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Owner: jose Roque
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CHILDREN’S HOME AND COMMUNITY BASED WAIVER

POLICY

It is the policy of the Detroit Wayne Mental Health Authority (DWMHA) that a comprehensive array of services and supports that promote recovery, self-determination, community integration and participation, optimum independence, productivity and family resiliency will be provided to eligible consumers and their families through the Children’s Home and Community Based Child Waiver Program (CWP).

PURPOSE

To provide standards and procedures regarding the provision of CWP services.

APPLICATION

The policy applies to Medicaid-eligible children under age 18 with a documented developmental disability and a need for medical or behavioral supports and services at home who meet CWP criteria, DWMHA Staff, the Service Providers (SP) and their subcontractors responsible for the provision of the CWP services.

KEY WORDS

1. Active Treatment
2. Category of Care
3. Children’s Home & Community-Based Waiver Program (CWP)
4. Choice Voucher System
5. Community Living Supports (CLS)
6. Developmental Disability
7. Individualized Plan of Services/Person-Centered Planning (IPOS/PCP)
8. Intermediate Care Facility for the Individual with Intellectual Disability (ICF/IID)LOC
9. Medical Necessity
10. Person-Centered Planning
11. Pre-Screen Score
12. Qualified Mental Health Professional (QMHP)
13. Qualified Intellectual Disabilities Professional (QIDP)
14. Web Support Application (WSA)

STANDARDS

1. The intended CWP beneficiaries must meet the eligibility requirements as stated in the Medicaid Provider Manual (MPM)- Children’s Home and Community-Based Services Waiver (CWP).
 - a. The CWP providers and their subcontractors shall:

1. Develop and implement policies and procedures to ensure the provision of CWP services to Medicaid eligible consumers, based upon medical necessity criteria,
2. Provide assessment to all potential CWP candidates,
3. Ensure the family/guardian receive information about the Choice Voucher system,
4. Ensure CWP candidates meet the MPM eligibility criteria.
 - i. Evaluate potential candidates for the CWP by completing the MDHHS Waiver Support Application CWP "pre-screen" form on the WSA system.
 - ii. Submit the pre-screening to MDHHS via WSA.
 - iii. Ensure updates to the pre-screening information are done every six months and whenever there is a change in the child situation.
 - iv. Ensure providers, consumers and families are trained on the program procedures by the specialists.
 - v. Submit to MDHHS the CWP application via the WSA within 30 days from the designated due date indicated in the invitation to apply.
 - vi. Complete CWP application to include:
 - a. The CWP Certification Form appropriately executed as required and the preliminary category/intensity of care determination,
 - b. The Demographic Intake Form,
 - c. Documentation of Medicaid eligibility if already established and
 - d. The proper budget to be submitted along with the application to MDHHS.
 - vii. Complete assessments to include the strengths and needs of the child and how the needs can be met by local service agencies.
 - viii. Ensure the Supports Coordinator shall recommend appropriate treatment interventions and behavioral interventions in an effort to eliminate progression of the child's disability.
 - ix. Develop the IPOS/PCP to include all medically necessary services and supports.
 - x. Ensure the child is in need of active treatment.
 - xi. Ensure there is a process to prior authorize all services.
 - xii. Ensure there is a process for monitoring CWP services including the claims are coded in accordance with MDHHS policies and procedures.
 - xiii. Ensure that Individuals who are identified in the individual plan of services to provide CLS to the child and family must meet provider qualifications. The CMHSP must maintain the following documentation:
 - a. A log of the CLS must be maintained in the child's record, documenting the provision of activities outlined in the plan.
 - b. Provider qualifications and standards must be maintained for all staff providing services and supports to the child and family. All service costs must be maintained in the child's file for audit purposes.
 - xiv. Ensure the coordination of the child's waiver services with all appropriate contractors/subcontractors.
 - xv. Document any changes in the person/family condition as established in the MDHHS Training Manual, Chapter 10 and other procedural details as shown in the Appendix.
 - xvi. Ensure all staff hired to perform CWP services receive a criminal background check in compliance with provision of the Medicaid Provider Manual-Children's Home and Community-Based Services Waiver.
 - xvii. Ensure full compliance of all provisions of the CWP Manual and the DWMHA General Fund Formulary to include the following key requirements:
 - a. Medicaid State Plan Services and CWP services may be provided concurrently except when services are duplicated, (e.g., Medicaid State Plan, and Department of Human Services (DHS) may not duplicate personal care and medical transportation services).
 - b. Children with DD that are screened as eligible for the CWP who are uninsured and underinsured may receive up to 60 days of service following the Access Center eligibility screening while waiting for enrollment

in the CWP. However, children waiting determination beyond the 60 day timeframe, that meet medical necessity criteria should be approved by Utilization Management and follow the system established by the Authority.

