

Self-Determination Implementation Technical Advisory

Michigan Department of Health and Human Services
Medical Services Administration

Version 1.0



This Technical Advisory includes recommended parameters developed by the Michigan Department of Health and Human Services (MDHHS) for ICOs related to specific administrative functions as derived from public policy and legal requirements.

Throughout this document, ICO refers to the Integrated Care Organizations or their First-Tier Downstream entity with which the ICO has a contract to perform the functions related to arrangements that support self-determination for MI Health Link HCBS Waiver enrollees.

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PREFACE

This Self-Determination Implementation Technical Advisory provides approaches to support individuals using arrangements that support self-determination when receiving home and community-based services **through the MI Health Link HCBS waiver**. Self-determination is the value that people served by Michigan Medicaid must be supported to have a meaningful life in the community. The Three-Way Contract shared among the Centers for Medicare and Medicaid Services (CMS), the Michigan Department of Health and Human Services (MDHHS, formerly Michigan Department of Community Health or MDCH), and Integrated Care Organizations (ICOs) requires that ICOs offer their enrolled individuals the opportunity to participate in arrangements that support self-determination, assuring methods for enrollees 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, how to connect in one's community, the opportunity to contribute in one's own ways, and the development of a personal lifestyle.

AUTHORITY: The assurance for an enrollee with a disability to control a certain sum of dollars in order to purchase these supports, with the backing of his or her 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 enrollee 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 enrollee 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 enrollees with meaningful authority to control and direct supports and services. Promoting true self-determination for adults with significant support and service needs requires a shift from the approaches that fit enrollees into an existing service array to approaches that are truly enrollee-centered and enrollee-controlled.

This Technical Advisory comprises technical guidance to ICOs in implementing arrangements that support self-determination. It includes prototype agreements that ICOs 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 MDHHS (formerly MDCH) and not a guarantee by the State, or the Attorney General's Office. This Technical Advisory is oriented toward self-determination for adults enrolled in the MI Health Link HCBS waiver program.

Implementing Arrangements That Support Self-Determination

This Technical Advisory provides individuals with methods to control and direct how the supports and services in their Individual Integrated Care and Supports Plan (IICSP) are implemented. Individuals, with their chosen allies,¹ work with their ICOs to determine their IICSPs and individual budgets through the person-centered planning process. The individual budget is the **central** way an enrollee exercises control over his or her supports and services.

The individual budget authorized by the ICO provides a set amount of resources sufficient to implement the enrollee's IICSP, which may be directed by the enrollee to pursue the goals and outcomes identified in the IICSP. Support and service arrangements directly controlled by the enrollee may range from one specific service to all of the services in the enrollee's IICSP. It is the enrollee's choice whether to manage some or all of their services. A enrollee 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 enrollee's consent.

Since individuals receiving Medicaid-funded services may not receive funds directly, mechanisms are needed to purchase the supports and services. ICOs are required to design and implement alternative approaches that individuals electing the option for individual budget may use to obtain individual-selected and -directed provider arrangements. 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 as access to a provider entity that can serve as employer of record for providers selected by the enrollee. (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 supports and services as well as a choice of providers. All individuals have the right to develop their IICSP 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 supports and services 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 An enrollee may choose to use a power of attorney to authorize a family member or trusted friend to handle matters for him or her; some enrollees may have a legal guardian whose responsibility is to act in place of the person in certain matters.

³ See Summary of Choice of Provider Requirements on page 6.

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

To implement arrangements that support self-determination, ICOs must ensure that individual and organizational self-interests do not compete with the opportunity of enrollees to have authority over the supports and services 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 an ICO, its staff and provider agencies, and the priorities of an enrollee tend to be reduced through use of arrangements that support self-determination. The enrollee, not the ICO 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 enrollee has the authority to terminate or replace a worker, when in his or her judgment, doing so is necessary.

Roles and Responsibilities

Successful use of arrangements that support self-determination requires that all parties understand their rights and responsibilities. ICOs are responsible for implementing arrangements that support self-determination pursuant to the Three-Way Contract and the MI Health Minimum Operating Standards document, this Technical Advisory, and any self-determination training provided by MDHHS. The ICO has a responsibility to support enrollees in using 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 ICO and enrollees of the MI Health Link HCBS waiver. Once an IICSP and an individual budget have been developed through person-centered planning and agreed to, the enrollee signs a Self-Determination Agreement with the ICO. Each enrollee 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 ICO. Each of these components is described in detail in this Technical Advisory.

