

**MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
CONTRACT REQUIREMENTS FOR**

**SELF-DETERMINATION IN
LONG TERM CARE**

MI CHOICE PROGRAM

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

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I. PREFACE

The Self-Determination in Long Term Care (SD in LTC) option for service delivery (originally termed the Choice Voucher System) provides a concrete set of methods that support self-determination by individuals receiving MI Choice services. These methods make it possible for participants who select SD in LTC to directly choose and control the providers of their services and supports. SD in LTC embodies a set of concepts and values that individuals have the right to define their lives and that the system of services should provide them with the freedom to do so and the authority to make the decisions about their lives, including the opportunity to responsibly control the use of needed services and supports. This document provides guidance to MI Choice Waiver Agencies so that waiver agencies may guide participants in concert with their allies successfully and support them in achieving arrangements that accomplish personal goals and outcomes while meeting individual needs for services and support.

By itself, SD in LTC is not “self-determination.” It is a pathway that provides meaningful authority to control and direct services and supports. Promoting true self-determination for adults with significant support needs requires a shift from the traditional attitudes and approaches that fit these individuals into the existing service array to new attitudes and approaches that are truly person-centered and person-controlled. Central to this change is shifting authority to make decisions and control delivery of services and supports from agencies to individuals. To accomplish this shift, waiver agencies must ensure that individual and organizational self-interests do not compete with the opportunity and right of participants to responsibly define, direct, and control their lives.

SD in LTC uses specific tools including a Self-Determination Agreement, involvement of a qualified fiscal intermediary, and direct consumer-provider contracting. A person centered service plan (PCSP) and an individual budget are developed through the person-centered planning process and provide the basis for authorization of services and supports that meet individual needs and address health and welfare issues. SD in LTC supports participants to directly acquire and control needed services and supports using funds allotted in an individual budget.

The elements of SD in LTC meet Medicaid requirements, including those specified in the MI Choice (1915(c)) waiver. SD in LTC components make consumer control possible by creating mechanisms to maintain waiver agency accountability for service delivery and the use of public funds, particularly Medicaid funds, and to support the participant in self-direction as needed. The documents included in this contract attachment offer technical guidance to waiver agencies to facilitate proper implementation of SD in LTC for their participants. The information contained in this document provides waiver agencies and fiscal intermediaries with the tools that may protect them from liability to the extent allowed by law. This document also includes interpretative statements from MDHHS and is not the guarantee of the State of Michigan or the Michigan Attorney General’s Office. MDHHS cannot and will not indemnify any party for its actions under the SD in LTC option. This document includes prototype agreements that waiver agencies and their counsel may adapt to meet local needs.

II. OVERVIEW OF SD IN LTC

A. Introduction

SD in LTC is available to all MI Choice participants. This document provides guidance on arrangements that support self-determination. A participant may choose to have his or her family members involved in creating arrangements that support self-determination, but absent legal authorization, the family member of an adult does not have the right to be involved without the participant's consent.

SD in LTC is essential to implementing self-determination within the MI Choice program. It provides MI Choice participants with a method to control and direct the implementation of services and supports in their PCSP. The participants, with their allies, work with their supports coordinator to determine the funding allocated in their individual budget based on the PCSP. Both components are developed through the person-centered planning process. The individual budget is the central instrument through which a participant may acquire arrangements that support self-determination.

Participants directly employ workers or directly contract with agency providers by utilizing the methods of SD in LTC. The individual budget authorized by the waiver agency provides a defined amount of resources sufficient to implement the person's plan. The participant may choose to direct the budget to pursue identified goals and outcomes. Service and support arrangements directly controlled by the participant may range from one service to all services identified in the plan. The participant chooses whether to manage some or all of their services.

In SD in LTC, participants control the allocated resources and enter into direct agreements with qualified providers (both individuals and organizations) of their choosing. When participants realize and find support to make their own choices, they are better able to self-determine the course of their lives. Allocated resources allow the individual to address health and welfare needs, engage and connect with people in their community, participate in personally meaningful and productive activities, and take on a valued role in the community.

Conflicts of interest between priorities of a waiver agency, its staff and provider agencies, and the priorities of a participant tend to lessen with the use of SD in LTC. The waiver agency and direct service providers do not decide which providers will be involved in supporting the participant. The participant controls the selection of providers and directs specific details about how, when, and for how long to utilize those services. The participant has the authority to terminate or replace a worker when doing so is necessary based on the participant's judgment. The processing of provider payments and support with using the individual budget is assured to be conducted within the interests of the participant through the use of an independent qualified entity performing the fiscal intermediary role.

Successful implementation of SD in LTC requires all parties to understand their rights and responsibilities. Once a PCSP and an individual budget have been developed and agreed to, the participant signs a Self-Determination Agreement with the waiver agency. The waiver agency transfers the funds allocated to support the individual budget to a fiscal intermediary that provides payment for services and supports, and the participant works with the fiscal intermediary to implement the plan. The fiscal intermediary has a contract with the waiver agency. The participant may have a choice of fiscal intermediaries. Participants must have an Employment Agreement with each worker and a Purchase of Services Agreement with other providers of services or supports. To meet Medicaid requirements, each provider must sign a Medicaid Provider Agreement with the waiver agency. Each of these components is described in detail later in this document. The prototype agreements found as appendices to this document indicate whether they may be changed or must be used “as is.”

B. Implementing SD in LTC Arrangements

The Self-Determination Agreement is a contractual arrangement between the waiver agency and the participant. It is an essential component in arrangements that support self-determination. The agreement outlines the relationship between the participant and the waiver agency and describes the obligations and responsibilities of each party involved in SD in LTC. It confirms the individual is participating in SD in LTC voluntarily and provides his or her informed consent to participate. The participant agrees to directly manage workers providing services and handle the other responsibilities of participation. It also confirms the waiver agency agrees to the participation, delegates to the participant the authority to manage the funds in the budget, and agrees to support the participant in successfully using the SD in LTC methods.

The agreement includes the participant’s PCSP and individual budget, either by reference or by attachment to the agreement. The agreement must include all updates to the plan and budget. The plan must address health and welfare issues, such as the need for an emergency back-up plan to provide support in the event that regular support workers have scheduled or unscheduled absences; the agreement specifically references the parties’ obligations regarding this plan. The participant agrees to follow specific requirements outlined by the waiver agency including assuring that selected providers meet applicable provider requirements. If the participant chooses, the fiscal intermediary or another agency may assist the participant in carrying out this task. It is incumbent upon the waiver agency to assure that chosen providers meet Medicaid provider requirements.

C. Retaining Chosen Workers & Providers

The participant (with support and consultation from allies) selects and contracts with providers of the services or supports identified in his or her individual plan. The participant has the choice to hire needed workers directly or contract with an agency to provide services and supports. The participant 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 participant is the sole employer. Similarly, a participant must directly enter into a Purchase of Services Agreement with an agency providing services and supports or a qualified individual professional practitioner

providing services and supports. Both types of agreements stipulate that the participant or his or her designated representative have authority to continue or terminate the contract. Neither the waiver agency nor the fiscal intermediary is a party to these agreements.

D. Fiscal Intermediary

A fiscal intermediary is an independent legal entity that acts as the fiscal agent of the waiver agency to assure financial accountability for the funds in the participants' individual budgets. The fiscal intermediary receives the funds comprising the person's individual budget; makes payments as authorized by the participant to providers of services, supports, or equipment; acts as an employer agency when the individual directly employs workers; and minimizes and eliminates conflicts of interest. While the essential roles of a fiscal intermediary are financial and administrative, the fiscal intermediary may also provide a variety of supportive services that assist the participant in using SD in LTC including assistance in locating and selecting qualified workers and training on how to manage workers. An essential role of the fiscal intermediary is to provide on-going individualized assistance to each participant as he or she arranges needed supports. The fiscal intermediary cannot be a direct provider of services.

The List of Fiscal Intermediary Functions describes in detail the functions of the fiscal intermediary, the waiver agency and the participants and the allocation of responsibilities among these parties. The Fiscal Intermediary Readiness Review includes a comprehensive list of fiscal intermediary tasks and provides a mechanism for both waiver agencies and fiscal intermediaries to assess capacity to begin services and annual performance. Waiver agencies can use these documents to construct fiscal intermediary arrangements to meet the needs of participants and monitor fiscal intermediary performance. A contract called a Fiscal Intermediary Agreement incorporates these duties.

E. Use of Medicaid Funds

Medicaid is the primary financing source for MI Choice services. The use of Medicaid funds places special accountability requirements specifically related to providing services and supports to assure accounting for the use of funds. When Medicaid funds are used, each service provider must execute a separate agreement, called the Medicaid Provider Agreement, with the waiver agency. In this agreement, the provider stipulates that the provider 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 a participant has an advanced directive to refuse life-sustaining medical treatment and inform the participant whether or not the provider is unable to carry out that advance directive so that the participant can make an informed choice in the hiring process.

These requirements are described in federal regulations at 42 CFR 431.107 and other sections of the Code of Federal Regulations referenced therein. The Medicaid Provider

Agreement complements the Self-Determination Agreement and Employment or Purchase of Services Agreements described above. The Medicaid Provider Agreement neither addresses the obligations that exist between the individual and his or her providers of services, nor makes the waiver agency or the fiscal intermediary a party to the agreements between the participant and the providers of services and supports.

F. Implementation

Waiver agencies are responsible for implementing SD in LTC. Each waiver agency must assure proper written agreements described above are in place and meet the purposes of each individual agreement. The prototypes in this document are in the appendices.

The waiver agency has responsibility to support participants choosing SD in LTC in their efforts to understand and apply the essential components of the system. The List of Fiscal Intermediary Functions contains information and guidance regarding what functions the waiver agency can provide or contract with the fiscal intermediary to provide. While not every participant will need assistance in each area, it is essential to successful implementation of the system that information, support and guidance be available and accessible to all participants.

SD in LTC is a partnership between the waiver agency and participants. Participants and their allies inform the waiver agency of issues that affect the ability of participants to successfully understand, interpret, and implement SD in LTC. Issues might include completion of the required agreements or finding, selecting, and managing workers. The waiver agency shall address these issues as they arise and is encouraged to schedule regular forums in which participants and their allies may gather to discuss and resolve common concerns and issues related to SD in LTC. The waiver agency develops and implements SD in LTC in a participant-friendly manner, making the methods as easy to use as possible.

The involvement of participants and their allies and advocates is critical throughout the process of implementing SD in LTC. These stakeholders must be involved in the development and use of fiscal intermediaries. Upon implementation of SD in LTC, the waiver agency must test the integrity of the system and develop both an individual and organizational approach to monitor its use. A simple audit of at least ten percent of the system that identifies the existence and sufficiency of the critical components may accomplish this requirement. As the system evolves, a defined and regularly scheduled forum involving all of the stakeholders can serve as a useful approach to assure success and avoid potential problems.

Waiver agencies must provide participants a mechanism to give feedback concerning fiscal intermediary performance to ensure:

- Participants are supported in the direction and control of chosen service providers;
- Each budget is presented so that the participant easily understands the budget and allocation of resources;
- Proper handling of waiver agency funds;
- All parties can easily follow reporting requirements;

- Participants, their allies and advocates are involved in the process of assessing and monitoring quality; and
- Information gathered is used to make positive change to the system.

The success SD in LTC depends on the partnership between the waiver agency, the fiscal intermediary and the participant. The waiver agency assures its policies and practices empower participants to make meaningful choices about how the individual budget is spent, consistent with the PCSP. Similarly, the fiscal intermediary must assist participants to create arrangements that support self-determination. The participants and their allies give input on how the system is working and how the agencies and individuals involved could better facilitate self-determination. As a result, individuals receiving MI Choice waiver services will be able to make decisions about their own lives.

III. SUPPORTING PARTICIPANT SUCCESS

A. SD in LTC Methods

Participants who successfully use SD in LTC to select, direct, and control providers do so with the help of others. Often, they use informal supports to assist them to implement arrangements that best meet their needs. A person may obtain and facilitate informal support through a number of methods used in this process.

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

When the methods SD in LTC are considered, the person-centered planning process must address the participant'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 allies can provide informal support to assist the participant.

