



MENTAL RETARDATION BULLETIN
COMMONWEALTH OF PENNSYLVANIA
PUBLIC WELFARE

DEPARTMENT OF

DATE OF ISSUE
January 2, 2004

EFFECTIVE DATE
Immediately

NUMBER
00-04-01

SUBJECT:

Intermediary Service Organizations (ISOs)

BY:

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SCOPE:

County Mental Health/Mental Retardation Administrators
Base Service Units
Non-State Operated Intermediate Care Facility (ICF/MR) Directors
Community Home Directors
Family Living Home Directors
Adult Training Facility Directors
Vocational Facility Directors

PURPOSE:

The purpose of this bulletin is to advise county administrators of the policy of the Office of Mental Retardation that requires counties in Pennsylvania to offer Intermediary Service Organization (ISO) services to individuals or their representatives.

The draft *Guidelines for Operating a Vendor Fiscal/Employer Agent and Agency with Choice Intermediary Service Organizations (ISOs)* issued on May 6, 2003, is to be used as a companion to this bulletin to support the development of ISO services.

BACKGROUND:

Everyday Lives, published in 1991 and updated in 2002 (*Everyday Lives: Making It Happen*), outlines the values and goals of individuals with mental retardation and the people that support them in Pennsylvania. One of the driving forces of *Everyday Lives* is the philosophy of *Self-Determination* presented in MR Bulletin 00-02-04, *Principles for the Mental Retardation System*. Self-Determination is the belief that one should have choice and control over all aspects of one's life. This includes affording individuals and their representatives choice and control over the services and supports they receive. Individuals receive needed services and supports as described in their Individual Support Plan (ISP). Historically, the supports coordinator or a provider agency arranged these services for individuals and their representatives.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Appropriate Regional Program Manager

Federal Medicaid law prohibits individuals/representatives from receiving Medicaid funds directly. Only Medicaid waiver providers may receive Medicaid funds directly.

Intermediary Service Organizations (ISOs) were developed to perform two primary functions. The first function is to reduce individuals'/representatives' employer-related burden through the provision of appropriate fiscal and supportive services. The second function is to assure the state and counties that support services are being provided in compliance with federal, state and local tax and labor requirements related to the employment of qualified support service workers (e.g., acting as a certified Medicaid provider for the purpose of receiving and disbursing Medicaid funds).

In general, individuals/representatives who hire their qualified support service worker(s) directly are considered to be *common law employers* by the Internal Revenue Service (IRS). According to the IRS, a common law employer is any one who hires a worker(s) to perform services for him/her and directs and controls the type of services provided and how and when the services are provided. ISOs can reduce the employer-related burden for individuals/representatives who wish to recruit/hire their support services directly by managing the employer related tasks on their behalf.

A *Vendor Fiscal/Employer Agent ISO* model (in accordance with Section 3504 of the IRS Code and IRS Revenue Procedure 70-6), may apply for and receive approval from the IRS to be an *employer agent* on behalf of individuals and their representatives for the limited purpose of withholding, filing, and paying federal employment taxes (i.e., FICA and FUTA) and income taxes, as required for the individuals' qualified support service workers. Vendor Fiscal/Employer Agent must receive permission from each individual it represents by submitting to the IRS a completed and signed IRS Form 2678: Appointment of Agent, accompanied by a request for approval letter to the IRS. Under the Vendor Fiscal/Employer Agent ISO model, the individual/representative is the common law employer of his/her qualified support service workers.

Under the Vendor Fiscal/Employer Agent ISO model, individuals/representatives are able to: (1) recruit and hire their qualified support service worker(s); (2) determine his/her work schedule, (3) determine the tasks to be performed and how and when the tasks are to be performed; (4) orient and train their worker(s); (5) manage the day-to-day tasks performed by their worker(s); and (6) dismiss their worker(s) when appropriate.