Enrollees and their allies shall inform the ICO 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 ICO 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 ICO is expected to develop and implement the approaches described in this Technical Advisory in an enrollee -friendly manner, making the methods as easy to use as possible.

Enrollees 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 ICO and FI about any change in circumstances that may require a modification of IICSP or the individual budget.
- Complete all requirements for documentation of Medicaid services in the format prescribed by the ICO.
- Provide all necessary information regarding all providers of supports and services and ensure that all required documentation and written agreements are in place.
- Assure that each service provider retained 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 ICO and the individual receiving services. It is an essential component in arrangements that support self-determination. The agreement outlines the relationship between the enrollee and the ICO and describes the obligations and responsibilities of each party involved in arrangements that support self-determination. It confirms that the individual is using arrangements that support self-determination voluntarily and consents to the arrangement. The individual agrees to handle all of the responsibilities of participation. It also confirms that the ICO agrees to the participation, delegates the authority to manage the funds in the budget to the enrollee, and agrees to support the individual to successfully use arrangements that support self-determination. The enrollee's IICSP and individual budget are referenced within, provided to the individual along with a copy

of the agreement, and the budget is updated as the IICSP changes. The IICSP 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 enrollee agrees to follow specific requirements outlined by the ICO including assuring that selected providers meet applicable Medicaid provider requirements.⁴ If the enrollee chooses, the fiscal intermediary or another agency may assist the enrollee in carrying out this task. The prototype Audit Form (See Appendix A) is a checklist to assure that each piece is in place.

Use Of Medicaid Funds

Medicaid is one funding source for supports and services. The use of Medicaid funds places special accountability requirements on the provision of supports and services. All requirements for documenting that Medicaid supports and services have been provided, as described in the Michigan Medicaid Provider Manual, must be completed. That documentation must be provided to the ICO. Every provider must execute a separate agreement, called the SELF-DETERMINATION PROVIDER AGREEMENT, with the ICO. In this agreement, the provider agrees that it will: 1) keep required records regarding service delivery and make those records available for review upon the request; 2) disclose financial ownership interest in Medicaid-financed provider entities; and 3) determine if an enrollee has an advanced directive to refuse life-sustaining medical treatment and inform the enrollee whether or not the provider is unable to carry out that advance directive so that the enrollee can make an informed choice in the hiring process⁵. These requirements are described in federal regulations at 42 CFR 431.107 and other sections of the Code of Federal Regulations referenced therein.

⁴ Provider requirements are to be determined by the ICO and communicated to the enrollee, and are derived from sources such as the Medicaid Provider Manual.

⁵ This requirement applies to home care agencies and providers of home care and personal care services as well as health care institutions. However, under Michigan law, certain health professionals cannot refuse to honor a Do Not Resuscitate order (MCL 333.1051 et. seq.).

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 as indicated in the Minimum Operating Standards document and any other documents provided by MDHHS.

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
- any other provider qualifications for each specific MI Health Link HCBS waiver service as indicated in the Minimum Operating Standards document.

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 have a right under the BBA to choose the providers of the supports and services that are identified in their IICSP “to the extent possible and appropriate.” ICOs 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.

The individual must be able to choose from at least two providers for 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 supports and services and who provides them. For example, most people have strong preferences about who provides their most intimate personal care.

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. Instead, they use informal support from others to assist them to implement arrangements that best meet their needs. There are a number of ways for an enrollee 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, IICSPs, individual budgets, and the methods for their implementation are developed. The enrollee 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 IICSPs that result.

When arrangements that support self-determination are being used, the person-centered planning process must address the enrollee'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 enrollee with the tasks involved.

The goal of arrangements that support self-determination is to provide the means and methods to enable enrollees to have meaningful lives in their communities. Most enrollees 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 enrollee's situation and relationships are unique; some enrollees may have more support than others. Very few enrollees 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 an enrollee who has a developmental disability or a guardian or conservator under the Estates and Protected Individuals Act for an enrollee who has a mental illness or physical disability. In cases where the enrollee has a legal guardian with authority over contracts, the guardian must be the managing employer in the self-determination arrangement.⁶

6 (continued on Page 9) 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,

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

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 participate. It recognizes the role of informal supports and representatives: “Where an individual does not have the ability or desire to manage his or her own care, the State may either provide personal care services without enrollee 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 enrollee has the desire and the ability to be the employer—must be considered in context of the life situation of each enrollee. 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 one or more involved family and friends, or even trusted staff, who are willing and able to assist by providing needed support and guidance. For others without this or comparable support, it will not be realistic or prudent for the ICO to authorize use of its funds for the enrollee to directly control methods described in this Technical Advisory until the enrollee has cultivated friends, family and community members who can serve as informal supports.

