

NORTHCARE NETWORK

POLICY TITLE: Self-Determination
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PURPOSE

To assure that the process of self-determination is available throughout the NorthCare Network as an option for the implementation of an Individual Plan of Service (IPOS) for adults with developmental disabilities and adults with serious mental illness.

DEFINITIONS

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

Consumer: For the purposes of this policy, "Consumer" means the adult consumer of direct specialty mental health services and supports, and/or his/her selected representative. That is, the consumer may select a representative to enter into the self-determination agreement and for other agreements that may be necessary for the consumer to use the process of self-determination. A person selected as the representative of the consumer shall not supplant the role of the consumer in the process of person-centered planning, in accordance with the Mental Health Code and the requirements of the contract between the PHP and the Department of Community Health. Where a consumer has been deemed to require a legal guardian, the role of the guardian in self-determination shall be consistent with the guardianship arrangement established by the court and there is an extra obligation on the part of the CMHSP to assure that the best interests of the consumer are primary; that it is the consumer's preferences that drive the use of self-determination arrangements. A CMHSP shall have the discretion to limit or restrict the use of self-determination arrangements by a guardian when the planned or actual use of those arrangements by that guardian are in conflict with the expressed goals and outcomes of the consumer.

Fiscal Intermediary: A fiscal intermediary (FI) is an independent legal entity (organization or individual) that acts as a fiscal agent of the CMHSP for the purpose of assuring fiduciary accounting for the funds comprising a consumer's individual budget. Duties of a FI shall be specified in the contractual language between the FI and the CMHSP or its designated subcontractor. The primary purpose of a FI is to receive funds making up a consumer's individual budget, and to make payments authorized by the consumer to providers and/or other parties to whom a consumer using an individual budget may be obligated. Examples of entities that might serve in the role of a FI include bookkeeping or accounting firms and local ARC or other advocacy organizations.

Individual Budget: An individual budget is a fixed allocation of public mental health resources, and may also include reference to other public resources whose access involves the assistance of the CMHSP, denoted in dollar terms. These resources are agreed upon as the necessary cost of specialty mental health services and supports needed to accomplish a consumer's plan of services/supports. The consumer served uses the funding authorized to acquire, purchase and pay for specialty mental health services and supports that support accomplishment of the consumer's plan.

Plan: A plan means the consumer's Individual Plan of Services and/or Supports as developed using a person-centered planning process.

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

Self-Determination: Self-determination incorporates a set of concepts and values that emphasize a core belief that people who require support from the public mental health system as a result of a disability should take part in defining what they need in terms of the life they seek, have access to meaningful choices, and assume personal control over their lives. A hallmark of self-determination is assuring consumers the opportunity to direct a fixed amount of resources, called an individual budget, based on the Individual Plan of Service derived from the person-centered planning process. The person controls the use of the resources in his/her individual budget and determines, with assistance as needed, which services and supports he or she will purchase, from whom, and under what circumstances. Through this process they possess power to make meaningful choices in how they live their life. Self-determination is based on the principles of consumer empowerment: freedom, authority, support, and responsibility.

POLICY

Self-determination shall be established as an option for implementing an individual's plan of services and supports for adult consumers with a developmental disability or a serious mental illness in each CMHSP in the NorthCare provider network.

NorthCare has adopted a set of guiding principles that support consumer involvement and direction in the arranging of CMHSP Specialty Services and Supports. These principles shall be recognized by all affiliates in the NorthCare Network and will guide the provision and arranging of services for consumers who choose self-determination. (See Attachment A, NorthCare Network Mission/Vision/Values statement for Self-Directed Services for Consumers and Families)