The goal of arrangements that support self-determination is to provide the means and methods to enable participants to have meaningful lives in their communities. Most people living in their community already have the involvement of family members, friends, co-workers, and these individuals constitute their informal support network. They may also have important relationships with paid support workers or other professionals. Each person's situation and relationships are unique; some people may have more support than others may. Very few people will not have informal supports.

B. The Role of Informal Support

A discussion of possibilities for informal support must start with this legal fact: State law presumes all individuals, regardless of their abilities and disabilities, competent unless there is a legal determination otherwise. That legal determination may be in the form of a guardian or conservator under the Estates and Protected Individuals Act for a person who is determined legally incapacitated. In cases where the person has a legal guardian with authority over contracts, the guardian must be the employer of record. While some people have guardians, many participants in arrangements that support self-determination successfully use informal supports and representatives to assist them in managing their services and supports.

In its guidance on personal care options in the State Medicaid Manual, the federal Centers for Medicare and Medicaid Services endorses arrangements that support self-determination when the individual expresses the desire and has the ability to do so. It recognizes the role of informal supports and representatives: “Where an individual does not have the ability or desire to manage their own care, the State may either provide personal care services without participant direction or may permit family members or other individuals to direct the provider on behalf of the individual receiving the services.” This guidance is applicable to all arrangements that support self-determination.

Consider the general directive that the person must have the desire and the ability to be the employer in context of the life situation of each person. Some individuals may possess legal right under common law to be an employer, but cannot perform those functions without assistance or support. For some of these individuals, there may be a one or more involved family and friends or even trusted staff able and willing to assist by providing needed support and guidance. For others without this or comparable support, it will not be realistic or prudent for the waiver agency to authorize use of its funds for the participant him/herself to directly control methods associated with SD in LTC until the participant and supports coordinator have worked together to cultivate friends, family and community members to serve as informal supports.

C. Choosing a Representative

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

The waiver agency has input in this process through the involvement of the supports coordinator and must concur in the use of a representative relating to arrangements authorized and funded by the waiver agency. The supports coordinator should include appropriate documentation of the issues discussed and the resulting agreements and decisions in the participant’s record and PCSP.

Typically, where a participant has a representative performing the function of employer of support staff, the representative is a spouse or adult child. However, friends and others may take on this role. Regardless of whether the participant is the employer of record or has a representative performing that function, the waiver agency supports the participant to take the lead in responsibly expressing preferences and goals and directing support workers. When the participant appoints a representative to handle some SD in LTC functions, both the participant and representative must sign all relevant agreements.

D. Factors to Consider in Self-Determination

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

When determining which arrangements to use, the person and others involved in the person-centered planning process should consider:

- The participant's preference;
- The participant's ability to manage the desired arrangement. Gauge ability 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 participant that cannot be balanced with available support; and
- Other related factors that appear to impinge on or assist the potential success of a given approach.

A distinction exists 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 waiver agency to pay for that arrangement. While the individual's right to enter into agreements under common law cannot be terminated, the use of the waiver agency's funds to directly arrange for and control providers of services must be authorized by the waiver agency for the sole purpose of implementing the PCSP. If use of the SD in LTC option is beyond the ability of the participant, 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 methods of SD in LTC are deemed to be inappropriate for an individual, given his or her current circumstances, the waiver agency must document the basis for the decision and work with the individual and his or her allies to determine how needed informal supports can be cultivated.

It is unacceptable for the waiver agency to determine arbitrarily which methods a person may access and use simply for the convenience of the waiver agency. For example, a waiver agency may not deny individual participants the right to select, employ and

manage their own qualified providers because this choice may affect existing arrangements with traditional providers.

The waiver agency must provide clear information and guidance to the participant and their representative so that they understand the nature of the arrangements and the responsibilities involved with controlling public funds and employing workers. The waiver agency must emphasize that problems could accompany these responsibilities, if not handled properly. The waiver agency should provide for support mechanisms (e.g., use of a properly defined, constructed and oriented fiscal intermediary) to ensure tasks the participant will not handle directly are properly performed.

E. Addressing Health and Welfare Issues

During the planning process, bring up, discuss, and resolve issues of health, safety and welfare specific to the participant. Overall, the arrangement chosen by participants should not, create a situation where they are physically at risk without a plan of risk management strategies. While this dialogue and planning is already standard practice, arrangements that are directly determined and controlled by the participant (or his/her representative) do not include the contingency plans 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 be present for a shift. The Self-Determination Agreement requires the waiver agency to work with the participant 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 using a person-centered approach. Risk-management solutions must assure the health and welfare of the participant in ways that support attainment of his or her goals while maintaining the greatest feasible degree of personal control and direction.

IV. FISCAL INTERMEDIARIES

A. General Information

A fiscal intermediary is a central component of SD in LTC. The fiscal intermediary performs a number of essential tasks that support self-determined arrangements for MI Choice participants while assuring accountability for the public funds allotted to support those arrangements. A fiscal intermediary is a neutral and independent entity that acts as a fiscal agency of the waiver agency to assure fiduciary accountability for the funds comprising a participant's budget developed through the person-centered planning process. The fiscal intermediary makes payments to providers when authorized by the participant. A fiscal intermediary may also provide a variety of supportive services that assist participants in using SD in LTC to manage their own supports.

The List of Fiscal Intermediary Functions describes in detail the functions of the fiscal intermediary, the waiver agency, and participants and the allocation of responsibilities among these parties. The Fiscal Intermediary Readiness Review provides a detailed chart of tasks performed by the fiscal intermediary. Waiver agencies can use these documents to construct fiscal intermediary arrangements that meet the needs of

participants. A fiscal intermediary shall perform the duties specified in its Fiscal Intermediary Agreement with the waiver agency.

The fiscal intermediary has four basic areas of performance:

- Offer supportive services to enable participants to participate in self-determination and direct the services and supports they need,
- Ensure compliance with requirements related to management of public funds and the direct employment of workers by participants,
- Provide employer agency services for participants directly employing workers, and
- Facilitate a smooth relationship between the parties and meet the needs of the waiver agency and participants.

B. Fiscal Intermediary Roles and Responsibilities

A primary role of the fiscal intermediary is its fiduciary responsibility to the waiver agency to handle, manage and account for the funds in the individual budgets of participants choosing SD in LTC. The waiver agency may contract with the fiscal intermediary to handle other tasks such as providing employee verification functions or offering information and guidance to ensure successful use of SD in LTC.

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

However, the fiscal intermediary does support the participant in carrying out his or her self-determined arrangements. The fiscal intermediary processes payments for services and supports upon participant authorization. The fiscal intermediary accounts for all expenditures and provides monthly reports of expenditures to the participant and waiver agency. It also has an obligation to ensure that all required agreements between participants and providers are in place before making payment. When the participant directly employs workers, the fiscal intermediary provides employer agency services for the participant. An employer agency 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 IRS, state, and local income tax jurisdictions, and unemployment insurance regulators. In this role, the fiscal intermediary is providing a service to participants and not serving as their agency as traditionally defined in law.

The fiscal intermediary may also perform functions that enable the participant to direct needed services and supports. These functions include employee verification to check provider qualifications and conducting reference checks and criminal history reviews. The fiscal intermediary also performs other functions such as collecting and reporting data related to service delivery to the waiver agency on behalf of participants.

In addition to its administrative functions, a fiscal intermediary performs a critical role in supporting participants to ensure successful use of SD in LTC. The fiscal intermediary may directly support participants in hiring and managing their own workers. If requested to do so, the fiscal intermediary may provide participants with the information and guidance they need to direct their services and supports and work with them to develop creative approaches and arrangements that best meet their needs.

The information and guidance functions include advice on how to recruit potential workers, sample job interview formats and job descriptions, work formats, discussion groups on being a successful employer, and locating or arranging for training on first aid or universal precautions. These functions may also range from assistance with identifying and locating specific provider organizations in a given area to guidance in constructing contracts and agreements and support in finding and selecting other options for arrangements that successfully support participants as members of their communities. The Federal Government explores the range of roles of an Intermediary in a publication describing the various roles of an intermediary services organization.

C. Key Elements of the Waiver Agency and Fiscal Intermediary Relationship

The waiver agency is responsible for selecting one or more fiscal intermediaries to serve the participants in SD in LTC in its area. Waiver agencies identify qualified providers of this service by using the Fiscal Intermediary Readiness Review Protocol. The waiver agency must construct its contractual arrangements with the fiscal intermediary in terms that clearly define the fiscal intermediary and waiver agency's roles, responsibilities, and reporting requirements through a Fiscal Intermediary Agreement.

The Fiscal Intermediary Readiness Review is a comprehensive list of tasks that the FI must perform. This document provides a mechanism for the fiscal intermediary to measure its capacity to handle all necessary functions; similarly, the waiver agency can use it as an instrument for assessing readiness to provide FI services and monitoring performance. When implementing SD in LTC, the waiver agency has great flexibility to construct a unique relationship with the fiscal intermediary provided the relationship meets all technical requirements. The administrative functions and the employer agency functions are required of all fiscal intermediaries. Each waiver agency may contract for other specific services that meet its or the participants' needs, such as employee verification and information and guidance functions. The List of Fiscal Intermediary Functions describes these functions more fully, and provides a list of criteria for the waiver agency to use in developing and implementing its fiscal intermediary arrangements. The waiver agency must involve participants and their allies in the development and implementation of the fiscal intermediary arrangement.

The fiscal intermediary must be able to fulfill all functions identified in the selection process and included in the Fiscal Intermediary Agreement. The intermediary must have a positive record of accomplishment for managing funds and accounting. It also must be oriented to provide an individualized support and response to each participant. The waiver agency has a responsibility to provide clear guidance to the fiscal intermediary on the

accounting requirements, reporting formats, and timelines to ensure the fiscal intermediary properly accounts for Medicaid funds.

To avoid conflicts of interest, the fiscal intermediary cannot be a direct service provider and cannot have any compensated fiduciary relationship with the participant (such as guardian or trust holder) with the exception of serving as the representative payee for Social Security benefits. The waiver agency must implement monitoring and safeguards to minimize and avoid conflicts of interest by the fiscal intermediary especially when the Intermediary serves as representative payee for a participant.

The waiver agency derives many benefits from the fiscal intermediary arrangement. It shifts the responsibility for handling the administration and employer agency role to the fiscal intermediary. The fiscal intermediary provides a guarantee that it will properly handle and account for Medicaid funds. If properly constructed, the arrangement provides a buffer for the waiver agency and insulates the waiver agency from liability for all of the functions handled by the fiscal intermediary. As the potential for waiver agency liability is related to the specific contractual arrangement with the fiscal intermediary, local counsel should be actively involved in developing this arrangement.

Waiver agencies must select fiscal intermediaries carefully to ensure they have the capacity to perform the required functions and maintain accountability for the allocated funds. The waiver agency must develop and implement a plan for assessing and monitoring fiscal intermediary performance to ensure the fiscal intermediary is properly performing its functions. The waiver agency must actively involve participants and their allies to best monitor the fiscal intermediary in its assessment plan that includes focus groups, performance loops, and satisfaction surveys. The elements of this plan must minimally include: (1) fulfillment of the requirements of Fiscal Intermediary Agreement and indemnification of the waiver agency, (2) demonstrated competency in the safeguarding, management, and disbursement of funds, (3) evaluation of participant feedback and satisfaction data and (4) performance of an audit of a sample of budgets.

If a fiscal intermediary fails to fulfill its functions properly (especially the functions of accounting for Medicaid funds and handling the employer agency duties) and the waiver agency does not discover the situation through its monitoring process and take corrective action, the waiver agency may be held responsible and exposed to liability and potential financial penalties. The waiver agency must require the fiscal intermediary to carry adequate insurance and obtain performance bonding to safeguard against losses that could result from intentional or inadvertent errors of fiscal intermediary employees.

The waiver agency compensates the fiscal intermediary separately from the individual budgets it manages. MDHHS recommends compensating the fiscal intermediary for its services on a flat fee or case-mix rate basis. The waiver agency 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 waiver agency and the participants.

D. The Value of Using an Independent Intermediary

For SD in LTC to be successful, participants 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 participants, a fiscal intermediary should work to develop a relationship based on trust, respect and partnership with each participant and be oriented to individually respond to each person's needs.