An *Agency with Choice ISO* is the *common law employer* of the qualified support service workers while working together with individuals/representatives to: (1) recruit/select and refer their qualified support service worker(s) to the agency for hire and to provide services to them; (2) provide and/or participate in training their worker(s); (3) determine their worker(s)' work schedule, (4) determine the tasks to be performed and how they are performed; (5) manage the day-to-day activities of their worker(s); and (6) dismiss them as necessary.

ISOs may also administer payments to vendors for one-time-only services purchased for individuals such as, environmental adaptations, e.g., wheelchair ramps.

DISCUSSION:

The Office of Mental Retardation is requiring counties to offer individuals/representatives Vendor Fiscal/Employer Agent ISO services and Agency with Choice ISO services.

These two ISO options have been selected by the Office of Mental Retardation because they provide individuals/representatives with:

1. A high level of choice and control over their services and supports;
2. The option of being the common law employer (Vendor Fiscal Employer/Agent ISO) or working together with the common law employer (Agency with Choice ISO) to hire/recruit directly; and
3. Assistance with some employer-related tasks (i.e., payroll and employment tax withholding, filing, and depositing) and bill paying tasks (processing and paying one time vendor payments).

This bulletin outlines the requirements for entities to operate as a Vendor Fiscal/Employer Agent and Agency with Choice ISOs. It also describes how counties can utilize Vendor Fiscal/Employer Agent and Agency with Choice ISOs to better assist individuals in accessing support services and in gaining enhanced choice and control in their lives.

POLICY:

Counties must offer either the Vendor Fiscal/Employer Agent ISO and/or the Agency with Choice ISO by July 1, 2004. Both models must be available to be offered to individuals/representatives in all counties by July 1, 2005.

ISO services must be available to be provided in conjunction with Medicaid waiver and state/county-funded (i.e., FSS Program) support service programs.

Counties may contract with an ISO to service multiple counties.

It is the responsibility of the county, and any ISOs it may contract with, to be knowledgeable of all federal, state and local rules and regulations pertaining to Medicaid, the operation of the type of ISOs it implements, and any amendments on an ongoing basis.

A. *Individuals' Use of ISOs*

An individual/representative who chooses to use an ISO to facilitate receiving support services must be fully informed of his/her role and responsibilities related to the type of ISO being used. Once fully informed of his/her role and responsibilities, and the role and responsibilities of the ISO, the individual/representative must review and sign an agreement prepared by the ISO. A copy of the agreement must be given to the individual/representative and the individual's supports coordinator. The original must be maintained in the individual's/representative's file maintained at the ISO. At a minimum, the agreement must:

1. List the role and responsibilities of the individual/representative using support services (i.e. either being the common law employer or working with the common law employer to manage workers he/she hires directly) and the prescribed type of ISO;
2. List the role and responsibilities of the ISO chosen;
3. **State that the individual/representative has reviewed the information and understands his/her role and responsibilities related to self-directing his/her support services using the prescribed ISO;**
4. **State that the individual accepts his/her role and responsibilities related to using the prescribed ISO; and**
5. State that the individual/representative will abide by the ISO's policies and procedures.

B. *ISO Requirements*

When a county is contracting with a vendor entity to provide Vendor Fiscal/Employer Agent ISO services, ISO services must be provided in accordance with U.S. Internal Revenue Service (IRS), U.S. Department of Labor and state and local rules and regulations pertaining to domestic service workers and employer agents, as well as Title 55, Chapter 4300 regulations. Until the IRS determines otherwise, Vendor Fiscal/Employer Agent ISO services must be provided in accordance with Section 3504 of the IRS Code and Revenue Procedure 70-6. If ISO services are funded by Medicaid, they must be provided in accordance with federal Medicaid law. Refer to the *Pennsylvania Intermediary Service Organization Guidelines* for further information about operating as a Vendor Fiscal/Employer Agent ISO.