- c. Must resubmit a revised pre-screening form every six month.
 - d. The beneficiary must receive at least one CWP service per month in order to retain eligibility.
 - e. Support Coordination for consumers receiving CWP services, must be performed by Qualified Intellectual Disabilities Professional (QIDP).
 - f. Monitor the plan of care monthly to ensure appropriateness of care.
 - g. Complete and update in timely manner in the WSA the required information such as re-certification, budget, etc.
 - h. Complete and actualize the narrative for the "Category of Care/Intensity of Care".
- xviii. Ensure all CWP beneficiaries comply with the federal laws and are notified of their right to file a Medicaid Fair Hearing when there has been a denial, suspension, reduction, or termination of services.
- xix. Ensure one hundred percent of the CWP clinical records shall be reviewed annually utilizing the self-monitoring tool loaded into the MHwin system.
- xx. Ensure that one hundred percent of the personnel records of the staff providing services to the child are reviewed annually for compliance with training and qualifications as well as the required training as follows: MFH, PCP/IPOS, HIPPA, RR, Infection Control, and First Aid.
- xxi. Ensure compliance with: eligibility requirements, freedom of choice provision, service provider, service provider qualifications, administrative procedures, and a safe and appropriate plan of service for children served by the CWP.
- xxii. Ensure all services and supports are included in the Individual Plan of Services/Person-Centered-Plan (IPOS/PCP).
- xxiii. Ensure the IPOS/PCP is reviewed at least annually, approved, and signed by the physician.
- xxiv. Ensure policies and procedures describe the Choice Voucher System, the nature of the contractual relationship, structure of service authorization and payment mechanisms in the context of the PCP/IPOS process.
- xxv. Ensure a formal process to facilitate and document the Choice Voucher option clearly identifying the amount, scope and duration of the approved services to be provided.
- xxvi. Ensure all staff involved in providing services to a CWP beneficiary have current credentials.
- xxvii. Ensure records shall be maintained at the SP level as well as in client home for audit purpose.
- xxviii. Coordinate transfer of the CWP when a child moves to or from other Counties or Regions.
- xxix. Ensure that the Authority receives reports of the following:
- a. Pre-screening submitted to MDHHS,
 - b. Plan of discharge (3 months in advance) for children aging off from CWP,
 - c. Changes in status of children in the CWP including transfers,
 - d. Every invitation received to apply for CWP and
 - e. CWP new enrollees.
- xxx. Provide technical guidance regarding the functions of the participant in the Choice Voucher System.
- xxxi. Monitor the age of all CWP enrollees and facilitate transfer to the HSW or other program(s), if clinically appropriate to ensure continuation of care when a child is aging out of the CWP.
- xxxii. Ensure a plan of discharge is submitted at least 3 months prior to a child aging out of the CWP.
- xxxiii. If a child is receiving Private Duty Nursing (PDN) benefit after the child ages out of the CWP the benefit must be provided in accordance with the policies and procedures outlined in the Medicaid Provider manual (MPM). PDN is covered for beneficiaries under age 21 who meet the medical criteria as stated in the MPM and the providers must adhere to all applicable limitations, policies and procedures set in the manual.

2. MDHHS shall:

- a. Determine priority rating based on the CWP “pre-screen” form.
 - b. Send invitation letter for application to the child’s family and to the service provider.
 - c. Review the application and determine the eligibility of the applicant within 14 days after receiving the information.
 - d. Notify the Authority and the CWP provider of the approval or denial of the application.
 - e. Terminate CWP services under the following conditions:
 1. Family moves out of Michigan,
 2. Child is not receiving at least 1 waiver service each month,
 3. No active treatment needs are being identified or provided,
 4. Child moves from their parent’s, or legal guardian’s, home,
 5. Child reaches the age of 18,
 6. CWP services are no longer necessary to ensure health and safety,
 7. Child loses Medicaid eligibility,
 8. Failure to submit annual CWP certification,
 9. At parent or guardian’s request to withdraw from CWP (Note: withdrawal requests must be made by the parent or guardian in writing (exception: deceased children) -- a Supports Coordinator can submit the request for withdrawal) or
 10. Child is deceased
3. DWMHA shall:
- a. Review findings from the CWP provider’s self-monitoring tool and provide technical assistance as indicated/requested.
 - b. Provide random reviews of CWP records to ensure compliance with all CWP requirements.
 - c. Conduct on site reviews of records as indicated in collaboration with the Authority’s Quality Management Division.
 - d. Review the IPOS/PCP of children’s records to ensure that habilitation and active treatment of services are provided.
 - e. Monitor the CWP WSA to ensure utilization of services as identified in the IPOS/PCP.
 - f. Provide ongoing technical assistance during the CWP quarterly meetings specific to the CWP contract.
 - g. Facilitate/coordinate transfers to or from other counties in compliance with the CWP Technical Assistance Manual procedures.
 - h. Update the status of CWP enrollments in MH-WIN system.
 - i. Monitor compliance with all invitations from MDHHS to apply for participation in the CWP.
 - j. Provide technical assistance (TA) to all CWP providers as requested and during the quarterly meetings.
 - k. Collaborate with MDHHS regarding coordination of care for the CWP enrollees.
 - l. Collaborate with the Authority Finance Division to ensure effective tracking of all active enrollees.