The fiscal intermediary has the unique role of administering the PCSP with the individual budget directed by the participant. 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 participant choices. Free from such conflicts of interest, the fiscal intermediary can provide each participant with an individualized response supportive of individual choice. As a result, participants perceive the fiscal intermediary as a partner in implementing their supports in a way that meets their needs and preferences identified during the person-centered planning process.

The Fiscal Intermediary arrangement eliminates other barriers associated with the waiver agency. Some reported barriers include burdensome administrative requirements for the participant, attitudinal and procedural barriers that may hinder the ability of participants to voice their needs and preferences, and simple delays in processing payments. As an independent agent, the fiscal intermediary fosters trusting relationships with participants and thus, creates an environment where true self-direction can occur. To best facilitate this partnership, the waiver agency should offer a choice of intermediaries located in the participant's community, when it is able to do so.

E. Putting it All Together

The fiscal intermediary is a central component to use of SD in LTC in promoting the opportunity for arrangements that support self-determination for individuals receiving MI Choice services. Establishing a fiscal intermediary is a straightforward process, and since the entities selected as intermediaries will likely have experience in handling the requirements of the payroll administration process, the implementation of the use of the fiscal intermediary is relatively simple.

Putting the fiscal intermediary arrangement into place requires planning at the administrative level by the waiver agency. The waiver agent must map out the specifics of the model it will use to support SD in LTC. The waiver agency should seek local legal and accounting professional consultation to verify the proposed administrative arrangements between the waiver agency and the fiscal intermediary are properly constructed. The waiver agency must consider whether to contract with the fiscal intermediary to handle employment support functions. Identify and manage issues concerning potential conflicts of interest. MDHHS must approve all contracts between a waiver agency and MI Choice service provider.

As a central matter, the waiver agency must enlist the involvement of participants and their allies when it begins planning to establish arrangements with a fiscal intermediary. As systems are defined and developed, the waiver agency should walk through them with representative participants and their allies to assure ease of use. The best fiscal intermediaries properly handle the administrative management tasks required by the waiver agency, while making their complexities invisible to the participant. Upon implementation of the fiscal intermediary arrangement, the waiver agency should use survey methods, focus groups, and/or an ongoing participant oversight process to obtain feedback on how the system is working. When the fiscal intermediary supports the participant properly a successful arrangement, the opportunity for identifying and obtaining the choices of supports that best fit the needs of a participant are more likely to become reality.

V. MI CHOICE AND SD IN LTC

A. SELF-DETERMINATION IN LONG TERM CARE BACKGROUND

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

B. SELF-DETERMINATION PRINCIPLES

The SD in LTC option allows MI Choice participants direct control over the delivery of MI Choice services, the selection of workers to furnish services, and the approved MI Choice services budget. Participants selecting the SD in LTC option choose and control the providers of their services and supports. Self-determination embodies a set of concepts and values that participants have the right to define their lives and that the system of services should provide them with the freedom to do so and the authority to make decisions about their lives, including the opportunity to responsibly manage the use of needed services and supports. MI Choice participants are permitted to control MI Choice services without prior authorization by the waiver agency as long as they are working within the budget agreed upon between the participant (or the legal representative) and waiver agency.

Person-centered planning (PCP) is an essential component of SD in LTC. Using PCP, the participant and their supports coordinators (SCs) develop a PCSP and individual budget. The participant acquires and directs needed services and supports within the allocated budget. The waiver agency maintains accountability for service delivery, the use of Medicaid funds, and to support the participant in self-direction as needed. Participants and waiver agencies utilize fiscal intermediaries (FIs) to disburse the funds allocated in the participant's budget to the participant's chosen workers. All workers chosen by

participants to furnish needed services and supports must meet specific criteria. MDHHS defined the requirements for self-determined service providers in the document “Minimum Operating Standards for MI Choice Services” which is Attachment H of the MI Choice contract.

VI. WAIVER AGENCY REQUIREMENTS FOR SD IN LTC

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

A. Enrolling and Informing Participants

1. Waiver agencies must inform all MI Choice participants of the option to direct those services available through self-determination.
2. Participants choosing the SD in LTC option may enroll directly or use a representative. Representatives do not have to be a power of attorney or guardian. The participant’s representative must sign the SD in LTC enrollment agreement.
3. The participant and SCs develop and agree on the PCSP through the PCP process. The waiver agency authorizes the types of services and number of hours determined in the PCSP. The participant (with assistance from SCs, allies, or others when necessary) identifies workers and back-up workers.
4. The participant and SCs develop a budget using a template approved by MDHHS. The SCs provide the participant with a meaningful copy of the budget or budget worksheet. The participant signs the budget. The SCs and participant revisit the budget when the need arises, or at least every 90 days.
5. The participant signs the Enrollment form or Self-Determination agreement. The Enrollment form or Self-Determination agreement must include participant’s name, date of birth, Medicaid number, Social Security number, the enrollment date, and the participant’s representative if the participant has designated a representative.
6. An individual worker may not be a legally recognized spouse or guardian of the participant. MDHHS may approve the spouse of the participant’s designated representative to be an individual worker upon request from the waiver agency.
7. Identified workers sign a release for a criminal background check, employment application, Medicaid provider agreement, and employment agreement. Back-up worker(s) also sign these documents.
8. The participant and SCs determine and arrange training needs for identified workers.
9. The participant, waiver agency, and FI schedule the enrollment, determine the start date for SD in LTC, and sign all agreements and required documents.

B. Fiscal Intermediaries

1. Each waiver agency must contract with at least one FI that meets the service standards defined in this document and the “Minimum Operating Standards for MI Choice Waiver Services.” Waiver agencies are responsible for annual reviews of the FI.
2. The FI provides employment forms for workers.
3. The FI provides monthly budget reports to the waiver agency and participant. The SCs follow up with the participants when budget reports indicate that budgets are more than 10% over or under the approved amount.

C. AGENCY WITH CHOICE MODEL

1. Introduction

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

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

2. Advantages

The AWC model has several advantages:

- a) Participants may value the additional layer of emergency backup.
- b) The AWC may have the potential to offer fringe benefits, such as vacation time or health insurance to workers.
- c) Participants who are new to being employers may want to have another entity take responsibility for the complex human resources and administrative functions.

- d) Workers may be able to obtain full-time employment by working for several participants.

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

3. The Role of the Agency with Choice Provider

An AWC provider must develop a system and written policies and procedures that incorporate the philosophy and practice of self-determination, for guiding participants and/or their chosen legal representatives to recruit, interview, and select workers and refer them to the AWC for employment. Within that system, both the participant and the AWC have defined roles and functions. In its role as the employer of record of workers, the AWC provider handles many of the employer duties.

a) Financial Management:

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

b) Human Resources

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

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

The AWC provider may also provide supportive services aimed at achieving a successful outcome as determined by the waiver agency and the needs of the

participant. For example, the participant can seek and obtain support from the AWC provider in recruiting, selecting, and hiring workers. In some situations, family, friends, or the SC may provide that support.

4. The Role of the Participant

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

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

5. Role of the Waiver Agency

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

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

6. Requirements

a) The Agreement between the AWC Provider and the Participant

The Agreement between the AWC provider and the participant defines the roles and responsibilities of each of the parties, the assistance and support available to the participant, and the methods available for problem resolution. The agreement should specifically state that the participant may select any qualified provider that he or she chooses and terminate any worker at any time, for any legal reason (workers are at-will employees). The agreement must prohibit any practices by the

AWC that impose penalties or fines when a worker leaves the AWC to work directly for a participant. The agreement must account for how the participant will go about handling these managing employer tasks. It must be clear that the role of the AWC is not to co-supervise the support worker, or to monitor the participant's management of the worker.

b) The Employment Agreement

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

c) Use of a FI

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

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

When the AWC is the sole provider, another option is for the waiver agency to pay the AWC provider directly without using a FI. In this situation, the waiver agency must be prepared to assure that this portion of budgeted funds is easily transferable. The waiver agency must maintain portability of the participant's individual budget to the greatest degree possible to enable the participant to choose another agency or method for employing workers if he or she chooses to do so. In addition, the waiver agency or the AWC must develop a monthly reporting mechanism so that the individual can exercise his or her responsibility to manage the individual budget.

d) Selection Criteria

Each waiver agency may select one or more Agencies with Choice to provide MI Choice services. The waiver agency must assure the AWC has the capacity to

complete required duties. If the waiver agency contracts with more than one AWC provider, the participant may choose between or among the agencies.

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

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

The waiver agency should identify criteria for AWC, and select and contract with agencies that meet those criteria. The AWC provider understands and embraces the philosophy of self-determination and has a history of supporting individual choice and control. The contract should clearly define the expectations of both the waiver agency and the AWC provider and should incorporate the assurances of the Medicaid Provider Agreement. Neither waiver agencies, nor its subsidiaries or affiliated agencies, can serve as an AWC. The waiver agency must have a mechanism for monitoring and documenting the quality of the AWC functions so that it can obtain and act upon feedback from participants and allies.

7. Implementation Issues and Conflicts of Interest

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

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

The AWC provider can support a participant in recommending worker candidates that meet worker characteristics identified for a specific participant during the person-centered planning process. The participant can interview the candidates to determine the best match for his or her needs. In supporting the participant in choosing their workers, the AWC provider should never make a choice for or on behalf of the participant.

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

D. DEVELOPING AND IMPLEMENTING INDIVIDUAL BUDGETS

1. Introduction

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

Authority over an individual budget has four components:

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

The individual budget must:

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

2. Elements of the Individual Budget

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

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

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

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

The participant and his or her allies are fully involved in the budget development process and the participant understands the options and limitations for using the funds in the individual budget to obtain the services and supports in the PCSP. The SC informs participants in writing of the options for, and limitations on, flexibility and portability. Waiver agencies must inform participants as to how, when, and what kind of changes they can make to their individual budget without SC approval and when such changes require approval.

3. Developing the Individual Budget

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

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

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

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

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

4. Monitoring and Modifying the Individual Budget

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

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

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

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

5. Conclusion

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

E. RESCINDING ENROLLMENT IN SD IN LTC

The waiver agency may rescind enrollment in the SD in LTC option for participants. This may be either a voluntary or an involuntary decision by the participant. The waiver agency must document all rescinded SD in LTC enrollments in the case record and include the reason for rescinding the enrollment and resolutions attempted prior to rescinding. When the waiver agency rescinds the SD in LTC enrollment, the participant returns to traditional waiver services without an interruption in service delivery. The waiver agency informs the participant of the grievance process when it rescinds the SD in LTC enrollment. Rescinding the SD in LTC enrollment is not cause for an appeal or a Medicaid Fair Hearing. However, if authorized services are reduced, suspended, or terminated the individual may file an appeal.

VII. SD IN LTC FORMS

MDHHS requires waiver agencies, participants, and chosen workers to complete several forms when participants choose the SD in LTC option for receiving MI Choice services. The Appendices to this Attachment include mandatory forms that waiver agencies must use "as is." The Exhibits to this Attachment include mandatory forms that waiver agencies may alter to suit agency preferences. Additionally, the pioneer sights developed optional forms that assist with meeting SD in LTC requirements. These optional forms are included as Addendums to this Attachment. Below is a list of all Appendices, Exhibits, and Addendums.

A. APPENDICES

1. List of Fiscal Intermediary Functions
2. Fiscal Intermediary Readiness Review
3. Annual Fiscal Intermediary Review

B. EXHIBITS

1. Budget Forms
2. Self-Determination Enrollment Agreement
3. Employment Agreement
4. Medicaid Provider Agreement
5. Dis-enrollment Form
6. Back-up Worker
7. Agency with Choice Agreement
8. Agency with Choice Employment Agreement

C. ADDENDUMS

1. Training Record (Optional)
2. Criminal Background Check Policy (Optional)
3. Right to Hire (Optional)
4. Right to Hire Driving Record (Optional)
5. SD in LTC Flyer (Optional)
6. Person Centered Planning Brochure (Optional)

List of Fiscal Intermediary Functions

The following is a list of the functions of the parties involved in the Choice Voucher System, which is a set of arrangements that enable MI Choice participants to direct the services and supports they need. The list includes functions of the waiver agency, fiscal intermediary (FI) and the participants.