Services provided by an Agency with Choice ISO must be provided in accordance with Title 55, Chapter 4300 regulations. If ISO services are funded by Medicaid, they must be provided in accordance with federal Medicaid law. Refer to the Pennsylvania *Intermediary Service Organization Guidelines* for further information about operating as an Agency with Choice ISO.

C. Rights of an Individual Using ISO Services

When using ISO services, individuals must have the right to Identify a *representative* and receive ISO services in accordance with the guiding principles of self-determination. This means that ISO services must be provided in a manner that affords individuals and their representatives choice and control over the services they receive and the qualified support service workers/providers who provide them.

D. *Individuals' Right to Have a Representative*

Individuals have the right to have a representative to assist the individual in hiring and managing service support workers who are paid through an ISO.

If a representative is desired, the representative must:

1. Effectuate, as much as possible, the decision the individual would make for himself/herself;
2. Accommodate the individual, to the extent necessary that they can participate as fully as possible in all decisions that affect them. Accommodations shall include, but not be limited to, communication devices, interpreters, and physical assistance;
3. Give due consideration to all information including the recommendations of other interested and involved parties; and,
4. Embody the guiding principles of Self-Determination.

If a representative is desired by an individual who is age 18 or older, they should be identified in the following order:

1. A guardian. Pursuant to Pennsylvania's guardianship statute. However, the legal guardian must include the individual in the decision making process related to the services and supports the individual receives and the individuals that provide them. Should a legal guardian not be able or willing to be an individual's representative, the legal guardian, in consultation with the individual, may designate a representative for the individual.
2. Next of Kin. If no one has been designated by a court or by the individual, the following next of kin in order of priority and as available and willing:

- a. Spouse
 - b. An adult son or daughter
 - c. Either parent
 - d. An adult brother or sister
 - e. Other willing relative
3. If an individual is interested in utilizing an ISO but desires a representative and is unable to identify one from the above criteria, the individual, along with their supports coordinator, shall identify an appropriate representative.

A representative may not receive payment for being the individual's representative. In addition, a representative may not receive payment for any direct care services the representative provides to the individual.

The ISO entity must recognize an individual's representative as a decision-maker for the individual and provide them with all the services, training, and support it would provide an individual if they were using the ISO directly.

The ISO entity must fully inform an individual's representative of the rights and responsibilities of a representative of an individual and in using ISO services. Once fully informed, the ISO entity must have the representative review and sign an agreement. A copy of this agreement must be given to the representative and the original must be maintained at the ISO in the individual's file. The agreement must:

1. List the role and responsibilities of being the individual's representative;
2. List the role and responsibilities of the representative related to using a particular type of ISO;
3. List the role and responsibilities of the ISO being used;
4. State that the person agrees to be the individual's representative and understands and accepts that role and all responsibilities related to being the individual's representative;
5. State that the representative understands and accepts the role and responsibility related to using the particular type of ISO; and,
6. State that the representative will abide by the ISO's policies and procedures.

The ISO entity must collect and maintain contact information for each individual's representative in the individual's file at the ISO.

E. Individual Support Plans and Budgets

Counties must provide ISOs, either electronically or by hard copy, with the section of an individual's county authorized ISP that outlines all services and supports for which the ISO is making payment, the county authorized budget, as well as any updates that are made to these two documents that affect ISO services. Supports and

services provided to individuals and authorized for supports and services by the ISO must be reflected in the individual's ISP.

The authorized budget should include:

1. The payment rate for the qualified support service worker, which includes:
 - a. The hourly wage and related federal, state, and local income and employment taxes;
 - b. All costs related to the purchase of worker's compensation insurance and general liability insurance;
 - c. The financial management costs of the ISO:
 1. This cost cannot reduce or cause any loss of authorized waiver services to the individual effective the issuance date of this bulletin.
 2. The fee associated with conducting criminal background checks for prospective support service workers hired directly by the individual/representative.

To cover ISO financial management costs, a county can choose from three different funding options: county waiver administration funds, waiver service funds, or county base funds.