QUALITY ASSURANCE/IMPROVEMENT

The Authority shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of direct contractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

Authority staff, MCPNs, contractors and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

1. Michigan Mental Health Code (Act 258 of 1974 as amended) MCL. 330.1700, 1712, 1100a.

2. MDHHS Medicaid Provider Manual
3. WSA Technical Assistance Manual CWP

RELATED POLICIES

1. Individual Plan Of Service/Person Centered Planning
2. Medicaid Fair Hearings
3. Grievance Resolution and Appeals
4. Local and Alternate Dispute Resolution
5. Provider and Workforce Qualifications and Prerequisites
6. DWMHA General Fund Formulary

RELATED DEPARTMENTS

1. Clinical Practice Improvement
2. Compliance
3. Customer Service
4. Managed Care Operations
5. Quality Improvement,
6. Utilization Management
7. Recipient Rights

CLINICAL POLICY

YES

INTERNAL/EXTERNAL POLICY

EXTERNAL

EXHIBIT(S)

Attachments:

[CHOICE_VOUCHER_SYSTEM_for_Children_12_2015_515803_7.pdf](#)

Approval Signatures

Approver	Date
Ronald Hocking: Chief Operating Officer [DL]	07/2017
Dana Lasenby: Deputy Chief Operating Officer [AS]	05/2017
Allison Smith: Project Manager, PMP	05/2017
William Sabado	04/2017
Dana Lasenby: Deputy Chief Operating Officer	03/2017
Allison Smith: Project Manager, PMP	03/2017
Rolf Lowe: Assistant General Counsel/HIPAA Privacy Officer	03/2017
Muddasar Tawakkul: Director of Compliance/Purchasing [AS]	03/2017
Bessie Tetteh: CIO	03/2017
tracey Lee: Director Claims Management	03/2017
Lorraine Taylor-Muhammad: Director, Managed Care Operations	03/2017
Michele Vasconcellos: Director, Customer Service	03/2017

Approver	Date
crystal Palmer: Director, Children's Initiatives	03/2017
Corine Mann: Chief Strategic Officer/Quality Improvement	03/2017
Mary Allix	03/2017
Darlene Owens: Director, Substance Use Disorders, Initiatives	03/2017
Kip Kliber: Director, Recipient Rights	03/2017
Jody Connally: Director, Human Resources	03/2017
Julia Kyle: Director of Integrated Care	03/2017
Stacie Durant: CFO Management & Budget	03/2017
Carmen McIntyre: Chief Medical Officer	03/2017
Diana Hallifield: Consultant	03/2017
Sarah Sharp: Consultant	03/2017
jose Roque	03/2017
Maha Sulaiman	03/2017

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**CHOICE VOUCHER SYSTEM
FOR CHILDREN
TECHNICAL ADVISORY**

Draft Version 3.0

December 2015

**Behavioral Health and Developmental Disabilities
Administration
Michigan Department of Health and Human Services**

A Technical Advisory includes **recommended** parameters developed by MDHHS for PIHP/CMHSPs related to specific administrative functions as derived from public policy and legal requirements.

This Technical Advisory comprises technical guidance to PIHP/CMHSPs in the use of the Choice Voucher System for Children for the families of minor children and includes prototype agreements that local CMHSPs may adapt to meet local needs. This Technical Advisory is an interpretive statement of the MDHHS and not the guarantee of the State, nor the Attorney General's Office.

Choice Voucher System for Children

Introduction

The Choice Voucher System for Children provides a concrete set of methods that gives families of children receiving services and supports from the Children's Home and Community Based Waiver Program (CWP), the Habilitation Supports Waiver (HSW) and other children receiving mental health specialty services and supports meaningful authority to choose and directly hire providers of authorized services and supports.

The goal of the use of the Choice Voucher System for Children is to facilitate a method of honoring the preferences and choices of the child, and his or her family, and connecting the child to a meaningful life in the community. The arrangements made through this system do not support self-determination because children are legally dependent upon a parent or guardian to make decisions for them until they reach the age of 18. These decisions include choices about mental health services and supports.

