the SC does not duplicate assistance provided by the supports broker. The SC retains the role of authorizing and monitoring the service plan and individual budget. The SC or participant cannot delegate this responsibility to an independent supports broker.

## **5. Conclusion**

Ultimately, the amount of a participant's individual budget is the total cost of the supports and services agreed upon as desirable, achievable, and prudent. Self-determination entails the principle of responsibility, the expectation that the participant will wisely use public dollars in his or her individual budget. The experience in Michigan to date with self-determination has demonstrated successful shared responsibility. Waiver agents are finding ways to reach acceptable individual budget amounts. Participants are experiencing success in almost every known situation, achieving satisfaction with their services and supports arrangements while staying within their individual budgets.

**E. OTHER**

1. Waiver agents administer a baseline Participant Outcomes and Status Measures (POSM) to all SD in LTC enrollees upon enrollment. Someone other than the supports coordinator administers this survey.
2. The waiver agent enters the baseline POSM, and all subsequent POSM surveys on MICIS, or a compatible database, for submission to the University of Michigan, Institute of Gerontology.
3. The waiver agent conducts a follow up POSM six months after enrollment, one year after enrollment, and annually thereafter.
4. The waiver agent may rescind enrollment in the SD in LTC option for participants. This may be either a voluntary or an involuntary decision by the participant. The waiver agent must document all rescinded SD in LTC enrollments in the case record and include the reason for rescinding the enrollment and resolutions attempted prior to rescinding. The waiver agent sends this information to MDCH HCBSS. When the waiver agent rescinds the SD in LTC enrollment, the participant returns to traditional waiver services without an interruption in service delivery. The waiver agent provides adequate notice to each participant when it rescinds the SD in LTC enrollment.