Choosing a Representative

An enrollee 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 enrollee and his or her allies may determine the best person to serve as representative. A representative must be willing and able to honor the choices and preferences of the enrollee and support him or her to take as active role in the process as possible.

The ICO has input in this process through the involvement of the ICO Care Coordinator and/or LTSS Supports Coordinator and must concur in the use of a representative relating to arrangements authorized and funded by the ICO. Appropriate documentation

meaning that if something goes wrong, his or her assets are at risk. In practice, the fiscal intermediary handles these responsibilities on behalf of the individual and the financial liability is minimized. However, if a guardian or representative is the employer of record (meaning the tax identification number is obtained in guardian’s name), then that liability extends to his or her assets. A distinction needs to be made between employer of record and managing employer. An enrollee may choose to have a representative be the managing employer. In cases where the enrollee 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

of the issues discussed and the resulting agreements and decisions are expected to be found in the enrollee's record and IICSP.

Typically, where an enrollee 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 enrollee is the managing employer or has a representative performing that function, the ICO is expected to support the enrollee to take the lead in responsibly expressing preferences and goals and directing support workers. When the enrollee appoints a representative to handle some functions, both the enrollee 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 enrollee and others involved in the person-centered planning process should consider:

- The enrollee's preference;
- The enrollee'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 enrollee 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 ICO 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 ICO's funds to directly arrange for and control providers of services must be authorized by the ICO for the sole purpose of accomplishing the IICSP. If use of arrangements that support self-determination is beyond the ability of the enrollee, 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 ICO 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 ICO to arbitrarily determine whether or not an enrollee may use arrangements that support self-determination simply for the convenience of the ICO. For example, an ICO may not deny enrollees 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 ICO to the enrollee and/or his or her representative so that the enrollee understands 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 ICO should provide for support mechanisms to ensure that tasks the enrollee 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, enrollees 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 enrollee (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 A), requires the ICO to work with the enrollee 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 enrollee 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 in supporting the individual. Some enrollees with very significant support needs can participate in arrangements that support self-determination because they have a high level of informal support. Sometimes, these informal supports are developed and fostered through meaningful participation in the community. The extent to which an enrollee 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

An Individual budget, for the purpose of this document, is the expected or estimated costs of a concrete approach to obtaining the supports and services in the IICSP **for which an individual is choosing to use arrangements that support self-determination**. An individual budget **does not include** supports and services **not obtained** through arrangements that support self-determination or other funding sources.

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

ICOs (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 ICO and the individual in which ICO 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 supports and services in the IICSP 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 ICO and the individual. The ICO retains responsibility for monitoring and ensuring that the individual obtains the supports and services in his or her IICSP.

All individuals using arrangements that support self-determination have been determined to be eligible to receive medically necessary supports and services. Their right to supports and services does not translate into either a right, or a requirement, that they obtain those supports and services at a certain cost. Each ICO must have a uniform, transparent process for costing out supports and services 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 supports and services determined to be necessary. **The budget is based on the IICSP rather than the IICSP**

being based on a targeted budget amount. After an IICSP that meets the individual's needs and goals has been developed, the amount of the individual budget is determined collectively by the individual, the ICO, and others involved through the person-centered planning process. The individual budget is determined by costing out the supports and services in the IICSP (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 for ensuring the use of supports and services does not exceed the individual budget authorization for the budget period. A fiscal intermediary is used as a fiscal agent for the ICO 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 supports and services consistent with the IICSP 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 supports and services in the IICSP 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 ICO. However, the individual must still follow the process set by the ICO for assuring the provider meets provider qualifications and the credentialing process for applicable providers.

Flexible means that the ICO describes in writing the options for modifying the budget components within the overall individual budget in accordance with the IICSP to the individual.

The ICO 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 to the ICO.

Documenting the Individual Budget (Accessibility)

As described above, the ICO 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 support and service.
- the dollar amount tied to each support and service (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 ICO 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 IICSP and individual budget must be provided to the individual with the Self-Determination Agreement. The ICO 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.