The CWP enables Michigan to provide Medicaid funded services to minor children with developmental disabilities who meet the criteria for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD) and who, without such services, would be at risk of being placed outside of the family home. The CWP is a fee-for-service program managed through local Community Mental Health Service Programs (CMHSPs). CMHSPs are required to offer the Choice Voucher System for Children to families of children on the CWP. The HSW provides Medicaid-funded services to adults and children with developmental disabilities who meet the criteria for ICF/IDD. Prepaid Inpatient Health Plans (PIHPs) are required to offer the Choice Voucher System for Children to minor children on the HSW. Many other minor children receive mental health specialty services and supports from the public mental health system. Each PIHP/CMHSP can choose to offer the Choice Voucher System to other minor children they serve.

The Michigan Mental Health Code (The Code) provides for the right of all individuals receiving mental health services to develop services and supports through the person-centered planning process. For minor children and their families, this planning process is also family-driven and youth-guided and builds upon the child's capacity to engage in activities to promote health, safety, habilitation skill development, and participation in community life. The process honors the preferences, choices and abilities of the child and the family and involves the participation of the child, family and friends. The result is an Individual Plan of Services (IPOS) that describes the services and supports that will be used to promote health and safety and achieve the identified preferences, choices, and goals. The community mental health services program (CMHSP) then authorizes funding for the services and supports identified in the IPOS. The Choice Voucher System for Children is intended to shift the choice of providers from the PIHP/CMHSP and its provider network to the family.

Families of minor children directly employ workers or directly contract with qualified providers (both individuals and organizations) of their choosing by using the methods of the Choice Voucher System for Children. Service and support arrangements directly controlled by the family may range from one specific service to all of those described in

the IPOS.¹ The PIHP/CMHSP authorizes funding to provide a defined amount of resources sufficient to obtain the services identified in the IPOS. Authorized funds (described in this document as an Individual budget²) are used to address the health and welfare needs of the child and enable the child to live in the family home and participate in the community.

The Choice Voucher System for Children is applied within the framework of Michigan's public mental health system. Its elements have been designed to meet the requirements of the Medicaid program, including the applicable waivers, and the Code. The components make family control possible by creating mechanisms to maintain PIHP/CMHSP accountability for service delivery and the use of public funds, particularly Medicaid funds, and to support the child and his or her family, as needed.

The responsible parent and family have the freedom to modify or terminate the choice voucher arrangements at any time. The most effective method for making changes is through the person-centered/family-driven and youth-guided planning process in order to identify and address problems that may be interfering with the success of the arrangement. The decision of a family to terminate the use of choice voucher arrangements does not alter the need for services as identified in the IPOS. The PIHP/CMHSP has the ability to terminate choice voucher arrangements (pursuant to the standards set forth for arrangements that support self-determination in the Self-Determination Policy and Practice Guideline) when the health and welfare of the child are at risk or the responsible parent fails to obtain the services and supports for the child according to the IPOS and within the Individual budget. When these arrangements are terminated by either party, the PIHP/CMHSP has an obligation to assure that all identified service needs are met by providers on contract with or employed by the PIHP/CMHSP.

Successful use of the Choice Voucher System for Children requires that all parties understand their rights and responsibilities. This Technical Advisory includes prototype agreements. These agreements should not be used, "as is;" the PIHP/CMHSPs and families should use the prototypes as starting points for developing individualized and locally viable agreements

The CHILDREN'S VOUCHER AGREEMENT is an agreement between the PIHP/CMHSP and the responsible parent of the family. The agreement describes the obligations and responsibilities of the PIHP/CMHSP and the family. It confirms that the family is participating in the Choice Voucher System for Children voluntarily. The family agrees to directly manage workers or other providers providing services and supports and handle other responsibilities of participation as described in the agreement. The agreement also confirms that the PIHP/CMHSP agrees to the family's participation, delegates responsibility to manage the individual budget to the responsible parent, and agrees to support the family in implementing its arrangements. The IPOS and individual

¹ See Appendix A for a list of services that can be obtained through choice voucher arrangements in the Habilitation Supports Waiver and for services that can be obtained through choice voucher arrangements in the Children's Waiver Program.