<p>I. The Role of the waiver agency and Fiscal Intermediary Selection <i>The waiver agency is responsible for selecting and contracting with at least one fiscal intermediary. The following sections describe the role of the waiver agency, the qualifications of the fiscal intermediary, and the criteria used to monitor the fiscal intermediary.</i></p>
<p>A. Waiver agency Functions <i>The waiver agency may have the following functions:</i></p>
1. Develop a Fiscal Intermediary Agreement that outlines the minimum functions of both the waiver agency and the FI;
2. Develop and provide a written set of procedures for the FI including clear guidance on the minimum requirements for accounting;
3. Require FI to maintain liability insurance and indemnify waiver agency for performance of FI functions;
4. Involve participants and their allies ¹ as advisory to the process of developing and defining the purpose and use of fiscal intermediaries, and continue to use participant feedback to assess and improve quality in the FI performance to ensure that: (a) participants are supported in the direction and control of chosen providers of services; (b) the Waiver agency funds are handled correctly; and (c) the reporting requirements can be easily followed by all parties;
5. Implement monitoring and safeguards to avoid and minimize potential conflicts of interest by FI;
6. Develop a procurement process (such as a RFP Process) with clear delineation of the FI requirements and functions;
7. Create reporting formats and timelines;
8. Compensate the FI on a flat fee basis, case rate, or other payment process that is not a percentage of individual budgets;
9. If the waiver agency has more than one fiscal intermediary, provide participants with choice of FI entity;
10. Define and inform participants of procedures to request an adjustment to an individual budget.

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

<p>B. Fiscal Intermediary Qualifications <i>The following attributes have been identified as qualifications for a fiscal intermediary and are to be considered in the selection process:</i></p>
<p>1. Cannot be a direct provider of waiver services;</p>
<p>2. Cannot be a guardian or trust holder of any participant or have any other compensated fiduciary relationship with a participant (except representative payee);</p>
<p>3. Must be able to fulfill the functions (which may include Employee Verification, Employer Agent, and/or Information and Guidance Functions) required by waiver agency as identified in the Fiscal Intermediary Agreement;</p>
<p>4. Has a positive track record of managing money and accounting;</p>
<p>5. Is oriented to support and respond to each participant with an individualized response;</p>
<p>6. Is able to work with participants to consider creative approaches both in payments and in arrangements (such as weekly payroll payments).</p>
<p>C. Criteria For waiver agency To Use To Assess & Monitor FI Performance</p>
<p>1. Develop and implement a plan for assessing and monitoring FI performance that involves participants and their allies in the assessment and monitoring. The plan should include: a. Use of an initial readiness review checklist and process review of FI performance to be performed prior to implementation of FI services; and b. A periodic performance review process of FI performance at least annually. For further guidance, consult the Fiscal Intermediary Initial Readiness Review (attached as Appendix II)</p>
<p>2. Elements of the plan must minimally include:</p>
<p>a. Fulfillment of Fiscal Intermediary Agreement requirements;</p>
<p>b. Competency in safeguarding, management and disbursement of funds;</p>
<p>c. Ability to indemnify waiver agency pursuant to Fiscal Intermediary Agreement requirements;</p>
<p>d. Evaluation of participant feedback and experience with and satisfaction of FI performance data with alternate methods for collection data from participants (i.e. more than mailed surveys);</p>
<p>e. Involvement of participants and their allies in the development and implementation of the FI arrangement;</p>
<p>f. Performance of an audit of a sample of the budgets.</p>

<p>II. Fiscal Intermediary Functions <i>The fiscal intermediary has four basic areas of performance: (1) to ensure compliance with requirements related to management of public funds and employment of workers by participants; (2) to provide employer agent functions for participants as requested; (3) to offer supportive services to enable participants to self-determine and direct the services and supports they need; and (4) to otherwise facilitate a smooth relationship between the parties and meet the needs of the waiver agency and participants.</i></p>
<p>A. Administrative Functions <i>The following are the general administrative functions of the fiscal intermediary:</i></p>
<p>1. Safeguard, manage and account for funds disbursed from the waiver agency;</p>
<p>2. Disburse funds to vendors and providers after obtaining (a) Purchase of Services Agreements and Employment Agreements; (b) verification that a Medicaid Provider Agreement has been signed by each provider; and (c) timesheets or invoices approved by participant or his or her authorized representative².</p>
<p>3. Assist each participant in assuring all necessary documentation is in place including, but not limited to, all agreements required by the waiver agency including a Medicaid Provider Agreement from each service provider;</p>
<p>4. Maintain complete current financial records, copies of all agreements, and supporting documentation verifying expenditures paid by the FI on behalf of each participant for seven years;</p>
<p>5. Record, maintain and provide a monthly spending report for each participant and provide a copy to the waiver agency and the participant and maintain records for seven years;</p>
<p>6. Indemnify waiver agency for FI Functions and maintain liability insurance;</p>
<p>7. Flag for the waiver agency and the participant any deviation in an individual budget of ten (10) percent either in under or over expenditures at any time;</p>
<p>8. Reconcile all accrued expenses/accounts in the period defined in the Fiscal Intermediary Agreement following the end of the fiscal year;</p>
<p>9. Make records regarding participants available to the waiver agency as requested and allow each participant access to his or her own records;</p>
<p>10. Perform an audit as required by the Fiscal Intermediary Agreement;</p>
<p>11. Accumulate and report service activity and encounter data if a contractual requirement applies.</p>

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

B. Employer Agent Functions

When a participant is directly employing workers, the fiscal intermediary shall provide employer agent functions and perform the financial administrative duties of employer, pursuant to the Internal Revenue Code Section 3504, IRS Revenue Procedure 70-6 and 80-4 and IRS Notice 2003-70. The required tasks for employer agent services of the fiscal intermediary include but are not necessarily limited to:

1. Issue payroll payments to workers hired directly by the participants;
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. Serve as payment agent for vendors of services and supports chosen and retained by the participant;
5. Issue W-2 forms and tax statements;
- 6 Obtain documentation from the participants and file it with the IRS so that the FI can serve as Employer Agent for participants, and meet the requirements of state and local income tax authorities and unemployment insurance authorities;
7. Assist the participant with purchasing worker's compensation insurance, if required.

III. Employment Support Functions

Employment support functions ensure that the participants are able to use the SD in LTC option successfully. The waiver agency is responsible for assuring that these functions are provided. It can provide the services itself or contract with the fiscal intermediary or another agency to perform these functions.

A. Employee Verification Functions

All workers hired through the Choice Voucher System must provide written verification that they meet employment requirements. In some cases, the FI will be responsible for this verification; in others, the participant or another agency will be responsible.

1. Perform criminal background checks and reference checks on workers;

2. Verify citizenship or resident alien status of each worker;

3. Assure that each provider of services and supports retained by the participant is not a legally responsible person for the individual, and is in compliance with provider requirements of the waiver agency including the five minimum requirements of Chapter Three of the Medicaid Manual:

- a. at least 18 years of age;
- b. able to prevent transmission of any communicable disease from self to others in the environment in which they are providing supports;
- c. able to communicate expressively and receptively in order to follow individual plan requirements and participant-specific emergency procedures, and report on activities performed;
- d. in good standing with the law pursuant to the criteria developed by the relevant waiver agency;
- e. able to perform basic first aid procedures.

If the fiscal intermediary performs these functions, it is responsible for safeguarding the findings, reporting them to the waiver agency and the appropriate participant, and maintaining records.

If another agency performs these functions, then the agency must report its findings to the participant and the FI. The FI maintains its responsibility to safeguard the information and maintain records.

If the participant performs these functions, he or she must share the findings with the FI. The FI maintains its responsibility to safeguard the information and maintain records.

<p>B. Information and Guidance Functions</p> <p><i>The waiver agency and fiscal intermediary shall make information and guidance available to the participants when they are to be the direct employer of workers. Such information shall assist participants in being successful employers. These supportive services shall include at least the following tasks:</i></p>
<p>1. Assist the participant to understand reporting, invoice processing and documentation responsibilities.</p>
<p>2. Provide information on how to recruit workers;</p>
<p>3. Provide of sample job interview formats and job descriptions;</p>
<p>4. Arrange and facilitate participation in peer discussion groups aimed at supporting a participant to be successful in the employer role;</p>
<p>5. Locate and arrange training, including training in first-aid and the prevention of transmission of communicable diseases, for employment candidates referred by the participant;</p>
<p>6. Assist each participant with the use of his or her individual budget, as requested or needed;</p>
<p>7. Support participants to facilitate timely authorization of payments and accurate record keeping;</p>
<p>8. Assist participants to find and select options for support arrangements including locating and selecting qualified workers;</p>
<p>9. Assure that an emergency back-up staffing arrangement is in the participant’s individualized PCSP.</p>

The waiver agency is responsible for ensuring that these functions are performed. It can perform them itself or contract with the FI or a participant-chosen third party to perform them. If the waiver agency contracts with FI to perform them, the waiver agency must monitor and assess the FI’s performance and involve participants and their allies in that process.

<p>C. Participant Role <i>Participants must be actively involved in all aspects of the Choice Voucher System. They must agree to fulfill their responsibilities in the Self-Determination Agreement. Their responsibilities are:</i></p>
<p>1. Manage the use of funds so that expenditures in the aggregate do not exceed the amounts identified in the individual budget and notify the waiver agency and FI about any change in circumstances that may require a modification of the individual PCSP or the individual budget;</p>
<p>2. Provide all necessary information to the FI regarding all providers of services and supports and ensure that all required documentation and written agreements are in place, including a Medicaid Provider Agreement by each employee and service provider;</p>
<p>3. Assure that each service provider retained by them is in compliance with the provider requirements of the waiver agency;</p>
<p>4. Provide the FI with necessary authorization and documentation (such as timesheets and invoices) to support expenditures of funds;</p>
<p>5. If FI serves as their employer agent, provide FI with the information and documentation necessary to perform employer agent duties;</p>
<p>6. Attempt to resolve any dispute with the FI through the local dispute resolution process, when possible;</p>
<p>7. Communicate with the FI and waiver agency and seek assistance from these entities as needed;</p>
<p>8. Provide feedback to FI to enable it to improve its service delivery.</p>

SELF-DETERMINATION IN LONG-TERM CARE
FISCAL INTERMEDIARY READINESS REVIEW

Name of Fiscal Intermediary Reviewed:
Address:
Phone:

A. Status of Physical Plant, Equipment, Information Systems Technology, and Customer Service System

A.1. Is the physical plant’s location, size, equipment (including computer hardware and software) adequate to operate Fiscal Intermediary (FI) services effectively?
Yes No

If not, why and what is the FI’s plan for correcting the situation?

A.2. Is the FI effectively executing the philosophy of participant direction and being culturally sensitive in all business practices in order to communicate effectively with a diverse population of participants of all ages and with a variety of disabilities and chronic conditions?

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

If not, why and what is the FI’s plan for correcting the situation?

A.3. Does the FI communicate effectively with participants who have a variety of functional impairments, including the need for large print/alternative formats, telecommunication devices for hearing and speech impaired, and access to translation services and to an interpreter?

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

If not, why and what is the FI’s plan for correcting the situation?

A.4. Are the necessary technologies and accommodations in place adequate to operate FI services effectively?

- Toll free number (or other method for free calls from participants)
- Internet web site
- E-mail communication option
- TDD line
- Fax (minimum 28.8 - standard)
- Alternate/large print capabilities
- Foreign language/American sign language capabilities

If not, why and what is the FI's plan for correcting the situation?

A.5. Does the FI return calls within 24 and at most, 48 hours from the time the message is recorded?

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

If not, why and what is the FI's plan for correcting the situation?

A.6. Does the FI have an automated communication, corrective action, and complaint tracking system for participants and workers that addresses the following issues so that the FI can analyze information by participant, issue, and over time?

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

If not, why and what is the FI's plan for correcting the situation?

A.7. Does the FI notify participants and Waiver Agency staff in a timely manner in the event a payroll is processed and disbursed late (i.e., over five days)

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

If not, why and what is the FI’s plan for correcting the situation?

A.8. Does the FI process participants’ representatives including:

- Making sure the representative is not a paid service provider for the participant, and
- When the representative is the common law employer of the workers (does not have an executed federal, and state, as required, Power of Attorney) and when the representative is not the common law employer of the workers (has a federal and state, as required, Power of Attorney).