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 ICO as long as the provider meets provider qualifications for the support or service (the individual must follow the procedures for establishing that the provider meets provider qualifications including the credential process for applicable providers). The ICO should clearly set forth the procedure for assuring that potential providers meet provider requirements. Sometimes, this checking is done by the ICO; 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 ICO 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 ICO and individual informally or through the person-centered planning process. In addition, the ICO contract with the fiscal intermediary (FI) should require the FI to contact an individual's ICO Care Coordinator and/or LTSS Supports Coordinator 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 ICO must provide the monthly budget report to the individual and his or her ICO Care Coordinator and/or LTSS Supports Coordinator.

Modifying the Individual Budget (Flexibility)

The individual budget must be written to allow the individual flexibility in its use: an individual can decide when supports and services are used and make some adjustments between budget line items.

Adjustments That Do Not Require a Modification to the Individual Budget

The IICSP and individual budget can set forth adjustments that do not deviate from the goals and objectives in the IICSP, and that do not require additional authorization from the ICO or advance notification of an intended adjustment. When adjustments are made in the application of funds in an individual budget, these shall occur within a framework that has been agreed to by the enrollee and the ICO, and described as an attachment to the enrollee's self-determination agreement.

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

- Specific goals in the IICSP 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.
- Supports and services that are similar and may be substituted for one another should be identified in the IICSP and individual budget (for example, supports and services with the same provider qualifications).
- Supports and services for which there is no substitution should be identified.

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

Adjustments that Require a Modification to the Individual Budget

Sometimes, an individual wants to make an adjustment that fundamentally alters the IICSP (for example, substituting one service for another service that is not similar, forgoing supports and services, or using supports and services not authorized). If an enrollee desires to exercise flexibility in a manner that is not identified in the IICSP, then the IICSP must be modified before the adjustment may be made. The ICO shall attempt to address each situation in an expedient manner appropriate for the complexity and the scope of the change.

In this situation, a modification can often be made over the phone between the individual and his or her ICO Care Coordinator and/or LTSS Supports Coordinator. The change should be accomplished as expeditiously as possible. More substantial changes may need to be made through the person-centered planning process. The ICO must provide the individual with information on grievance and appeals 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 supports and services 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 Direct Employment & Contracting Model

Most people who use arrangements that support self-determination directly hire their workers or directly contract with other providers (e.g. agencies and professional providers). The enrollee (with support and consultation from allies) selects and contracts with providers of the supports and services identified in his or her IICSP. The enrollee has the choice to directly hire needed workers or contract with an agency or professional provider to provide supports and services. The enrollee 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 enrollee is the sole employer. Similarly, a enrollee must directly enter into a PURCHASE OF SERVICES AGREEMENT with an agency providing supports and services or a qualified individual provider or professional practitioner providing supports and services. Both types of agreements state that the enrollee or his or her representative has authority to terminate the contract. Neither the ICO nor the fiscal intermediary is a party to these agreements.

Enrollees 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 ICO for the purpose of assuring financial accountability for the funds in the enrollee's individual budget. The fiscal intermediary makes payments as authorized by the enrollee 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 ICO to ensure accountability for the funds in the individual budgets,
- ensures compliance with requirements related to management of public funds and the direct employment of workers by enrollees,
- provides employer agent services for enrollees directly employing workers; and
- offers supportive services to enable enrollees to participate in self-determination and direct the supports and services they need.

The Employer Agent Role

When enrollees 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 enrollee'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 IRS⁸, state and local income tax jurisdictions, and unemployment insurance regulators. In this role, the fiscal intermediary is providing a service to the enrollee and not serving as an agent as that term is traditionally defined in law.

The fiscal intermediary neither contracts directly for supports and services on behalf of the enrollee, nor acts as the employer of workers. If a enrollee chooses to hire workers directly, the enrollee 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 enrollee (or his/her representative) and each provider.

The fiscal intermediary may also perform functions that enable the enrollee to direct needed supports and services. 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 ICO. 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.⁹

Key Elements Of The Relationship Between The ICO And The Fiscal Intermediary

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

The ICO derives many benefits from the fiscal intermediary arrangement. It shifts the responsibility for handling the administrative and employer agent roles to the fiscal

⁸ 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 ICOs who handle required IRS tasks for employers.

⁹ "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.

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 ICO and insulates the ICO from liability for all of the functions that are handled by the fiscal intermediary¹⁰. As the potential for ICO liability is directly related to the specific contractual arrangement with the fiscal intermediary, ICO legal 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 ICO. The ICO must map out the specifics of the model it will use to support implementation of the arrangements that support self-determination. Legal counsel and accounting professional consultation should be sought to verify that the proposed administrative arrangements between the ICO and the fiscal intermediary are properly constructed. Issues concerning potential conflicts of interest need to be identified and managed.