² The CWP is a fee-for-service program. Therefore, families using choice voucher arrangements do not have the discretion and flexibility in implementing their individual budget that other families may have.

budget are referenced within, attached to the agreement, and updated as they change. The family agrees to follow specific requirements from the PIHP/CMHSP including assuring that providers meet applicable provider requirements.³

Use of Medicaid Funds

Medicaid is one funding source for mental health services and supports. The use of Medicaid funds places special accountability requirements on the provision of services and supports. All requirements for documenting that Medicaid services and supports have been provided, as described in the Michigan Medicaid Provider Manual, must be completed. That documentation must be provided to the PIHP/CMHSP. Every provider must execute a separate agreement, called the CHOICE VOUCHER PROVIDER AGREEMENT, with the PIHP/CMHSP. In this agreement, the provider agrees that it will: 1) keep required records regarding service delivery and make those records available for review upon the request; 2) disclose financial ownership interest in Medicaid-financed provider entities; and 3) determine if a person has an advanced directive to refuse life-sustaining medical treatment and inform the person whether or not the provider is unable to carry out that advance directive so that the person can make an informed choice in the hiring process⁴. These requirements are described in federal regulations at 42 CFR 431.107 and other sections of the Code of Federal Regulations referenced therein.

Implementation

The Choice Voucher System for Children is a partnership between the PIHP/CMHSP and families. The PIHP/CMHSP is expected to assure that its policies and practices empower the families to make meaningful choices about how the authorized funds are spent, consistent with the IPOS. The PIHP/CMHSP is expected to develop and implement the Choice Voucher System for Children in a family-friendly manner, making the methods as easy to use as possible.

In addition, families must be given a way to provide feedback concerning use of the Choice Voucher System for Children to ensure that:

- Families are supported in the direction and control of chosen providers of services;
- Each IPOS is presented in a way that the family can easily understand the allocation of funding authorized to implement the IPOS;
- PIHP/CMHSP funds are handled correctly;
- Monthly budget reports can be easily understood by all parties;
- Families and advocates are involved in the process of assessing and monitoring quality; and
- Information gathered is used to make positive change to the system.

³ Provider requirements are to be delineated by the PIHP/CMHSP to the family, and are derived from such sources as the Michigan Medicaid Provider Manual.

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.).

FISCAL INTERMEDIARIES IN THE CHOICE VOUCHER SYSTEM FOR CHILDREN

Most families that use choice voucher arrangements directly hire their workers or directly contract with other providers (e.g. agencies and professional providers). The responsible parent selects and contracts with providers of the services or supports identified in child's IPOS. The responsible parent has the choice to directly hire needed workers or contract with an agency or professional provider to provide services and supports. The responsible parent must enter into an EMPLOYMENT AGREEMENT with each person he or she directly employs. This agreement outlines the terms and conditions of employment. Similarly, a responsible parent must directly enter into a PURCHASE OF SERVICES AGREEMENT with each agency providing services and supports or qualified individual professional practitioner providing services and supports. Both types of agreements state that the responsible parent or his or her representative has authority to terminate the contract.

Families that directly employ workers through choice voucher arrangements must use a Fiscal Intermediary (FI) to handle the individual budget. An FI is an independent legal entity that handles the funds in the individual budget, ensuring that funds are spent in accordance with the IPOS. The FI makes payments as authorized by the responsible parent to providers of services and supports.

The FI has three basic areas of performance:

- serves as fiscal agent for the PIHP/CMHSP to ensure accountability for the funds in the individual budgets and ensures compliance with requirements related to management of public funds;
- provide employer agent services for responsible parents directly employing workers;
- offers supportive services to families so they can participate successfully in choice voucher arrangements.

The requirements related to FIs are set forth in the Fiscal Intermediary Technical Requirement (attached as Appendix B to the Self-Determination Implementation Technical Advisory).

The Employer Agent Role

When families using choice voucher arrangements directly hire workers, they are the employer of those workers and responsible for hiring, managing and, when necessary, firing those workers. However, the FI is needed not only to handle the funds in the individual budget, but to handle the complex legal aspects of employment. The FI serves as the responsible parent's employer agent to handle the payroll, tax and unemployment insurance filings and secure worker's compensation insurance.

Employer Agent is a term developed by the Internal Revenue Service (IRS) to describe entities that provide the service of handling all of the employer-related duties for an individual or organization. These tasks include those required by the IRS⁷, state and

⁷ See Section 3504 of the Internal Revenue Code, IRS Revenue Procedure 70-6 and 80-4 and IRS Notice 2003-70. These documents deal explicitly with employer PIHPs/CMHSPs who handle required IRS tasks for employers.

local income tax jurisdictions, and unemployment insurance regulators. In this role, the FI is providing a service to responsible parents and not serving as their agent as that term is traditionally defined in law.

The FI neither contracts directly for services and supports on behalf of the responsible parent, nor acts as the employer of workers. If a responsible parent chooses to hire workers directly, the responsible parent is the employer and is responsible for hiring and managing the workers. The FI is not a party to Employer Agreements or Purchase of Services Agreements between the responsible parent and each provider.