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

If not, why and what is the FI’s plan for correcting the situation?

A.9. Does the FI obtain and evaluate participant feedback, experience, and satisfaction with the receipt of FI services, have alternative methods for collecting this information (e.g., more than mail surveys) and use this information to make improvements to systems, policies, and procedures?

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

If not, why and what is the FI’s plan for correcting the situation?

B. Staffing

B.1. Does the FI have an organization chart for the organization and for the FI function?

Yes No

Attach a copy of all relevant organizational charts.

If not, why and what is the FI’s plan for correcting the situation?

B.2. Are the key management and staff in place and is the level of staffing (FTEs) and staff qualifications and experience sufficient to provide effective FI services? Attach job descriptions of all FI management and staff positions and resumes of existing staff.
_____Yes _____No

If not, why and what is the FI's plan for correcting the situation?

B.3. Has the FI had any trouble recruiting FI staff and does the FI foresee any challenges in recruiting staff in the future?
_____Yes _____No

If yes, how does the FI plan to address these challenges?

C. Coordination and Communication with Waiver Agency Support Coordinators

C.1. Does the FI communicate effectively with the Support Coordinators and avoid duplication of activities in supporting participants in understanding and implementing arrangements?
_____ System in Place
_____ Written Policies and Procedures in Place
_____ Internal Controls Documented for Monitoring

If not, why and what is the FI's plan for correcting the situation?

C.2. Do the FI's policies and procedures clearly describe the FI's and Support Coordinators' role and responsibilities related to the MI Self-Determination in LTC Supports and Services, participants and workers?
_____Yes _____No

If not, why and what is the FI's plan for correcting the situation?

C.3. Does the FI receive information including Medicaid identification numbers, PCSPs, and individual budget from the Waiver Agency regarding participants who enroll in and disenroll from the Self-Determination in LTC option?

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

If not, why and what is the FI's plan for correcting the situation?

C.4. Does the FI notify the participant's Supports Coordinator when FI staff becomes aware of an issue related to a participant's performance (e.g., untimely timesheet filing or over reporting of worker's hours) and/or any incidences of financial fraud/abuse or a participant's inability to perform required tasks?

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

If not, why and what is the FI's plan for correcting the situation?

D. 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

D.1. 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

Attach a copy of the manual.

If not, why and what is the FI's plan for correcting the situation?

D.2. 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

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

If not, why and what is the FI’s plan for correcting the situation?

D.3. Does the FI review and update all IRS forms, instructions, notices, and publications related to FIs, household employers, and employees and for withholding, filing and paying federal income tax withholding and employment taxes (FICA and FUTA) and managing advanced payments of federal earned income credit (EIC) on behalf of the participants it represents and their workers? (Key web site www.irs.gov)

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

If not, why and what is the FI’s plan for correcting the situation?

D.4. Does the FI review and update all applicable US 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)

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

If not, why and what is the FI’s plan for correcting the situation?

D.5. Does the FI review and update all applicable federal Department of Labor 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)

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

If not, why and what is the FI’s plan for correcting the situation?

D.6. Does the FI review and update all applicable Michigan Department of Labor & Economic Growth rules, forms and instructions related to household employers and domestic service employees and related to State wage and hour rules? (Key web site: www.michigan.gov/cis)

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

If not, why and what is the FI’s plan for correcting the situation?

D.7. Does the FI review and update all Michigan Department of Labor & Economic Growth Unemployment Insurance Agency rules, forms, and instructions for registering and retiring participants as employers and for withholding, filing, and paying state unemployment insurance taxes for each participant it represents in accordance with information presented on state web sites and in department handbooks/manuals? (Key web site: www.michigan.gov/uia)

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

If not, why and what is the FI’s plan for correcting the situation?

D.8. Does the FI report participants’ new hires through the Michigan New Hires Operations Center? (Key web site www.newhire-usa.com/mi)

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

If not, why and what is the FI’s plan for correcting the situation?

D.9. Does the FI review and update all rules, forms, and instructions for registering and retiring participants as employers and for withholding, filing, and paying state income tax withholding for each participant it represents in accordance with information provided on the MI Department of Treasury web site(s) and in department handbooks/manual(s)? (Key web site: www.michigan.gov/treasury)

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

If not, why and what is the FI’s plan for correcting the situation?

D.10. Does the FI identify participant’s back-up workers for payroll purposes?

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

If not, why and what is the FI’s plan for correcting the situation?

E. Administration – Record Management Process

E.1. Does the FI establish and maintain current participant, worker, and FI files on site in a secure and confidential manner as required by federal and state rules and regulations (e.g., records kept in a secure place with restricted access using a password protected computer system)?

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

If not, why and what is the FI’s plan for correcting the situation?

E.2. Does the FI establish and maintain archived participant, worker, and FI files in a secure and confidential manner as required by federal and state rules and regulations either on or off site (e.g., records kept in compliance with secure place with restricted access using a password protected computer system)? Does the FI maintain the files for seven years either on or off site?

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

If not, why and what is the FI’s plan for correcting the situation?

E.3. 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?

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

If not, why and what is the FI’s plan for correcting the situation?

E.4. 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 No

- System in Place
- Written Policies and Procedures in Place
- Internal Controls Documented for Monitoring
- Approval by Waiver Agency

If not, why and what is the FI’s plan for correcting the situation?

E.5. Has the FI developed a system and a written policy and procedure and internal control for maintaining other records and information required by the contract with the Waiver Agency?

- Written Policies and Procedures in Place
- Internal Controls Documented for Monitoring
- Approval by Waiver Agency

If not, why and what is the FI’s plan for correcting the situation?

F. Administration – Processing Payroll and Invoices Preparing and Submitting Required Reports to State Government and Participants/Representatives

F.1. Does the FI process payroll and pay other invoices in an efficient manner?

- System in Place
- Written Policies and Procedures in Place
- Internal Controls Documented for Monitoring
- Approval by Waiver Agency

If not, why and what is the FI’s plan for correcting the situation?

F.2. Has the FI developed the format for and submitted a sample monthly report of financial activities to each participant with a copy to the Waiver Agency?

- System in Place
- Written Policies and Procedures in Place
- Internal Controls Documented for Monitoring
- Approval by Waiver Agency

If not, why and what is the FI’s plan for correcting the situation?

F.3. Does the FI report the information required by the MDHHS/Office of LTC Supports and Services to the Waiver Agency?

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

If not, why and what is the FI’s plan for correcting the situation?

G. Enrollment of Participants and Workers

G.1. Does the FI have a standard orientation protocol for participants (by phone or in-person), as requested by the participant or representative, to be implemented by FI staff?

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

If not, why and what is the FI’s plan for correcting the situation?

G.2. Does the FI ensure that each participant understands the role of the FI in the Self-Determination in LTC option?

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

If not, why and what is the FI’s plan for correcting the situation?

G.3. Does the FI evaluate all FI orientation materials and its standard orientation protocol?

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

If not, why and what is the FI’s plan for correcting the situation?

G.4. Has the FI developed participant enrollment and worker employment packets that contain the following information and is it in a user-friendly format? Attach a copy of each of the packets.

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

If not, why and what is the FI’s plan for correcting the situation?

G.5. Does the FI produce and distribute Participant Enrollment and Worker Employment Packets and collect, review and process the information contained in these packets?

Yes No

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

If not, why and what is the FI’s plan for correcting the situation?

H. Waiver Agency Approval to Be an FI

H.1. Is the FI enrolled with the Waiver Agency as a Medicaid provider with an executed contract to provide FI services?
_____Yes _____No

If not, why and what is the FI’s plan for correcting the situation?

H.2. Does the FI have a separate FEIN specifically to file the IRS Forms 2678, 8821 and selected federal tax forms on participants’ behalf?
_____Yes _____No

If not, why and what is the FI’s plan for correcting the situation?

H.3. Has the FI executed an IRS Form 8655, *Reporting Agency Authorization* between itself and its reporting agency, if the FI has engaged a reporting agency to process payroll on its behalf and for maintaining the applicable documentation in the FI’s file?
_____Yes _____No

If not, why and what is the FI’s plan for correcting the situation?

H.4. Does the FI revoke IRS Form 8655 with a reporting agency when appropriate and for maintaining the applicable documentation in the FI’s file?
_____ System in Place
_____ Written Policies and Procedures in Place
_____ Internal Controls Documented for Monitoring

If not, why and what is the FI’s plan for correcting the situation?

H.5. Does the FI attach a federal employer identification number (FEIN) for each participant it represents and for maintain copies of the IRS FEIN notification and the filed Form SS-4, *Application for Employer Identification Number* in each participant’s file?

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

If not, why and what is the FI’s plan for correcting the situation?

H.6. Does the FI retire individuals’ FEINs when they are no longer employers (and stating specifically in the letter when the participant is deceased)?

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

If not, why and what is the FI’s plan for correcting the situation?

H.7. Does the FI monitor the FEIN process, including attaching and retiring FEINs and making sure all relevant documentation is maintained in each participant’s file?

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

If not, why and what is the FI’s plan for correcting the situation?

H.8. Does the FI prepare, submit and maintain copies of a signed IRS Form 2678: *Employer Appointment of Agency*, Request for Approval Letter (multiple individuals may be listed on one letter) to the IRS for maintaining IRS Approval Notification for each participant it represents?

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

If not, why and what is the FI’s plan for correcting the situation?

H.9. Does the FI submit the IRS Form 2678 and IRS Request for Approval Letter, receipt of IRS FI Authorization Notice from the IRS and documents revoking the IRS Form 2678 in

accordance with IRS requirements and the maintenance of all relevant documentation in each participant’s file?

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

If not, why and what is the FI’s plan for correcting the situation?

H.10. Does the FI file a signed IRS Form 8821, *Tax Information Authorization* with the IRS for each participant it represents in order to communicate with the IRS on the participant’s behalf regarding federal employment tax issues and to maintain copies of the Form in each participant’s file?

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

If not, why and what is the FI’s plan for correcting the situation?

H.11. Does the FI file IRS Form 8821 renewals for each applicable participant at the appropriate time?

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

If not, why and what is the FI’s plan for correcting the situation?

H.12. Does the FI revoke the IRS Form 8821 for each participant when the FI no longer represents the individual, and to maintain the relevant documentation in the participant files?

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

If not, why and what is the FI’s plan for correcting the situation?

H.13. Does the FI file the Michigan Department of Treasury Form 518, *Registration for Michigan Taxes* and Attaching state income and unemployment tax registration numbers for each participant it represents and maintain the appropriate documentation in participants’ files?

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

If not, why and what is the FI’s plan for correcting the situation?

H.14. Does the FI retire the state income tax registration number for each participant it represents using the MI Department of Treasury Form 163, *Notice of Change or Discontinuance* and for maintaining the appropriate documentation in participants’ files?

Yes No

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

If not, why and what is the FI’s plan for correcting the situation?

H.15. Does the FI retire the state unemployment tax registration number for each participant it represents using the MI Department of Labor and Economic Growth Form 1772, *Discontinuance or Disposition of Business* and for maintaining the appropriate documentation in participants’ files?

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

If not, why and what is the FI’s plan for correcting the situation?

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

SELF-DETERMINATION IN LONG-TERM CARE
FISCAL INTERMEDIARY ANNUAL PERFORMANCE REVIEW

Name of Fiscal Intermediary Reviewed:
Address:
Phone:

A. Customer Service Procedures and Practices

A.1. Does the FI communicate effectively with participants? Yes No

If not, describe the issues and the recommended corrective action.

Horizontal lines for text entry.

A.2. Are the necessary technologies and accommodations in place adequate to effectively operate FI services? Yes No

- Toll free number (or other method for free calls from participants)
Internet web site
E-mail communication option
TDD line
Fax (minimum 28.8 - standard)
Alternate/large print capabilities
Foreign language/American sign language capabilities
Vendor View

If not, describe the issues and the recommended corrective action.

Horizontal lines for text entry.

A.3. Does the FI return calls within 24 and at most 48 hours from the time the message is recorded? Yes No

If not, describe the issues and the recommended corrective action.

Horizontal lines for text entry.

A.4. Does the FI have a communication, corrective action, and complaint tracking system for participants and workers? _____ Yes _____ No

If not, describe the issues and the recommended corrective action.