PROCEDURES

- I. Each affiliate shall assure that the person-centered planning process actively supports consumers in the choice to apply the principles of self-determination and direct the implementation of their Individual Plan of Service.
 - A. Utilization of the self-determination process shall be a voluntary option on the part of the consumer.
 - B. Consumers who use the self-determination process shall have the authority to manage their own specialty mental health services and supports arrangements by responsibly controlling the resources allotted in an individual budget based on their Individual Plan of Service.
 - C. A CMHSP shall assure that full and complete information about self-determination is provided to each consumer. This shall include education on the different levels of control and range of options available, and the responsibilities associated with using this process.
 - D. A consumer's choice to use self-determination shall not serve as justification for any reduction or termination of services.
- II. The option to use self-determination shall be available for those consumers who request it and for whom an Individual Plan of Service has been negotiated along with an acceptable individual budget.
 - A. The development of an individual budget based on a plan of service shall first include a determination of what natural and community supports are available for consumer use.
 - B. The individual budget shall be based on the Individual Plan of Service, and represents the expected or estimated costs of services necessary to accomplish the consumer's plan. The budget must be acceptable to the consumer and authorized by the CMHSP.
 - C. Responsible and proper use of an individual budget must be of primary concern to both the CMHSP and the consumer.

1. Mental Health funds included in an individual budget are the property and responsibility of the CMHSP and must consider statutory and regulatory requirements. Control of the budget is delegated to the consumer for the sole purpose of achieving the goals in the consumer's plan. The responsibilities and limitations associated with this control must be provided to the consumer during the development of the plan of service.
2. An agreement shall be made in writing between the CMHSP and the consumer that describes the responsibility of both parties in the use of the individual budget. Copies of this self-determination agreement, along with the authorized individual budget and IPOS, must be provided to the consumer prior to the use of the budget and implementation of the Person-Centered Plan.
3. An individual budget is considered part of the Individual plan of Service, and is in effect for a specified period of time. A consumer's plan of specialty services and supports may be renegotiated whenever the consumer, or the CMHSP, deems it necessary. When the plan needs to change, the budget will also need to be reconsidered.
4. The individual budget is authorized by the CMHSP for the purpose of-defining the resources that may be directed by the consumer to implement the Individual Plan of Service.
 - a. The consumer **may** be able to modify the budget in order to adjust service arrangements as necessary to accomplish his/her plan. Any changes made must be consistent with the approved services and supports as noted in the individual plan.
 - b. The consumer does not need prior authorization of the CMHSP if the budget modification is consistent with the approved plan. If adjustments in the budget are made, the CMHSP must be notified promptly.
 - c. If an adjustment in the use of the budget is intended for a service/support that is not consistent with the plan of services, the plan must be appropriately modified before any adjustments are made.
 - d. The funds referenced in an individual budget may be controlled by more than one funding source. Flexibility in the use of these funds may be limited by the specific funding sources (e.g., Home Help, Vocational Rehabilitation, etc.) Consumers must be informed when any the resources included in the budget involve commitments from funding sources other than the CMHSP.
 - e. All expenses covered by Medicaid capitated dollars must be reflected in the individual plan of service, and must directly relate to approved mental health specialty services and supports as defined in the Medicaid Provider

Manual. Funds allocated for specialty mental health services may not be used for other services/supports that are not consistent with Medicaid covered services or for supports that are not included in the plan. Generally, purchases of assets are not allowed, unless considered necessary adaptive equipment.

E. Either the CMHSP or the consumer may terminate a self-determination agreement. Prior to the CMHSP terminating an agreement, the CMHSP shall inform the consumer, via appropriate notice and in writing, of the reasons that have led to reconsideration of the self-determination arrangement. An opportunity for problem resolution will be offered whenever possible, and the local process for dispute resolution may be used to address and resolve these issues.

1. Discontinuation of a self-determination agreement shall not, by itself, change the consumer's plan of services, nor eliminate the obligation of the CMHSP to assure that the services and supports included in the plan are continued.

2. As long as the mental health specialty services and supports are not reduced, suspended, or terminated, the Medicaid Fair Hearing Process does not apply to the termination of the self-determination agreement.

III. A CMHSP shall design and implement alternative approaches that consumers electing to use an individual budget may use to obtain consumer-selected and directed provider arrangements.

A. A consumer shall be able to access any willing and qualified provider or agency that is available, qualified, and competent to provide needed specialty mental health services and supports. The CMHSP shall assure that the consumer is fully involved in the selection of personnel, and the removal or reassignment of personnel who fail to meet consumer preferences.