While the responsible parent is managing employer, most often the IRS documentation (especially obtaining an Employer Identification Number (EIN) to employ a worker) is completed by the responsible parent on behalf of the child. In other words, the EIN is in the child's name and the child is the employer of record. The distinction is important because if the responsible parent is the employer of record, rather than the managing employer, then the liability, if something goes wrong, extends to his or her assets. However, all agreements must be signed by the responsible parent as managing employer because a minor does not have the capacity to sign contracts.

The FI may also perform functions that enable the responsible parent to direct needed services and supports. These functions include employee verification to check provider qualifications and conducting reference and background checks. The FI also may be expected to perform other functions such as collecting and reporting data related to service delivery to the PIHP/CMHSP.

Key Elements of the Relationship Between the PIHP/CMHSP and the FI

The PIHP/CMHSP is responsible for selecting one or more fiscal intermediaries to serve the responsible parents using choice voucher arrangements in its area. More information on developing and implementing a Fiscal Intermediary Agreement is found in the *Self-Determination Implementation Technical Advisory* including a prototype Fiscal Intermediary Agreement. The PIHP/CMHSP has great flexibility to construct a unique relationship with the FI provided that all technical requirements are met. Each PIHP/CMHSP may contract for other specific services that meet its or the responsible parents' needs, such as employee verification functions. The Fiscal Intermediary Technical Requirement provides a list of criteria for the PIHP/CMHSP to use in developing and implementing its FI arrangements. The PIHP/CMHSP must construct its contractual arrangements with the FI in terms that clearly define the FI and PIHP/CMHSP's roles, responsibilities, and reporting requirements through a Fiscal Intermediary Agreement.

The PIHP/CMHSP derives many benefits from the FI arrangement. It shifts the responsibility for handling the administrative and employer agent roles to the FI. The FI provides a guarantee that it will properly handle and account for Medicaid and other public funds. If properly constructed, the arrangement provides a buffer for the PIHP/CMHSP and insulates the PIHP/CMHSP from liability for all of the functions that are handled by the FI⁸. As the potential for PIHP/CMHSP liability is directly related to the specific contractual arrangement with the FI, local counsel should be actively

involved in developing this arrangement.

While the use and proper functioning of the fiscal intermediary insulates the PIHP/CMHSP from liability for those functions, the PIHP/CMHSP has potential employer liability if it fails to separate itself from the responsible parent's role in directly contracting with workers and providers. The responsible parent using choice voucher arrangements is the sole employer in charge of hiring and managing his or her employees. As such, responsible parents, with their allies, must fully and independently select, orient and direct chosen workers. In general, the PIHP/CMHSP provides support as well as information and guidance to responsible parents directly employing workers rather than performing the selection and management duties itself. While the design of Technical Advisory is intended to limit the potential for liability, the particular realities of a relationship between a responsible parent, provider, FI and PIHP/CMHSP may be result in liability⁹.

In addition, PIHP/CMHSPs must carefully structure and examine its involvement in direct hire arrangements to avoid joint employment. If it is too involved or sets the terms and conditions of employment, it could be considered the joint employer of workers. As a result, in addition to other liability, it could be responsible for overtime if a worker exceeds 40 hours per week working for two or more parents using choice voucher arrangements or individuals using arrangements that support self-determination in addition to paying for travel time between the homes¹⁰.

The PIHP/CMHSP must actively involve families in its assessment plan that includes focus groups, performance loops, and satisfaction surveys (dissemination of surveys by mail is insufficient). If a FI does not fulfill its functions properly (especially the functions of accounting for Medicaid funds and handling the employer agent duties) and the PIHP/CMHSP does not discover the situation through its monitoring process and take corrective action, the PIHP/CMHSP may be held responsible and exposed to liability and potential financial penalties. The PIHP/CMHSP must require the FI to carry adequate insurance and obtain performance bonding to safeguard against losses that could result from the errors of the FI.

The Value of Using a FI

The FI has the unique role of administering the individual budget or funding directed by the responsible parent. In this role, the FI 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 family choices. Free from such conflicts of interest, the FI can provide each family with an individualized response.

In order for choice voucher arrangements to be successful, families must see the FI as an independent entity that works in partnership with them as they consider and try out

⁹ For more information, consult "Addressing Liability Issues in Consumer-directed Responsible parental Assistance Services" by Charles J. Sabatino and Sandra L. Hughes, January 2004, Developed for the U.S. Department of Health and Human Services, Office of Disability, Aging and Long-Term Care Policy. This report can be downloaded from <http://aspe.hhs.gov/daltcp/reports/cdliab.htm> Please note that you must click on each section of the report separately to read that section.