A.5. Does the FI process payroll and pay other invoices in an efficient manner? _____ Yes _____ No

If not, describe the issues and the recommended corrective action.

A.6. Does the FI notify participants and Waiver Agency staff in a timely manner in the event a payroll is processed late (i.e., over five days)? _____ Yes _____ No

If not, describe the issues and the recommended corrective action.

A.7. Does the FI obtain and evaluate participant satisfaction surveys, and use this information to make improvements to systems, policies, and procedures? _____ Yes _____ No

If not, describe the issues and the recommended corrective action.

B. Staffing and Coordination and Communication with Waiver Agency Support Coordinators and Participants

B.1. Does the FI have an organizational chart for the organization and for the FI function? _____ Yes _____ No

Attach a copy of all relevant organizational charts.

B.2. Are the names and contact information of the appropriate contact people communicated both to waiver agencies and to participants? Yes No

If not, describe the issues and the recommended corrective action.

B.3. Does the FI have a standard orientation protocol for participants or their representative? Yes No

If not, describe the issues and the recommended corrective action.

B.4. Does the FI ensure that each participant understands the role of the FI in the Self-Determination in LTC option? Yes No

If not, describe the issues and the recommended corrective action.

B.5. Does the FI communicate effectively with the Support Coordinators and avoid duplication of activities in supporting participants in understanding and implementing arrangements? Yes No

If not, describe the issues and the recommended corrective action.

B.6. Does the FI notify a participant's Supports Coordinator when FI staff becomes aware of an issue related to a participant's performance (e.g., untimely timesheet filing or over reporting of worker's hours) and/or any incidences of financial fraud/abuse? Yes No

If not, describe the issues and the recommended corrective action.

- B.7. Does the FI provide a monthly report of financial activities to each participant with a copy to the Waiver Agency?
B.7.1. Are monthly reports provided in a timely manner?
B.7.2. Are monthly reports clear and easy to understand?
B.7.3. Do the monthly reports include all needed information?

If not, describe the issues and the recommended corrective action.

C. Administration - FI Policies and Procedures Manual, and Staying Up-to-Date with Federal and State Rules and Regulations

- C.1. Has the FI developed a comprehensive Policies and Procedures Manual that documents and updates all FI tasks, includes all applicable federal and state forms and documented internal controls for each FI task?
• All applicable IRS forms, instructions, notices and publications related to FIs, household employers and employees and for withholding, filing and paying federal income tax withholding and employment taxes (FICA and FUTA) and managing advanced payments of federal earned income credit (EIC)?
• All Michigan Department of Labor & Economic Growth Unemployment Insurance Agency rules, forms and instructions for registering and retiring participants as employers, and for withholding, filing and paying state unemployment insurance taxes for each participant it represents?

If not, describe the issues and the recommended corrective action.

C.2. Does update its FI Policies and Procedures Manual as needed? Yes No

System in Place

Written Policies and Procedures in Place

Internal Controls Documented for Monitoring

If not, describe the issues and the recommended corrective action.

C.3. Does the FI establish and maintain current participant, worker and FI files on site in a secure and confidential manner? (e.g., records kept in a secure place with restricted access using a password protected computer system)? Yes No

If not, describe the issues and the recommended corrective action.

C.4. Review of participants' employee files:
 W2, W4, I9, criminal check, payroll history, proof of ID, proof of training, 940, 941, 2678 copies? Yes No

If not, describe the issues and the recommended corrective action.

C.5. Review of participants' employer files:
 Budgets, revisions, monthly reports, reconciliations, proof of payments? Yes No

If not, describe the issues and the recommended corrective action.

BUDGET FORM – EXAMPLE 1

(Available in Excel format from MDHHS Contract Manager)

Participant Name: _____ **Case #** _____

Employees	Weekly Hours	Hrly Rate	Regular	Gross Weekly Wages
STAFF1	0.00	0.00	0.00	0.00
STAFF2	0.00	0.00	0.00	0.00
STAFF3	0.00	0.00	0.00	0.00
STAFF4	0.00	0.00	0.00	0.00
Total	0.00	0.00	0.00	0.00

Employees	Weekly Gross	Yearly Gross	0.062 Fica	0.0145 Mcare	0.008 Futa	0.027 Suta	W/Comp	Total
STAFF1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
STAFF2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
STAFF3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
STAFF4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Additional Cost(s)	Start-up	Weekly	Monthly	Annually	Subtotal	Total
FI Services	50		65		830	830
Criminal Background Check	10				10	10
Goods & Services					0	0
Home Modification					0	0
OOH Respite					0	0
Trans/Non-Medical					0	0
Subtotal Additional Cost(s)	60	0	65	0	840	840

Total Budgeted Dollars Needed

Total expense 840.00

	Annual	Monthly	Daily
HOURS	0		
UNIT RATE	\$13.50		
MAXIMUM BUDGET TOTAL EXPENSED BUDGET BALANCE	\$ -	0.00	0.00
	\$ 840.00	70.00	2.30
	\$(840.00)		

Budget hourly rate

#DIV/0!

Agency Authorization

Date:

BUDGET FORM – EXAMPLE 2

(Available in Excel format from MDHHS Contract Manager)

Budget Template

ALL TOTALS ARE ANNUAL

MICIS Rate \$2.84

Direct Care Hours Authorized

Hours

Rate

Total Gross Payments

Community Living Supports	2184	\$11.77	\$25,712.72
respite	0	\$11.77	\$0.00
	0		\$0.00
			\$0.00
<i>Non-Hourly Revenue</i>			
ramp			\$1,500.00
Fiscal Intermediary			\$845.00

Total Income/Service Hours	2184		\$28,057.72
-----------------------------------	-------------	--	--------------------

Workers Comp (Enter # of FT/PT Employees to the right.)			\$911.00
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<u>Additional Non-Payroll Expenses:</u>			
<i>Home Modifications/</i>			\$1,500.00
<i>Goods & Services</i>			\$0.00
<i>Non-Medical Transportation millage</i>			\$0.00
<i>Other: Fiscal Intermediary</i>			\$845.00

Subtotal \$24,801.72

Employer Payroll Taxes \$2,558.03

Total Available For Employee **\$22,243.70**

Max Hourly Rate **\$10.18**

Enter Rate to Calculate Cost: **\$10.14**

Calculated Cost (incl.workers' comp/employmt.tx non payroll exp) \$27,948.52

Unallocated Funds **\$109.20**

1/12th Prepayment to FI \$2,142.73

CAL COST -NON PAYROLL EXP	\$25,603.52	
hourly rate including wrkmens comp	\$11.77	\$11.36
micis unit rate- workmens comp	\$2.84	\$0.42

Worker's Comp Rates **Budget** **Amendment Date:**

Consumer Name: **Lucy**
Auth Begin: **10/1/08** Auth End: **9/30/09**
Start Date:
EOR (if different): **Same**

Company	Full Time Hours	Full Time Rate	Part Time Hours	Part Time Rate	Expense Constant Charge
Accident Fund	18 or more	\$526.00	less than 18	\$160.00	\$225.00
WC Placement Facility	20 or more	\$540.00	less than 20	\$238.00	\$200.00

# FT	#PT	Underwriter
1	1	WC Placement Facility

Notes:

	Employee Name	Yearly Hours	Rate of Pay	Total Cost	
Employee #1	Anna	1560	10	15600	
Employee #2	Mary	624	10.5	6552	
Employee #3				0	
Employee #4					
Employee #5		2184		22152	
			10.25	10.14	Unit rate to calculate cost K32/I32

Prototype
Self-Determination Agreement

The Self-Determination Agreement is a contract between the waiver agency and the participant that defines the roles and responsibilities of the parties regarding participation in the Choice Voucher System. Waiver agencies may use this prototype agreement as a template to create local agreements that meet their unique needs.

The provisions of the Self-Determination Agreement:

- Describe the responsibilities of the waiver agency, including ways that the waiver agency can support the participant in creating and using arrangements that support self-determination;
- Describe the authority and responsibilities of the participant;
- Provide the participant with the necessary information and support so that the participant can make an informed choice regarding participation and successfully participate in the Choice Voucher System;
- Outline a mechanism for changing the agreement, the PCSP, or the individual budget;
- Describe the fiscal intermediary arrangements;
- Describe the importance of the Medicaid Provider Agreement;
- Outline requirements for service providers.

Prototype

SELF-DETERMINATION AGREEMENT

Notes in bold, italics and brackets are places where waiver agencies must insert specific information. To make the agreement clearer for the participant, the waiver agency should substitute his or her name for the term “participant” throughout the document.

This agreement is made on ***[insert date]*** between ***[insert name of waiver agency]*** (waiver agency) and ***[insert name of participant]*** (“participant”). The waiver agency is an entity that authorizes services and supports to participants receiving MI-Choice waiver services. The participant is an individual who is or will be receiving supports through the waiver agency and has developed a PCSP and an individual budget to accomplish arrangements that support self-determination

The purpose of this agreement is to define the responsibilities of the parties regarding participation in the Choice Voucher System. This agreement will be in effect until it is changed or ended. Only a written agreement signed by both parties may change this agreement. If one party wants a change, that party must provide written notice of the desired change to the other party. The waiver agency will respond to any such notice from the participant within seven (7) working days. Termination of this agreement does not affect the participant’s right to access services and supports through the waiver agency.

The Choice Voucher System is a set of arrangements to support an individual in the process of self-determination. These arrangements include using a person-centered planning process to determine the appropriate service and supports, develop a PCSP, and authorize an individual budget.

Funds in the individual budget are the property and responsibility of the waiver agency and the participant must use them according to statutory and regulatory requirements. The waiver agency delegates authority over control and direction of the funds to the participant for the purpose of assuring the participant the maximum freedom in choosing providers of goods and services that offer the best opportunity for achieving the goals and outcomes in the PCSP in ways that best fit the participant’s preferences.

**ARTICLE I
WAIVER AGENCY RESPONSIBILITIES**

The waiver agency agrees to the following responsibilities:

1. The waiver agency will provide supports coordination in the following ways:
 - a. The waiver agency will participate in the development of a PCSP and an individual budget for the participant through a person-centered planning process.

- b. The waiver agency will assist in accessing sources of financial support. Specifically, the waiver agency will provide assistance in maximizing and maintaining eligibility for Supplemental Security Income (SSI), Retirement, Survivor, or Disability Income (RSDI), Social Security, Food Stamps, Home Help Services, Medicaid and/or any other sources of financial support.
 - c. The waiver agency will assist the participant in developing and assuring a back-up plan is in place for essential services in case of worker absences, emergencies, or unforeseen circumstances.
 - d. The waiver agency will assure that all the necessary documentation is in place, including the Medicaid Provider Agreement completed by each provider of services or supports.
 - e. ***[Insert other specific supports coordination roles provided by the waiver agency.]***
2. The waiver agency will provide and/or facilitate access to opportunities for additional support services. Additional support services may include, but are not limited to the following: housing and utility subsidies, personal assistance, home maintenance, transportation, and employment opportunities.
 3. The waiver agency will fund services and supports directed by the participant and authorized through the PCSP and the corresponding individual budget (see attachments A and B). The fiscal intermediary (FI), ***[insert name and contact information for the fiscal intermediary]***, will administer the individual budget and retain responsibility for completing and submitting paperwork associated with billing, payment for services and supports upon participant authorization, and handling the employer agency functions if the participant directly employs workers.
 4. If the services of a FI will be used, the waiver agency will assign ***[if there is a choice of fiscal intermediary, replace “assign” with “assist the participant with selecting”]*** a FI. Further, the waiver agency will convene a meeting with the participant and the FI at least two weeks prior to beginning the use of the FI's services. At this meeting, the participant and the FI will receive an approved copy of the participant's individual budget.
 5. The waiver agency will assure that the FI will provide a monthly spending report to the participant.
 6. If the waiver agency is to make services and supports arrangements directly with any provider on behalf of the participant, the waiver agency will assure that:
 - a. The individual can change provider agencies within ***[insert reasonable period of time (e.g. not to exceed thirty (30) calendar days)]***;
 - b. The waiver agency honors the participant's preferences in selecting provider agencies;

- c. The waiver agency's contracts with provider agencies allow the participant to choose and direct the employees of the provider agency assigned to support the participant, to the greatest extent possible.
7. The waiver agency will assure and pay for appropriate background checks of support providers as requested and/or needed by the participant. The waiver agency will inform the participant of the Medicaid requirements for providers (such as age, relationship to participant).
8. The waiver agency will provide the participant's FI with the appropriate funds necessary to implement the individual budget and purchase services and supports on a monthly basis with the first payment made by ***[Insert start up date]***.
9. The waiver agency will assist the participant with the process of providing the FI with copies of required employment agreements and documents, and provide the FI with a copy of a completed Medicaid Provider Agreement for each provider selected and employed or contracted by the participant.
10. The waiver agency and the participant will review the PCSP at least every 90 days and the individual budget periodically.
11. The waiver agency will assist the participant in monitoring expenditures and reviewing financial reports monthly, or as requested.
12. The waiver agency will assure that its policies and practices empower the participants to make meaningful choices about how the individual budget is spent, consistent with the PCSP.
13. At the request of the participant or when otherwise necessary, and using person-centered planning, the waiver agency will facilitate the modification of the PCSP. The waiver agency will not reduce the participant's PCSP and/or budget without holding a person-centered planning meeting and providing adequate notice as required.
14. The waiver agency will provide the necessary forms, information and material relevant to the waiver agency's reporting requirements for the participant.
15. The waiver agency will provide the participant with the applicable dispute resolution procedure ***[Insert information about how to access dispute resolution procedure]***.