The ICO 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 ICO must actively involve enrollees 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 ICO does not discover the situation through its monitoring process and take corrective action, the ICO may be held responsible and exposed to liability and potential financial penalties. The ICO 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.

¹⁰ While the use and proper functioning of the fiscal intermediary insulates the ICO from liability for those functions, the ICO 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 ICO 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, fiscal intermediary and ICO 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.

ICOs should avoid joint employment relationships as described in the Administrator's Opinion 2014-2 released by the U.S. Department of Labor, Wage and Hour Division. The Opinion may be found at http://www.dol.gov/WHD/opinion/adminIntprtn/FLSA/2014/FLSAAI2014_2.pdf.

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 ICO 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 ICO and the enrollees.

The Value Of Using An Independent Intermediary

In order for the Direct Employment Model to be successful, enrollees 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 enrollees, a fiscal intermediary should work to develop a relationship based on trust, respect and partnership with each enrollee and be oriented to individually respond to each enrollee's needs. To best facilitate this partnership, the ICO should offer a choice of intermediaries located in the enrollee's community, when it is able to do so.

The fiscal intermediary has the unique role of administering the individual budget directed by the enrollee. 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 the enrollee's choices. Free from such conflicts of interest, the fiscal intermediary can provide each enrollee with an individualized response. As a result, the enrollee perceives 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 ICO must enlist the involvement of enrollees and their allies when it begins planning to establish arrangements with a fiscal intermediary. As systems are defined and developed, the ICO should walk through them with representatives, enrollees and their allies to assure that they can be used easily. The best fiscal intermediaries properly handle the administrative management tasks required by the ICO, while making their complexities invisible to the enrollee. Once the fiscal intermediary arrangement is implemented, the ICO should use survey methods, focus groups, and/or an ongoing enrollee oversight (audit) process to obtain feedback on how the system is working. When the enrollee 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 an enrollee 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 to choose and employ workers to provide their supports and services. A hallmark of self-determination is assuring enrollees have the opportunity to direct their individual budgets that enable them to control the funding for their supports and services 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 employers¹¹ 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, ICOs, Prepaid Inpatient Health Plans (PIHPs), Community Mental Health Services Program (CMHSPs), and their subsidiaries or affiliated agencies.

Each ICO may select one or more AWC providers according to the requirements in the Three-Way Contract, this Technical Advisory, and other supporting documentation. The ICO must ensure 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 ICO. 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 supports and services.

¹¹ 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 ICO may directly select and contract with AWC providers or place qualified AWC providers on its provider panel. If the ICO 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 ICO

The ICO shall have an agreement with each AWC provider it selects that clearly defines the expectations of both the ICO and the AWC provider and incorporates the assurances of the Self-Determination Provider Agreement (see prototype agreement in Appendix A). The ICO 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 ICO contracts with an AWC provider to offer additional support to individuals, such as assistance in finding workers, the ICO 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 supports and services, the ICO Care Coordinator and/or LTSS 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.

The Role of the AWC Provider

The AWC provider handles the administrative aspects of employment and serves as employer of record.¹² (See *Minimum Functions in Section 3.*) 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 in accordance with state and federal policies. 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.

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 provider qualifications established by MDHHS and any additional requirements

¹² 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

established by the AWC provider. Potential workers may include qualified friends or family members¹³ 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 ICO Care Coordinator and/or LTSS Supports Coordinator. The ICO Care Coordinator and/or LTSS Supports Coordinator may discuss additional training or support needs with the individual. If such intervention is ineffective, the ICO Care Coordinator and/or LTSS Supports Coordinator is authorized to terminate the Self-Determination Agreement.

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 A*). 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 supports and services 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 supports and services 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 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 his or her ICO Care Coordinator and/or LTSS Supports Coordinator on a monthly basis. Another option is

¹³The AWC provider requirements do not allow an individual to hire a legally responsible relative or guardian.

for the ICO to directly pay the AWC provider. With this option, the ICO must be prepared to assure portability of the enrollee'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 ICO 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 individual's ICO Care Coordinator and/or LTSS Supports Coordinator, if applicable, 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 ICO Care Coordinator and/or LTSS 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 IICSP. 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

ICOs 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 W-2 Forms
 - 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 MDHHS
 - Providing training to workers, as required by the ICO and/or the AWC provider and/or directed by the individual
 - Handling fringe benefits (such as health insurance) for workers

**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 ICO 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 ICO together determine whether a criminal background is relevant, subject to ICO 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 ICO Care Coordinator and/or LTSS Supports Coordinator).	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.