¹⁰ For more information on new federal rules minimum wage and overtime home care workers, consult <http://www.dol.gov/whd/homecare/> For guidance on joint employment, consult http://www.dol.gov/whd/homecare/joint_employment.htm

creative, non-standard approaches to obtaining support. To facilitate successful outcomes for families, a FI should work to develop a relationship based on trust, respect and partnership with each family and be oriented to individually respond to each child's needs.

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Overview of the Choice Voucher Agreement

The Choice Voucher Agreement is a contract between the PIHP/CMHSP and the family of a minor child receiving services and supports through mental health agency that defines the roles and responsibilities of the parties regarding participation in the Choice Voucher System for Children. This prototype agreement can be used as a template for PIHP/CMHSPs to create local agreements that meet their unique needs.

The provisions of the Choice Voucher Agreement:

- Describe the responsibilities of the PIHP/CMHSP including ways that the PIHP/CMHSP can support the family in creating and using family-directed/youth guided planning process;
- Describe the authority and responsibilities of the family;
- Provide the family with the necessary information and support so that they can make an informed choice regarding participation and successfully participate in the Choice Voucher System for Children;
- Explain that the Agreement, the individual plan of services and/or the authorized funding can be changed through the person-centered planning/family-driven and youth-guided practice;
- Describe the FI arrangements;
- Describe the importance of the Choice Voucher Provider Agreement;
- Outline requirements for providers.

**Prototype
CHOICE VOUCHER AGREEMENT**

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the responsible parent, his or her name should be substituted for the term “responsible parent” throughout the document.

This agreement is made on **[insert date]** between **[insert name of PIHP/CMHSP]** (“PIHP/CMHSP”) and **[insert name of responsible parent]** (“responsible parent”). The PIHP/CMHSP authorizes mental health specialty services and supports. The responsible parent is using choice voucher arrangements to obtain those services and supports on behalf of a minor child.

The purpose of this agreement is to define the responsibilities of the parties in the choice voucher arrangements. This agreement may be changed only through a written agreement by both parties. Termination of this agreement does not affect the child’s right to access services and supports through the PIHP/CMHSP.

Funds in the individual budget are the responsibility of the PIHP/CMHSP and must be used consistently with applicable Medicaid and waiver requirements. Providers must meet provider requirements and sign a Choice Voucher Provider Agreement with the PIHP/CMHSP. The authority over control and direction of the funds is delegated by the PIHP/CMHSP to the responsible parent.

The individual budget will be administered by the fiscal intermediary (FI) **[insert name and contact information for the FI]**, which will be responsible for completing and submitting paperwork for billing, payment for services and supports when authorized by the responsible parent, and handling the employer agent function. The FI will provide a monthly spending report to the responsible parent and the PIHP/CMHSP supports coordinator.

ARTICLE I—PIHP/CMHSP RESPONSIBILITIES

The PIHP/CMHSP agrees to the following responsibilities:

1. Fund services and supports in the IPOS and the individual budget (see attachments A and B) (Individual Budgets are not required for Children’s Waiver Program).
2. Inform the responsible parent of the Medicaid requirements for providers (such as age, relationship to child).
3. Assist the responsible parent with obtaining required agreements from each provider.

4. Provide information on the documentation and reporting requirements for services and supports obtained through choice voucher arrangements.
5. Provide assistance in monitoring expenses and reviewing monthly spending reports.
6. Provide information on applicable dispute resolution procedures.
7. The case manager or supports coordinator from the PIHP/CMHSP will:
 - a. Work with the responsible parent to develop an IPOS and an individual budget through a person-centered planning/family-driven and youth-guided process.
 - b. Work with the responsible parent to develop a backup plan for essential services in case of worker absences, or emergencies.
 - c. [Insert other specific case management/supports coordination roles to be provided by the PIHP/CMHSP.]

Article II—Responsible Parent’s Responsibilities

The responsible parent agrees to:

1. Directly manage a portion or all of the services and supports.
2. Directly hire or contract with workers or providers who meet provider requirements.
3. Use services and supports consistent with the goals and outcomes in the IPOS.
4. Provide the PIHP/CMHSP and/or the FI with all necessary documentation supporting expenditures of funds provided by the PIHP/CMHSP pursuant to the individual budget.
5. Manage the use of funds so that expenses over the course of the year do not exceed individual budget.
6. Let the PIHP/CMHSP know of a change in circumstance or an emergency that may require a change in the IPOS or the individual budget.

The PIHP/CMHSP and responsible parent agree to the terms and conditions of this agreement.