ARTICLE II PARTICIPANT RESPONSIBILITIES

The participant agrees to the following:

1. The participant voluntarily chooses to participate in the Choice Voucher System to manage a portion or all of his or her services and supports directly. The participant may choose to end participation in Choice Voucher System and such a decision does not affect the participants' ability to obtain the services and supports identified in the PCSP through the waiver agency.
2. The participant will direct the person-centered planning process and the development of a PCSP and an individual budget. The PCSP will outline the types, frequency, and on-going review of support the participant may receive. The plan will include a backup plan for essential services in case of worker absences, emergencies or unforeseen circumstances. The participant and waiver agency will review this plan at least every 90 days or more often, if requested by the participant.
3. The participant will use services and supports consistent with the goals and outcomes in the PCSP.
4. The participant will communicate with the waiver agency on the effectiveness of purchased supports and the person-centered plan in achieving the goals and outcomes in the PCSP. The participant may initiate a change to the PCSP or individual budget by convening a person-centered planning meeting.
5. In directing his or her own services and supports, the participant agrees to manage the use of funds so that total expenditures do not exceed the amounts identified in the individual budget. The participant will notify the waiver agency of a material change in circumstance or an emergency that may require a modification of the PCSP or the individual budget (for example, the loss of a natural support).
6. The participant will make arrangements, *as necessary*, for obtaining formal (paid) and informal (unpaid) providers of services and supports sufficient to accomplish the goals and outcomes of the his or her PCSP.
7. If the participant directly employs workers, the FI will provide employer agency services and handle paperwork associated with employment and payroll of workers including withholding and paying federal, state, and local income taxes, and unemployment taxes.
8. The participant will assure that each provider of services and supports retained by the participant meets provider requirements identified by the waiver agency and agrees to secure or have secured appropriate background checks on any potential support providers to assure they meet minimum requirements.

9. The participant will provide the waiver agency and/or the FI with necessary documentation supporting expenditures of funds provided by the waiver agency pursuant to the individual budget. Supporting documentation may include, but is not limited to, contracts and agreements with providers of services and supports, utility bills, payroll checks, receipts for furnishings and transportation, invoices and time sheets.
10. When directly hiring and managing workers, or when contracting for services and supports from other providers, the participant agrees to use a written agreement that clearly states that the waiver agency and FI are not the employer of any workers and providers or a party to the contract between the participant and his or her employees or providers.
11. The participant agrees to provide the waiver agency and the FI with all necessary information regarding all providers of services and supports including executed copies of employment and purchase of services agreements and Medicaid Provider Agreements prior to authorizing payments for services and supports. **The participant agrees to specify in all Employment Agreements or Purchase of Services Agreements the requirement that all employees and support providers must execute a Medicaid Provider Agreement.**
12. If the FI serves as employer agency, the participant will provide the FI with the information and documentation necessary for it to perform the employer agency duties.
13. The participant agrees to allow a the waiver agency to review his or her financial situation for purposes of assessing financial eligibility for SSI, RSDI, Social Security, Home Help Services, Medicaid or similar programs.
14. The participant agrees to attempt to resolve any dispute over this agreement, the person-centered planning process, the PCSP, or the budget through the applicable dispute resolution procedure described above. While an informal dispute resolution process may result in a quick resolution to the issue, use of an informal process is not a waiver of any legal remedy available for resolving disputes pertaining to this agreement, including the right to a Fair Hearing under provisions of the Social Security Act and the Michigan Administrative Procedures Act.
15. The participant agrees to communicate with the FI and waiver agency and to seek assistance from these entities as needed.
16. When requested to do so, the participant agrees to provide feedback to the FI to enable it to improve its service delivery system.

The waiver agency and participant agree to the terms and conditions of this agreement.

Participant [³]

Date

Waiver agency Self Determination Coordinator

Date

Executive Director or Self Determination Coordinator

Date

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

SELF DETERMINATION OPTION ENROLLMENT AGREEMENT

Name: _____

SSN: _____

DOB: _____

Medicaid ID #: _____

START DATE OF BUDGET: _____

I have reviewed the materials provided to me by _____ explaining the Self Determination option and have decided to participate in this option.

_____ I do not wish to designate a representative.

_____ I will designate a representative to work on my behalf – see below:

Representative Description:

A representative may be a guardian, a family member or other supporter who willingly accepts the participant’s responsibilities in directing their services and supports.

My representative is willing to follow my wishes and respect my preferences while using sound judgment to act on my behalf. I name the following person as my representative:

Name: _____

Address: _____

Phone: _____

Signatures:

I understand that enrollment into this option is voluntary and that I have a right to withdraw any time I choose.

Participant/Representative

Date

Supports Coordinator

Date

EMPLOYMENT AGREEMENT

This agreement is made on _____ (Date)

Between waiver participant: _____ (Name)

And employee: _____ (Name)

To describe the supports that the employee will provide to the employer and the terms and conditions of employment.

Article I Employee Responsibilities

I, the employee: _____ (name) am aware and agree that my employment is conditioned on my employer’s participation in the Choice Voucher System, administrated by the waiver agency. If my employer ends their participation in the Choice Voucher System, 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 _____ (waiver agency) 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 _____ (waiver agency) or my employer: _____
3. I shall immediately notify my employers, physician, OR call 9-1-1 if my employer experiences a medical emergency or illness.
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 _____ (waiver agency) regulations (described below) regarding my employment duties to the employer through the Choice Voucher System and I acknowledge receipt of the following rules and regulations:
a. See Attachment A to this Agreement (job description)

- b. I am 18 years old or older, and a US Citizen or Legal Alien
 - c. I am able to demonstrate an ability to perform tasks employer requests. (Attachment A)
 - d. I will complete CPR, blood borne pathogens/universal precautions, and basic first aid training within 3 months of employment. If Waiver Participant is a DNR this requirement can be waived.
 - e. I am not a Participant's Representative for the Self-Determination option
 - f. I am not a legally responsible relative (spouse/guardian)
 - g. I will document time in and time out for each shift. Must use a standardized form, which my employer or Fiscal Intermediary will supply.
6. I understand that this is an employment at will relationship, which can be terminated by me or 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 (Seven) days written notice to my employer if I terminate my employment.
7. I understand and acknowledge that my employer is my sole employer and that I am not an employee of the waiver agency, who authorizes the supports I provide, or the fiscal intermediary, which is the financial administrator of the Choice Voucher System funds used to pay me.
8. I agree to not to sue the fiscal intermediary for its role as the financial administrator of my employer's Choice Voucher System funds and (waiver agency) for its role in administering the Choice Voucher System.
9. I agree to the following compensation for the services I shall perform:
\$_____an hour
10. I agree to execute a Medicaid Provider Agreement with (waiver agency) and acknowledge that this agreement does not alter the fact that (waiver agency) is only the project administrator of the Choice Voucher System, and that (participant) is my employer. I understand that my employment is contingent on completing this agreement.
11. I understand that my employer has been approved for _____ hours of community living supports per month. I will not work over this amount unless my employer consults with their Support Coordinator and the additional hours are approved.
12. I understand that if my employer goes into the hospital, or other medical care setting, I cannot be paid during their absence.
13. I will not submit timesheets for nay hours of work I have not performed, if so, falsifying timesheets will cause for legal proceedings to be pursued

**Article II
Employer Responsibilities**

I, (employer name): _____

1. Will provide my Fiscal Intermediary with the necessary documentation to assure timely compensation of my employee.
2. Will compensate my employee in the following manner: \$_____ and hour.
3. I understand I am approved for _____ hours of community living supports per month and that I will have to consult with my Support Coordinator before I can allow my employee to work additional hours.
4. Payroll will be handled by my Fiscal Intermediary, which will withhold all necessary taxes, unemployment, and other withholdings from the employee’s paycheck.
5. I will assure my employee receives appropriate training.
6. I will evaluate the performance of my employee and provide appropriate feedback to assure that I am receiving quality supports.
7. I will assure that my employee executes a Medicaid Provide Agreement with (waiver agency).
8. I understand that if I go into the hospital or other medical care setting, my employee cannot be paid during that time.
9. I will sign off/approve any timesheets for hours of work that my employee has/has not worked, falsifying timesheets will cause for legal proceedings to be pursued.
10. I understand I must treat my employee(s) with respect and that I cannot solicit them for anything or harass them in any way (sexually or verbally).

Employee Signature Date

Employer Signature Date

MEDICAID PROVIDER AGREEMENT

THIS AGREEMENT is entered into by and between the Waiver Agency, [place agency name here], herein referred to as Waiver Agency, and:

Medicaid Provider: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: (____) _____ **Fax:** (____) _____ **E-Mail:** _____

Federal ID#: _____

Social Security#: _____ **Birthdate:** _____

The purpose of this agreement is to define the roles and responsibilities of the above named parties. It is understood by and between the Medicaid Provider and Waiver Agency that a binding agreement shall commence on the date of acceptance as indicated by signatures on behalf of the Waiver Agency. 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 Waiver Agency will certify the Medicaid Provider as available to provide services to individuals who receiving services and/or supports in accordance with their PCSPs developed through the person-centered planning process, authorized by the Waiver Agency or one of its subcontractors, and funded through the MI-Choice Waiver/Project Choices.

The Medicaid Provider stipulates that it agrees to the following:

1. To keep any records required by the Participant or the Waiver Agency regarding the services provided to Participants and to provide such information and any related invoices or billings, upon request, to the Participant, Waiver Agency, the State Medicaid Agency, the Secretary of the Department of Health and Human Services or the State Medicaid fraud control unit.
2. To comply with the ownership disclosure requirements specified in 42 CFR 455, subpart B, as applicable.
3. To comply with intent of the advance directive requirements specified in 42 CFR 489, Subpart I and 42 CFR 417.436 (d), as applicable, by finding out if a Participant has an advance directive to refuse life-sustaining medical treatment, and informing the Participant, before the Provider starts work, whether or not the Provider will carry out that advance directive so the Participant can make an informed choice during the hiring process.⁴

⁴ This requirement applies to home health agencies and providers of home health 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.).

Both parties expressly acknowledge that the sole purpose of this agreement is to assure compliance with 42 USC 1902 (a) 27. Further, both parties recognize and reaffirm that the Waiver Agency is not the employer of the Medicaid Provider, and that the Participant is the sole employer of the Medicaid Provider.

This agreement sets forth the entire understanding between the parties with respect to the subject matters, and supersedes any and all other agreements, either oral or in writing between the parties pertaining to these matters. No change or modification of the terms of this agreement is valid unless it is in writing and signed by the parties.

Medicaid Provider Agency/Individual Date

Executive Director, Waiver Agency Date

Copy to Fiscal Intermediary:

Date: _____ **Name:** _____

SELF-DETERMINATION DIS-ENROLLMENT FORM

Self-Determination in Long Term Care
DISENROLLMENT FORM

Name of Participant: _____

Medicaid #: _____ SS# _____ DOB _____

Date of enrollment/start of budget: _____

Name of Representative (If Necessary): _____

I, _____
am voluntarily/involuntarily terminating my participation in the Self-Determination in Long Term Care option. I understand that I will return to agency provided care management at this time, but if I decide I want to return to the Self-Determination option as a participant at any time, I may call 1-888-897-8050 and someone will revisit my home to discuss my re-enrollment.