APPENDIX A: PROTOTYPE AGREEMENTS

The prototype agreements provided in Appendix A should not be used “as is.” They are presented as technical guidance only for the ICOs and individuals using services to use as starting points for the parties, with their ICO legal 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 ICO and an enrollee using arrangements that support self-determination. This prototype agreement can be used as a template for ICOs to create local agreements that meet their unique needs.

The purpose of Self-Determination Agreement is:

- Describe the responsibilities of the ICO, including ways that the ICO can support the enrollee in creating and using arrangements that support self-determination;
- Describe the authority and responsibilities of the enrollee;
- Describe how the agreement, the IICSP, 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 enrollee, his or her name should be substituted for the term “enrollee” throughout the document.

This agreement is made on **[insert date]** between **[insert name of ICO]** (“ICO”) and **[insert name of enrollee]** (“enrollee”). The ICO authorizes supports and services to enrollees receiving Medicaid home and community-based supports and services and the enrollee 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 an IICSP, 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 enrollee's right to access supports and services through the ICO. The enrollee has the right to local dispute resolution, grievance, and/or appeals processes provided by the ICO.

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

and sign a Self-Determination Provider Agreement with the ICO. The authority over control and direction of the funds is delegated by the ICO to the enrollee to enable the enrollee to use his or her supports and services 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 supports and services when authorized by the enrollee, and handling the employer agent function. The fiscal intermediary will provide a monthly spending report to the enrollee and the ICO Care Coordinator and/or LTSS Supports Coordinator.

ARTICLE I—ICO RESPONSIBILITIES

The ICO agrees to the following responsibilities:

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

ARTICLE II— PERSON’S RESPONSIBILITIES

The person (enrollee, guardian, or other legal representative) agrees to:

1. Directly manage a portion or all of his or her supports and services.
2. Directly hire or contract with workers or providers who meet provider requirements.
3. Use supports and services consistent with the goals in the IICSP.
4. Provide the ICO and/or the Fiscal Intermediary with all necessary documentation supporting expenditures of funds provided by the ICO pursuant to 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 ICO know of a change in circumstance or an emergency that may require a change in the IICSP or the individual budget.
7. When requested to do so, the person agrees to provide feedback to the fiscal intermediary or ICO to enable them to improve fiscal intermediary services.

The ICO and person agree to the terms and conditions of this agreement.

_____ Person [¹⁴] *	_____ Date
_____ ICO	_____ Date

* “Person” refers to enrollee, guardian, or other legal representative

¹⁴ 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

FISCAL INTERMEDIARY AGREEMENT

The purpose of this contract is to define the roles and responsibilities the ICO 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 home and community-based supports and services while assuring accountability for the public funds allotted to support those arrangements. The use of a fiscal intermediary assures the opportunity for enrollees 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 IICSPs developed through the person-centered planning process. This prototype should be used to develop a specific agreement for use.

This Agreement:

- Explains the role of the fiscal intermediary in supporting self-determined arrangements for enrollees;
- Describes the duties of the ICO; 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 ICO]*** (the “ICO”) 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 enrollees 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 (now the Michigan Department of Health and Human Services (MDHHS)) adopted and promulgated under Act 258. The ICO policies shall govern in any area not specifically covered in this Agreement and are available from the ICO for review upon request.

ARTICLE I

ICO RESPONSIBILITIES

The ICO 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 enrollee who using arrangements that support self-determination through the ICO using this fiscal intermediary.
2. To provide the fiscal intermediary with funds to be expended by each enrollee, in accordance with the IICSP and individual budget.
3. To perform the ICO 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 ICO on behalf of each enrollee 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 enrollees 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 enrollee 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 ICO and the enrollee 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 enrollee and/or ICO.

The Parties also agree to the following

1. That the role of the fiscal intermediary is that of an agent of the ICO, through this contract, for the purpose of assuring for each assigned enrollee maximum control over supports and services, within the framework of the enrollee's IICSP and his or her individual budget.
2. The fiscal intermediary is not an employer of workers directly employed by the enrollee or a party to any contract in which the enrollee 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 enrollee for the ICO.]