B. Consistent with MDCH Technical Advisory instructions and within the IRS, Department of Treasury and federal and state employment guidelines, a CMHSP shall facilitate access to a variety of alternative methods for directing and managing support personnel. A consumer utilizing self-determination shall be able to choose the level of control over their individual budget they are comfortable in exercising. Consumer options may include:

1. The consumer would choose staff from the CMHSP as the provider of services and the CMHSP acts as the FI and employer of record.
2. The consumer chooses their own employees, who are then hired by the CMHSP to provide services to individual. CMHSP also fills role of FI.
3. The consumer chooses a provider agency other than the CMHSP, and the CMHSP enters into a contractual relationship with that agency to provide services to the individual. Either the CMHSP or provider agency may act as the FI and employer agent.

4. The consumer chooses their employee(s) who are then hired by a contract agency to provide services. The provider agency would act as the FI and employer agent.

In the arrangements noted above, The CMHSP or other provider entity would perform all employment functions associated with the hiring of selected personnel, (e.g., assuring that required paperwork is completed, providing training, criminal background checks, monitoring of contract agreements, payroll agent functions, etc.).

In addition to the above options involving the CMHSP or other provider agency, consumers may choose to engage the use of a Fiscal Intermediary:

5. The consumer chooses an independent FI to be employer agent, and chooses their preferred provider agency.
 6. The consumer chooses an independent FI to be the employer agent, and then hires their own individuals to provide services through a direct purchase of service agreement.
- C. When individuals choose to use the services of an independent Fiscal Intermediary, the FI performs the employer agent functions that would otherwise be the responsibility of the CMHSP or other provider agency.
1. The consumer and the CMHSP must assure that the use of a fiscal intermediary does not add excessive charges over and above the administrative costs that would typically be associated with a CMHSP or other provider entity performing those functions.
 2. The consumer, FI and CMHSP representative are all responsible to ensure that the appropriate and necessary agreements are in place, based on the legal requirements relevant to which option(s) the consumer chooses.
 3. If an FI is chosen as an option, the FI shall be under contract with the CMHSP. Such a contract shall clearly delineate the specific employer agent functions to be accomplished by the fiscal intermediary. (See Attachment B)
 4. The CMHSP shall exercise due diligence in establishing the qualifications capabilities of potential fiscal intermediaries, and to assure that the entities selected to perform intermediary functions are capable of meeting and maintaining compliance with the applicable requirements associated with their stated functions.
 5. The CMHSP shall manage the use of fiscal intermediaries consistent with MDCH Technical Assistance Advisories addressing fiscal intermediary arrangements. The CMHSP has the obligation to determine whether any optional alternative

methods abide by state and federal regulations and if the CMHSP will endorse or offer such options.

- D. Consumers must act as careful prudent purchasers of specialty mental health services and supports necessary to accomplish their plan. Existing personal and community resources shall be pursued and utilized prior to the authorization of a budget for a plan that includes Medicaid resources. Arrangements for purchasing services must not be excessive in cost. Consumers should aim for getting the best value for the costs involved. Consumers should be involved in the setting of rates paid to providers. The CMHSP or provider entity may provide guidance as to the range of applicable rates and may set maximum amounts that a consumer may spend to pay specific providers.
- E. Consumers, in collaboration with the CMHSP, shall assure that written agreements that specify the type of service or support and the rate to be paid are developed with each provider entity or individual. Copies of all agreements shall be kept current and available for review.
 - 1. All individuals selected by the consumer shall meet applicable provider requirements for direct support staff personnel, and/or other requirements pertinent to the particular professional services offered by the provider.
 - 2. Services/supports provided by a consumer-selected provider with whom the consumer executes a direct purchase-of-services agreement is an available option only through the use of an independent Fiscal Intermediary at this time. A consumer shall not be required to select or direct their own support personnel or provider agency if she or he does not desire to do so.
- F. In practice, consumers using the self-determination process function as an employer in terms of the selection, training, retention, and scheduling support personnel. Consumers should also be involved in the determination of rates paid to their provider(s) of choice.
- G. Consistent with federal standards, Medicaid funds may not be given directly to a consumer, and consumers may not function as the formal employer of record in fulfilling the legal responsibilities as the employer and payroll agent for selected personnel.
- H. Documentation and financial reporting requirements shall be outlined in the written self-determination arrangements between the consumer and the CMHSP. This includes:
 - 1. Determination of what documentation will be required of service providers and how/when this information will be provided to the CMHSP.
 - 2. Establishing the format for financial reporting and assuring there is timely service activity and cost reporting to the CMHSP.
 - 3. The process that will be used to provide the consumer with regular, current information on the status of the budget.