For waiver recipients at or near the Person/Family Directed Support Waiver (P/FDS) dollar cap, base funds can be added to the county authorized budget to cover financial management costs. If County base funds are unavailable, ISO services cannot be used.

If a time sheet is submitted to the ISO for more than the approved hours, or an invoice for services and supports that are not included in the individual's ISP and county authorized budget or for more than the amount budgeted, the individual will be responsible for paying the excess amount(s). The individual may pay any amount(s) in excess or not authorized in the budget either directly (private pay), or through a line item transfer in the budget, or through a reduction in the budget for the remainder of the plan year. Any transfer or reduction in the budget to accommodate services in excess of the approved hours must be accompanied/accomplished through a plan revision.

F. Establishment of Payment Rates

Counties must establish a payment rate range to guide individuals/representatives in determining the rates of payment paid to support service workers they hire directly. The payment rate range will include the hourly wage (developed in accordance with federal and state Department of Labor rules and regulations) and all required federal, state, and local income and employment taxes.

Using the payment rate range, the individual/representative may select the payment rate for the support service workers they hire directly subject to the authorized budget.

G. Payment to ISOs for Services Rendered

A county shall establish a financial management rate paid to an ISO that is consistent with Title 55, Chapter 4300. Counties shall negotiate or set an financial management rate for ISO services in accordance with Title 55, Chapter 4300 cost principles. This rate will be a monthly flat fee or a percentage of the budget for ISO services.

If this rate is based on a flat fee, the financial management rate for ISO services established by the county shall be the same for all individuals served by the ISO. If based on a percentage of the total budget, the percentage would not exceed the financial management fee the county uses with providers. It is recommended that counties consider establishing a financial management rate for ISO services that is based on the number of months individuals will be in enrolled in an ISO during the fiscal year.

Costs associated with training individuals and representatives must be included in the financial management rate. This includes orientation for individuals and representatives by the ISO and training to the individual and representatives in best employer practices.

H. *Employee and Provider Qualifications*

Employee and provider qualifications must be referenced to the appropriate Medicaid Waiver pursuant to the specific service provided.

In general, minimum requirements for support service workers are:

1. Must be at least 18 years old;
2. Must have a criminal background check completed and results referenced with appropriate statutes or licensing requirements, and;
3. Must have received the necessary pre/in-service training.
4. Verification that service specific staff qualifications are met.

Support service workers who serve minors receiving Medicaid Waiver services must have a State Child Abuse Clearance Check conducted. Support service workers who serve adults receiving Medicaid Waiver services must have a State Police Criminal Background Check done. Support service workers who are from out-of-state and who serve individuals receiving Medicaid Waiver services must have an FBI Criminal Background Check done.

The above mentioned criminal background checks are valid for one year from the date they are conducted for the purpose of hiring a support service worker. The cost of conducting these criminal background checks will be included in the budget. Counties are responsible for verifying that all support service workers hired by individuals/representatives are qualified and meet the applicable Medicaid waiver requirements. This verification role may also be delegated as a contract condition with the ISO and monitored by the County. If this role is delegated to the ISO, OMR's *Habilitation Certification* form must be used.

I. Monitoring the Quality of Supports and Services Provided to Individuals

The individual/representative and the individual's support coordinator shall continue to monitor the health, safety, and quality of the services provided in accordance with the individual's ISP and existing waiver requirements.

J. Monitoring the Quality of Supports and Services Provided By ISOs

Counties shall conduct an ISO Readiness Review at least 30 days prior to an ISO becoming operational to determine if the ISO has the systems, policies and procedures in place to perform the required tasks in accordance with federal, state, and local rules and requirements. Refer to the *Pennsylvania Intermediary Service Organization Guidelines*.

Counties shall monitor ISO performance, payments, and contract conditions per the Pennsylvania ISO guidelines at least annually.

Counties shall ensure that all ISOs comply with Title 55, Chapter 4300 regulations.