Signature of Participant/Representative

Date

To Be Completed by the Support Coordinator

Reason for Disenrollment: _____

What problem solving measures have you taken to encourage continued participation?

What referrals have been made to assure that personal care needs are met for this individual?

Adequate Action forms completed? YES _____ NO, Why _____

Support Coordinator

Date

BACK-UP WORKER AGREEMENT

**SELF-DETERMINATION
BACKUP WORKER**

Name of Participant: _____

Medicaid #: _____ **SS#:** _____

Name of Representative (If Necessary): _____

I understand that as a Participant I am responsible for maintaining a Backup Worker to assist me in the event that my Worker may not be able to work for me.

My Worker is an informal Worker and requests no payment:

My Backup Worker will work for payment. I understand that my worker cannot be paid until have completed and submitted a New Hire Employee Packet.

Backup Worker Name: _____

Backup Worker Address: _____

Backup Worker Phone #: _____

Signature of Participant/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 waiver agency*] (the “waiver agency”) and [*Insert name of Agency with Choice*] (the “Agency with Choice”). The purpose of this contract is to define the roles and responsibilities of the parties in the use of the Agency with Choice’s services to assure the opportunity for participants in Self Determination in Long Term Care option to directly employ personal assistance services workers

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 waiver agency shall respond to any such notice within seven (7) working days.

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 Health and Human Services adopted and promulgated under Act 258. The policies of the waiver agency shall govern in any area not specifically covered in this Agreement and are available from the waiver agency for review upon request.

Article I
Waiver Agency Responsibilities

The waiver agency agrees to the following:

1. To designate a liaison person, who shall be the primary contact person with the Agency with Choice.
2. The Agency with Choice is the employer of record directly employed by the participant and the participant is the managing employer.
3. The Agency with Choice will provide individualized support to the participant as managing employer.
4. To assist each assigned participant to assure that all necessary documentation is in place including but not limited, to all agreements required by the waiver agency, especially a Medicaid Provider Agreement between each provider of services and the waiver agency.
5. Provide the AWC with a copy of individual budget for the participant that includes the authorized supports and services.

Article II
Agency with Choice Responsibilities

The Agency with Choice 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 participants to understand and perform managing employer responsibilities.
3. To perform the financial administrative duties of employer. The Agency with Choice shall abide by all federal and state laws regarding payroll taxes and shall remain current with all payroll tax requirements. Both the waiver agency and the participant shall provide copies of all required employment documents including the Medicaid Provider Agreement to the Agency with Choice.
4. To pay providers only upon receipt of all required agreements including the Medicaid Provider Agreement and timesheets or invoices approved by the participant 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 Agency with Choice on behalf of each participant. These records shall be retained for seven years from the start of Agency with Choice services.
6. 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 participant and/or waiver agency.
7. To make records regarding participants available to the waiver agency as requested and to allow each participant access to his or her own records.
8. To indemnify the waiver agency and maintain a valid insurance policy for its role as an employer of record for workers.

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:

[Insert contact information and person for the waiver agency.]

[Insert contact information and person for Agency with Choice.]

This agreement, with its attachments, sets forth the entire understanding and agreement between the parties regarding the provision of Agency with Choice 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.

Agency with Choice Representative

Date

Waiver Agency Executive Director

Date

Prototype
Agency with Choice Employment Agreement

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the participant, 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 Agency with Choice]* *[Insert name of participant 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 Self Determination in Long Term Care option administered by the waiver agency. If my employer ends participation in Self Determination in Long Term Care, 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 Agency with Choice or the waiver agency. 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 waiver agency 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 waiver agency regulations (described below) regarding my employment duties to the employer through the Self Determination in Long Term Care option 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 Agency with Choice waiver agency shall insert its policies and/or procedures for the AWC or other policies 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 Agency with Choice is my employer of record that handles legal and tax aspects of my employment.
8. I agree to not to sue the waiver agency for its role in administering the Self Determination in Long Term Care option.
9. 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 Agency with Choice 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 the Agency with Choice, 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 Medicaid Provider Agreement with waiver agency.

Article III Agency with Choice

TRAINING RECORD

EMPLOYEE Name: _____

Employer Name: _____

Please initial each training requirement as you complete them and sign the bottom of the form when you have all three requirements completed. Then return this document to the Support Coordinator in the self-addressed stamped envelope.

1) I have completed the CPR training materials. I feel I could perform CPR in case of an emergency.

_____ (employee initials)

2) I have read the material on blood borne pathogens and the use of universal precautions. I feel I am well informed about blood borne pathogens and the use of universal precautions.

_____ (employee initials)

3) I have read the First aid reference guide on basic first aid. I feel I could perform basic first aid if needed.

_____ (employee initials)

I attest that all the above information is true and that I have completed all three training requirements.

Signature

Date

I have additional training in the following areas/comments: Completion date:

CRIMINAL HISTORY SCREENING POLICY

The Supports Coordinator (SC), Self-Determination (SD) Coordinator, and Executive Director will review all positive results on criminal history screenings for potential SD workers. SC or SD Coordinator will contact the participant to confirm the participant knows and understands the information found in the criminal history screening. The SC or SD Coordinator will document this discussion. For misdemeanors not specifically listed, staff will ask the participant if the participant wishes to consider employment of the applicant.

Length of Time Barred from Working	Types of Conviction
Twenty Years After Completion of Parole or Probation	<ul style="list-style-type: none"> -Felonies related to manufacture, distribution, prescription or dispensing of a controlled substance. -Felony health care fraud -More than one felony conviction. -Felony for abuse neglect, assault, battery, criminal sexual conduct (1st, 2nd or 3rd degree), fraud or theft against a minor or vulnerable adult. -Felony or misdemeanor patient abuse. -Felony involving cruelty or torture.
Fifteen Years After Completion of Parole or Probation	<ul style="list-style-type: none"> -Felonies involving the use of a firearm or dangerous weapon. -Felonies involving the use or threat of violence.
Ten Years After Completion of Parole or Probation	<ul style="list-style-type: none"> -Any other felony.
Ten Years From the Date of Conviction	<ul style="list-style-type: none"> -Misdemeanors involving the use or threat of violence. -Misdemeanors involving the use of a firearm or dangerous weapon. -Misdemeanors involving abuse or neglect. -Misdemeanor criminal sexual conduct. (4th degree)
Undetermined Length of Time	<p>The waiver agency reserves the right to convene a meeting to determine the advisability of employment for any criminal infraction, and to render a decision to the client regarding a negative decision. Clients have the right to appeal that decision.</p> <p>Clients have the right to choose not to hire or to terminate employment, based on the information Criminal Background Check, and must inform the employee of the information they received if negative action is taken.</p>

RIGHT TO HIRE

By the contract provisions of the Self Determination policy and practice guidelines, I have the authority to choose a personal aide/staff to work with _____.

I am aware that (WAIVER AGENCY) is required to conduct a criminal history screening prior to hiring any personal aide/staff to assist a consumer. As a result of a criminal history screening regarding _____, (WAIVER AGENCY) has informed me that he/she has a criminal record.

I have considered that information in choosing to employ _____ as _____'s personal aide/staff. I agree (on behalf of _____) to hold (WAIVER AGENCY) harmless regarding all consequences arising from the employment of _____ as the personal aide/staff of _____.

Employer

date

Employee

date

Area Aging on Aging Representative

date

RIGHT TO HIRE – DRIVING RECORD

By the contract provisions of the Self Determination Policy and Practice guidelines, I have the authority to choose a personal aide/staff to work with _____ . I am aware that (WAIVER AGENCY) is required to conduct a criminal history screening that denotes driving record violations prior to hiring any personal aide/staff to assist a consumer.

As a result of the criminal history screening regarding _____ (WAIVER AGENCY) has informed me that my potential worker does not have a valid driver’s license or has many violations against their current licensure.

I have considered that information in choosing _____ as my personal aide/staff. I understand that until such time that _____ has shown proof of a valid driver’s license and insurance, he/she may not transport _____ during the course of their employment.

Employer

date

Employee

date

Area Aging on Aging Representative

date

Self Determination in Long Term Care MI Choice Waiver

If you are interested in applying for the MI Choice waiver or are already getting services from MI Choice, you are eligible for this option. Eligibility for MI Choice is based on income and level of disability. Agencies known as "waiver agencies" (often an Area Agency on Aging) operate this program.

Ask for information about Self Determination and how to get started.

Self Determination

Is based on four principles:

Freedom

Authority

Responsibility

Support

It gives the option of choosing and hiring your workers and managing a budget for your services.

Your Services

These are the services available under this option:

Community Living Supports

Chore

Respite

Non-Medical transportation

Home Modifications

Private Duty Nursing

Nursing Services

Goods & Services

Fiscal Intermediary

There are also other waiver services that may meet your needs, but they are not a part of this option.

Your Workers

There are some basic requirements all workers must meet. You are able to choose who your workers are, what kinds of help they provide and when they come.

Your Plan, Your Way

Through the Person Centered Planning Process, you talk about your goals & needs and work with the waiver agency to make a plan for your services that is best for you. You can invite your friends and family to part of this.

Your Budget

After your plan is made and your workers are chosen, a budget for your services will be developed. The budget includes the wages for your workers and the other related expenses, like taxes.

The budgets go through a "Fiscal Intermediary". This is a neutral third party who will pay the bills for your services out of the budget. You will receive monthly reports from the Fiscal Intermediary about your spending.

You have some flexibility with the items in your budget and expenses to meet your needs. You can't go over the total amount, however.

Assistance

Help is there for you as you make the decision about Self Determination,
When you enroll in the MI Choice program,
And the whole time you participate.
You can change your mind anytime and you will still get the services you need.

Talk to your supports coordinator to get your questions answered.

PERSON-CENTERED SERVICES

More choice and control over Long Term Care Services for individuals and their families.

The State Of Michigan is committed to ensuring Long Term Care services are focused around the individual's wishes, preferences and needs, regardless of the setting.

Person-Centered Planning is a process for planning services and supports for individuals building on the individual's strengths, preferences and choices to promote the life they choose and services to meet individual needs.



Person-Centered Planning should be expected:

- when health status or needs change
- when the participants request
- on a decided upon schedule

Participating in Person-Centered Planning is up to the individual to decide in terms of when, where, who to include and what topics to discuss.

Individuals may choose not to participate in Person-Centered Planning.

**FOR MORE INFORMATION ON
PERSON-CENTERED PLANNING
IN LONG TERM CARE CONTACT:**



Person-Centered Planning involves families, friends and professionals as the individual desires or requires.

- Person-centered planning is designed to respond to the preferences and desires of the individual.
- The individual, and if desired, people important to her or him are included in the planning.
- Each individual has strengths and the ability to express preferences and make choices.
- The individual's choices and preference shall always be honored and considered.
- Each individual can contribute to the community, and has the ability to choose how supports and services may help them.
- Person-centered planning processes maximize independence, create or maintain community connections, and work towards achieving the individual's dreams, goals and desires.
- A person's cultural background shall be recognized and valued in the planning process.
- The planning process is supportive of the individual and their wishes, with an ongoing commitment to the whole person.

What to expect

The person controls the planning process.

The planning process focuses on the individual's gifts, abilities, talents and skills instead of weaknesses. The focus is on the individual's life and not fitting the individual's need for services into a standard program.

The plan focuses on what is important to the person.

Each person is presumed capable of contributing to the process and expressing desires and choices.

The planning must provide information, support and guidance to the person.



The important people chosen by the individual are part of the planning.

The health and welfare of the individual is addressed to support living in the setting of choice.

Individuals may choose someone to facilitate the planning.

The planning will result in written plan that is useful to the individual and the people responsible for carrying out the plan.

Everyone receiving information or service in Long Term Care has the right to a Person-Centered focus.

This includes:

- when asking for basic information to make LTC planning choices
- when being discharged from a hospital
- when receiving services at home or in the community
- when residing in a nursing facility