- I. Each CMHSP shall have policies and procedures addressing potential conflict of interest scenarios involving consumers and their services and supports providers.

ATTACHMENT A TO SELF-DETERMINATION POLICY:

NORTHCARE NETWORK **SELF-DIRECTED SERVICES FOR CONSUMERS AND FAMILIES**

VISION for SELF-DIRECTION

We see a world where our consumers enjoy the same civil rights as the rest of society, where each life has significant meaning and everyone is treated with dignity and respect.

MISSION STATEMENT

To enhance the freedom and choice for consumers in the pursuit of meaningful lives.

GUIDING PRINCIPLES

Freedom to have a life of one's own choosing

Authority to decide how resources for support are spent

Support to organize those resources in ways that are life-enhancing and personally meaningful

Responsibility of everyone to use public funds wisely and to give back to the communities in which they live and work

Confirmation of the importance of the role of self-advocates

VALUES of SELF DIRECTION

- Everyone will be treated as equals.
- Consumers are empowered to make informed decisions that are respected.
- Staff must work to remove obstacles that get in the way of consumers living the life they choose: for work, and play, in relationships and at home.
- Everyone should have the ability to generate income to have some discretionary funds in the pursuit of the life they choose.
- People should be responsibly involved in communities and nurture the natural supports that are available in those communities.
- Making changes and risk-taking needs to be encouraged as long as health and safety concerns are addressed.
- We all learn from mistakes and consequences.
- There are acceptable alternatives to traditional guardianship.
- Control of resources is an individual responsibility, and consumers have the right to control the services and supports they need.
- The public system can be creative and flexible **and** in compliance with the requirements for the use of public funds.
- Self-advocates are a necessary part of systems change and should be encouraged to take a central role in promoting that change.
- The public service delivery system needs to utilize all of its assets to make self-direction work; to not just 'talk the talk', but 'walk the walk'.

ATTACHMENT B TO SELF-DETERMINATION POLICY: FISCAL INTERMEDIARY FUNCTIONS

A. Administrative Functions

- a. Safeguard, manage, and account for public funds
- b. Disburse funds to vendors and providers
- c. Assist Consumer/representative in assuring all necessary documentation is in place
- d. Maintain complete financial records and copies of supporting documentation
- e. Provide a monthly spending report
- f. Indemnify the PIHP/CMHSP for FI functions and maintain liability insurance
- g. Report any deviations in individual budgets to the Consumer and the CMHSP
- h. Reconcile all accrued expenses and accounts for defined reporting periods
- i. Maintain adequate financial records and allow the Consumer and the PIHP/CMHSP access to those records upon request
- j. Perform recommended audits as determined by contract

B. Employer Agent Functions (where applicable)

- a. Issue payroll payments to employees hired directly by the Consumer
- b. Withhold appropriate income tax/Social Security/Medicare funds from employee payroll and make payments to the appropriate tax authorities
- c. Serve as payment agent for vendors of services chosen by the Consumer
- d. Issue W-2 forms and tax statements
- e. Obtain documentation from the Consumer and file paperwork to function as Employer Agent for the Consumer
- f. Assist the Consumer in obtaining unemployment insurance and worker's compensation where needed
- g. Assist the Consumer with the resolution of any questions/problems that arise with tax agencies or other legal issues

C. Employment Support Functions to be individually determined by contract (e.g., Employee Verification, reporting service and encounter data, etc.)

Other Requirements:

Audit checklist to assess compliance with employer role requirements

Prototype Agreements:

Self-Determination Agreement

Fiscal Intermediary Agreement

Employment Agreement

Purchase of Services Agreement

Medicaid Provider Agreement