



# Independent Providers in Self-Directed Service Delivery

# Definitions

- "Agency provider" means an entity, including a county board of developmental disabilities, that employs persons for the purpose of providing services for which the entity must be certified under this rule.

- "Independent provider" or "individual provider" means a self-employed person who provides services for which he or she must be certified under this rule and does not employ, either directly or through contract, anyone else to provide the services.

# History

1. Every Governor received notification in 2014 from the Federal Government of intent to enforce the Fair Labor Standards Act in regard to Health Care Workers.
2. Governor Kasich recommended the phase out of Independent Providers in his state budget proposal.
3. After thousands of letters/emails and hours of testimony, the Ohio House removed all reference to the elimination of Independents from the budget.
4. The Administration proposes a Self-Directed approach to supports which will allow individuals to choose their specific provider and comply with federal law.

# Why?

- Fraud
- Independent Contractor vs. Employee
- Wage & Hour Federal Law

# Fraud

- Not the major reason.
- Serving groups of people on various waivers at the same time and billing at the single rate for each one.
- Using others to provide the service.
- Paperwork
- Not paying all taxes Self – Employment Taxes

# Independent Contractor

- The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done
- You are not an independent contractor if you perform services that can be controlled by an employer (what will be done; when, and how it will be done). This applies even if you are given freedom of action.
- What matters is that the employer has the legal right to control the details of how the services are performed, (what you are paid; when you work; how long you work; and, what you do while at work).
- If you are not an Independent Contractor, then you are an Employee, but an Employee of Whom?

# Wage & Hour Federal Law

- Fair Labor Standards Act.
- As an Employee, your Employer must:
  1. Pay the Employer share for Social Security.
  2. Pay the Employer share for Medicare.
  3. Pay Unemployment tax.
  4. Pay Worker's Comp Insurance
  5. Pay time and ½ for hours worked over 40 each week.
  6. Provide Health Insurance if under the rules established by Obamacare.



# Proposed Time Line

- Create a Self Directed Advisory Group to advise on “big picture” items and who this affects by December, 2015: Homemaker/Personal Care Providers, Nurses, Adult Family Living, Foster Care, Therapists, etc. ?
- Add a Self-Directed Service to the Level 1 and IO Waivers and amend the SELF Waiver BEFORE the following:
  - 7/1/2017 – Stop Enrolling New Independent Providers
  - 7/1/2018 – Stop Re-Newing Independent Providers
  - 6/30/2021 – Stop Paying Non-Agencies EXCEPT through Self -Direction

# Self Directed Services

According to Medicaid:

- Self-directed Medicaid services means that participants, or their representatives if applicable, have decision-making authority over certain services and take direct responsibility to manage their services with the assistance of a system of available supports. The self-directed service delivery model is an alternative to traditionally delivered and managed services, such as an agency delivery model. Self-direction of services allows participants to have the responsibility for managing all aspects of service delivery in a person-centered planning process.
- Self-direction promotes personal choice and control over the delivery of waiver and state plan services, including who provides the services and how services are provided. For example, participants are afforded the decision-making authority to recruit, hire, train and supervise the individuals who furnish their services. CMS calls this "employer authority." Participants may also have decision-making authority over how the Medicaid funds in a budget are spent. CMS refers to this as "budget authority."

# Self-Direction Guidelines

Each Medicaid funding authority has different guidelines but all authorities, share some common characteristics:

- **Person-Centered Planning Process:** CMS requires that a person-centered planning process and assessment be used to develop a person-centered plan. The process is directed by the individual, with assistance as needed or desired from a representative of the individual's choosing. It is intended to identify the strengths, capacities, preferences, needs, and desired measurable outcomes of the individual. The process may include other persons, freely chosen by the individual, who are able to serve as important contributors to the process. The planning process must also include planning for contingencies such as when a needed service is not provided due to the worker being out sick. The contingency or "back-up" plan must become a part of the individual's person-centered plan. As part of the contingency planning process, an assessment of the risks to the individual must be completed and a discussion about how the risks will be addressed must be held.

# Service plan (ISP)

- A service plan is the written document that specifies the services and supports that are to be furnished to meet the preferences, choices, abilities and needs of the individual, and that assist the individual to direct those services and supports and remain in the community.