[Insert contact information and enrollee 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

ICO Executive Director/CEO

Date

PROTOTYPE

EMPLOYMENT AGREEMENT

This agreement should be used as a prototype for developing an agreement between an enrollee (or his or her chosen legal representative¹⁵) who is an enrollee using arrangements that support self-determination and an enrollee directly employed by the enrollee 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.

¹⁵ 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 enrollee, 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 enrollee 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 ICO. 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 ICO. 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 ICO 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 ICO 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 ICO 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 ICO, 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 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 an investigation and/or assist my employer with exercising his or her rights.
- 8. I agree to not sue the fiscal intermediary for its role as the financial administrator of my employer's individual budget and the ICO for its role in administering arrangements that support self-determination,
- 9. **I agree to execute a Self-Determination Provider Agreement with the ICO and acknowledge that this agreement does not alter the fact that the ICO 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 ICO.**

Employee Signature

Date

Employer Signature¹⁶

Date

¹⁶ 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 representative¹⁷⁾ and a provider agency from which he or she chooses to purchase services. This agreement can be modified and used when the agency is providing all or some care 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.

¹⁷ 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 enrollee, 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 enrollee]*** ("enrollee") and ***[Insert name of service provider]*** ("service provider"), a provider of [Insert type of services] to describe the supports or services the enrollee 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 enrollee's use of arrangements that support self-determination administered by the ICO. If the enrollee 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 enrollee 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 his or her allies¹⁸ and ICO Care Coordinator and/or LTSS Supports Coordinator, should determine what services he or she wants to purchase and how the services 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.***

¹⁸ An individual's allies include chosen: family members, friends, paid staff, other professionals, and community members, etc.

2. The enrollee 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 enrollee. If the service provider has a question about payment, it must contact the enrollee 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 ICO for information.
3. **[If the service provider is providing staff, insert the following provisions:**
The service provider is an independent contractor of the enrollee. **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 enrollee's preferences when employing and scheduling its employees. This includes involving the enrollee in the employee selection and assuring re-assignment of employees when they are not acceptable to the enrollee. The enrollee 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 enrollee's home. The service provider agrees that its staff will abide by all of the enrollee's rules and ICO regulations and the service provider acknowledges receipts of the following rules and regulations:
- a. **[enrollee should insert any rules he or she may have (such as rules regarding phone usage or smoking in his or her home)].**
 - b. **[The ICO shall insert its policies and/or procedures for enrollees 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 enrollee has a complaint regarding the provision of supports and services under this contract, he or she 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 enrollee shall inform his or her ICO Care Coordinator and/or LTSS 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 enrollee [for example, it may be an ally] if the enrollee experiences a medical emergency or illness. The service provider will also notify [insert name of contact person] before taking the enrollee 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 ICO or the enrollee.
9. The service provider understands and acknowledges that this contract is with the enrollee only and that the ICO, which authorizes the supports provided, and the fiscal intermediary, which is the financial administrator of the funds used to fund the services or supports, 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 enrollee's individual budget and not to sue the ICO in its role in administering arrangements that support self-determination.
11. The service provider agrees to assist the enrollee in filing a grievance with the ICO 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 grievance investigation and/or assist the individual with exercising his or her rights. The parties agree to comply with all 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 ICO and acknowledges that this agreement does not alter the fact that the ICO is only the administrator of arrangements that support self-determination, and that this contract for services or supports is solely with

the enrollee. 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 Signature¹⁹ *

Date

* "Person" refers to enrollee, guardian, or other legal representative

¹⁹ Some individuals may have a guardian or a chosen legal representative. If the enrollee 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 supports and services 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 ICO will certify the Self-Determination Provider as available to provide services to individuals who receive services and/or supports in accordance with their Individual Integrated Care and Supports Plan (IICSP) developed in a person-centered planning process, authorized by the ICO or one of its subcontractors, and financed through the ICO.

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.
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 ICO.
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 IICSP) 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 ICO.
5. Accept the check(s) or direct deposit(s) as payment in full for service(s) or item(s) purchased.
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, ICO, 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

ICO 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 ICO]*** (the “ICO”) 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 supports and services 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 ICO shall respond to any such notice within seven (7) working days.

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

**Article I
ICO Responsibilities**

The ICO 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 assigned individual to assure that all necessary documentation is in place.
3. To monitor that supports and services are provided pursuant to the same monitoring processes used for all ICO supports and services.