# Individualized Budget

- An individualized budget is the amount of funds that is under the control and direction of the individual. The budget plan is developed using a person-centered planning process and is individually tailored in accordance with the individual's needs and preferences as established in the service plan. States must describe the method for calculating the dollar values of individual budgets based on reliable costs and service utilization, define a process for making adjustments to the budget when changes in participants' person-centered service plans occur and define a procedure to evaluate participants' expenditures.

# Information and Assistance in Support of Self-Direction

- States are required to provide or arrange for the provision of a system of supports that are responsive to an individual's needs and desires for assistance in developing the person-centered service plan and budget plan, managing the individual's services and workers and performing the responsibilities of an employer.
- Examples of self-directed supports include, but are not limited to: information regarding how a self-directed care program works; individual rights and responsibilities; and available resources; counseling; training; assistance, such as the use of a supports broker/consultant and financial management services (FMS); and access to an independent advocacy system available in the state.
- The amount and frequency with which an individual uses the available supports varies by person and circumstance.

# Financial Management Services

- Financial Management Services (FMS) must be available to assist individuals in exercising budget authority. Individuals can perform some or all of the FMS functions themselves. Typically, however, individuals prefer that the FMS entity performs these functions for them. FMS helps individuals:
  - Understand billing and documentation responsibilities;
  - Perform payroll and employer-related duties (e.g., withholding and filing federal, state, local and unemployment taxes; purchasing workers' compensation or other forms of insurance; collecting and processing worker timesheets; calculating and processing employee benefits; and issuing payroll checks);
  - Purchase approved goods and services;
  - Track and monitor individual budget expenditures; and
  - Identify expenditures that are over or under the budget.

# So, what's Next

- All Waivers must be amended to allow for Self Directed Services.
- We expect that the SELF Waiver will be modified.
- We expect the IO Waiver and Level 1 Waiver to have an Additional Service Category added called: *Self Directed Services*.
- These changes must be done with Stakeholder (Us) participation and coordination with the Centers of Medicare and Medicaid Services (CMS).



# Administrative Rule Changes

- Any changes to the Waivers must include changes in Administrative Rules which requires public comment. (Us, again.) through the Dept. of DD and JCARR (Joint Committee on Agency Rule Review) – a Committee of Ohio Senate & House Members.
- These rules will define Self Direction in more detail AND outline what an individual can pay his/her Independent who must now be considered an Employee, when this proposal is fully implemented.

# The Future

- The Individual on a Waiver will be assessed to determine the ability to Self Direct or if someone is in the individual's life willing to accept that responsibility.
- An Individual Budget (funding range) will be established based on an assessment tool such as the Ohio Developmental Disabilities Profile.
- An Individual Service Plan will be developed and the individual will have the option of choosing and Agency Provider or using a Self Direction option or Both.

# Proposed Future

- The Individual will select Providers.
  1. Agencies will have a set rate as determined by Administrative Rule, as now.
  2. Self Directed Staff will be selected by the Individual at a rate determined by that Individual, within his/her determined budget. The Individual retains the right to hire/fire.

# Proposed Future

- Once a Self Directed staff person has been selected:
  1. The staff person and rate of pay is authorized for payment within the ISP.
  2. The staff person is employed by the Financial Management Service *FMS* (currently Morningstar) at a rate and number of hours determined by the individual.
  3. Who will assure that the staff person meets all certification requirements is to be determined.

# Proposed Future

- The Self Directed Staff Person will provide the service and submit time sheets to the FMS according to a pay schedule.
- All Employer taxes will be paid by the FMS.
- All Employee taxes will be paid through payroll deduction and the Employee will receive a W-2 , rather than a IRS Form 1099.
- The Self Directed Staff Person will now be eligible for Worker's Compensation & Unemployment Compensation and all rights associated with the status of "Employee".

# Questions?

- Can the parent of an adult on a Waiver provided Self Directed Services?
- Can a parent who is also Guardian provide Self Directed Services?
- What about time worked over 40 hours?

OTHER QUESTIONS / COMMENTS / CONCERNS