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 ten 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 ICO.
7. To make records regarding individuals available to the ICO, as requested, and to allow each individual access to his or her own records.
8. To indemnify the ICO 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 ICO Care Coordinator and/or LTSS 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.
- 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 ICO.
- 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 IICSP) 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 ICO.
- e. Accept the check(s) or direct deposit(s) as payment in full for service(s) or item(s) purchased.
- f. 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, ICO, 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 ICO.]**
 - 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

ICO Executive Director/CEO

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 ICO. 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 ICO. 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

**SELF-DETERMINATION PERSON AUDIT OF
COMPLIANCE WITH EMPLOYER ROLE REQUIREMENTS
SAMPLE**

Person (enrollee, guardian, legal representative): _____

ICO Care Coordinator: _____

LTSS Supports Coordinator (if applicable): _____

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 ICO 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 supports and services, 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 IICSP?
10. Where is this documentation located?
11. Does the IICSP 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)

APPENDIX B
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> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div>
<p>Is the FI effectively executing the philosophy of enrollee direction and being culturally sensitive in all business practices in order to communicate effectively with a diverse population of enrollees 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> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div>
<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 enrollees) <input type="checkbox"/> Fax (minimum 28.8 standard) <input type="checkbox"/> Internet Web site <input type="checkbox"/> Alternate/Large Print capabilities <input type="checkbox"/> E-mail communication option <input type="checkbox"/> Foreign Language/American Sign Language capabilities <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> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div>
<p>Does the FI have a communication, corrective action, and complaint tracking system for program enrollees and workers that addresses the following issues and is automated so that information can be analyzed by program enrollee, 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> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div>

<p>Does the FI notify program enrollees and ICO staff in a timely manner in the event a payroll is processed and disbursed late (i.e., over five days)?</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> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div>
<p>Does the FI obtain and evaluate enrollee 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?</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> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div>
<p>Are key management staff in place and is the level of staffing (FTEs) and staff qualifications and experience sufficient to provide effective FI services?</p> <p> <input type="checkbox"/> Yes If the answer is YES, please Attach job descriptions for all FI management and staff positions and resumes of existing staff. </p> <p> <input type="checkbox"/> No If the answer is NO, please explain why and how the FI plans to correct the situation? </p> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div>

II. COORDINATION AND COMMUNICATION WITH ICO Care Coordinator and/or LTSS Supports Coordinator

<p>Do the FI's policies and procedures clearly describe the FI's and ICO Care Coordinator and/or LTSS Supports Coordinator role and responsibilities related to arrangements that support self-determination enrollees and workers?</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> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div>
<p>Does the FI notify program enrollees and ICO staff in a timely manner in the event a payroll is processed and disbursed late (i.e., over five days)?</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> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div>
<p>Does the FI notify a program enrollee's ICO Care Coordinator and/or LTSS Supports Coordinator when FI staff becomes aware of an issue related to a program enrollee'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 enrollee's inability to perform required tasks?</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> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div>

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.)

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?

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

Does the FI update its FI Policies and Procedures Manual as needed and at least annually in an accurate, complete and timely manner?

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

Does the FI review and update all rules, forms, and instructions for registering and retiring program enrollees as employers, and for withholding, filing and paying state income tax withholding for each program enrollees 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)

☐ 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 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 axes (FICA and FUTA) and managing advance payments of federal earned income credit (EIC) on behalf of the program enrollees 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)

☐ 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 review and update all applicable U.S. Citizenship and Immigration Services (US CIS) rules, forms (i.e. US CIS Form I-9, *Employment Eligibility Verification*) and instructions (Key Web site: www.uscis.gov)?

☐ 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 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)?

☐ 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 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 enrollees as employers, and for withholding, filing and paying state unemployment insurance taxes for each enrollee 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 enrollee, 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 ENROLLEES/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?

Has the FI developed the format for and submitted a monthly report of financial activities to each program enrollee with a copy to the ICO within 15 days after the end of the month (please attach a sample report)?

☐ 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 report the information required by the MDHHS to the ICO?

☐ 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?

VI. ENROLLMENT OF ENROLLEES AND WORKERS

Does the FI have a standard orientation protocol for program enrollees (by phone or in person), as requested by the program enrollee or representative, to be implemented by FI staff?

☐ 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 evaluate all FI orientation materials and its standard orientation protocol?

☐ 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 program enrollee enrollment and worker employment packets in a user-friendly format? Please attach a copy of each packet.

☐ 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 produce and distribute Program Enrollee Enrollment and Worker Employment Packets and collect, review, and process the information contained in these packets?

☐ 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?

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 enrollee'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 enrollee'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?