Responsible Parent

Date

PIHP/CMHSP

Date

Overview of the Employment Agreement

This agreement should be used as a prototype for developing an agreement between a responsible parent using choice voucher arrangements and a person directly employed by the responsible parent to provide services or supports. It outlines and describes the duties and responsibilities of the parties to the contract.

The provisions of this agreement:

- Describe choice voucher arrangements, the nature of the employment relationship, and the structure of service authorization and payment mechanisms;
- Describe the duties required of the employee;
- Detail the employee's compensation and benefits;
- Outline the rules and regulations affecting the employee's employment;
- Explain the importance of the Choice Voucher Provider Agreement;
- Outline the requirements that the employee must meet.

Prototype EMPLOYMENT AGREEMENT

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the responsible parent, 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 responsible parent 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 choice voucher arrangements administered by the PIHP/CMHSP. If my employer ends participation in choice voucher arrangements, 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 records required by my employer or the PIHP/CMHSP. 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 PIHP/CMHSP or my employer.

3. I agree to abide by all of my employer's rules and PIHP/CMHSP regulations (described below) regarding my employment duties to the employer and I acknowledge receipt of the following rules and regulations
 - a. Attachment A to this Agreement, which outlines the supports that I will provide to my employer.
 - b. ***[Employer should insert rules he or she may have (such as rules regarding phone usage or smoking in his or her home)].***
 - c. ***[Insert reporting and documentation requirements for verifying hours worked].***
4. 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.
5. I understand and acknowledge that my employer is my sole employer and that I am not an employee of the PIHP/CMHSP, which authorizes the supports I provide, or the FI, which is the financial administrator of funds used to pay me.
6. I agree to assist my employer in filing right complaints upon request. I also understand that I have a responsibility to report rights violations of which I am aware or any potential abusive or neglectful situations I observe. I understand that I may be requested to cooperate with a recipient rights investigation and/or assist my employer with exercising his or her rights.
7. I agree to not to sue the FI for its role as the financial administrator of my employer's individual budget and the PIHP/CMHSP for its role in administering choice voucher arrangements,
8. **I agree to sign a Choice Voucher Provider Agreement with the PIHP/CMHSP and acknowledge that this document does not alter the fact that the PIHP/CMHSP is only the administrator of the funds used through choice voucher arrangements, and that my employer is *[insert name of employer]*. I understand that my employment is contingent on completing a Choice Voucher Provider Agreement.**

ARTICLE II—Employer Responsibilities

I, ***[insert name of Employer]*** (“Employer”) agree to the following:

1. I will provide my FI with the necessary documentation to assure timely compensation of my employee.
2. I will compensate my employee in the following manner: \$ ***[Insert hourly wage]*** an hour. ***[Insert specific information about any benefits the employee shall receive and describe benefits that will be excluded.]*** Payroll will be handled by my FI ***[Insert name of FI]***, 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 Choice Voucher Provider Agreement with PIHP/CMHSP.**

Employee Signature

Date

Employer Signature

Overview of the Purchase of Services Agreement

This agreement should be used as a model for designing a locally sanctioned agreement to be used between the responsible parent using choice voucher arrangements, and a provider agency from which they choose to purchase services. A modification of this agreement format may also be used to contract with an independent licensed/certified professional, or an entity that provides other goods or services. The format does not allow for the sort of arrangements necessary to define an employer-employee relationship, and should not be for those situations.

The provisions of this agreement:

- Describe the duties required of the provider;
- Detail the provider's compensation and benefits;
- Outline the rules and regulations affecting the provision of services;
- Explain the importance of the Choice Voucher Provider Agreement.

Prototype

PURCHASE OF SERVICES AGREEMENT

Notes in bold, italics and brackets are places where specific information must be inserted. To make the agreement clearer for the responsible parent, his or her name and the provider's name should be used throughout the document.

This agreement is made on **[Insert date]** between **[Insert name of responsible parent]** ("responsible parent") and **[Insert name of provider]** ("provider"), a provider of [Insert type of services] to describe the services or supports the responsible parent is purchasing from the provider and how the provider will be compensated for providing such services.

This contract shall remain in effect until it is terminated or modified. Any party can initiate a termination or modification by providing 15 days written notice to the other party. The other party shall respond to any such notice within seven (7) working days by accepting the modification or termination or proposing an alternative modification.

The parties acknowledge and agree that this contract is dependent on the responsible parent's participation in choice voucher arrangements administered by the PIHP/CMHSP. If the responsible parent ends participation in the choice voucher arrangements, this contract may be terminated.

1. During the term of this Agreement, the provider shall provide support to the family by performing the following duties **[Insert detailed description of duties]**.

- *There can be different types of services, different rates by service or shift, and it could outline which employee will provide which services, or cover which shift.*
 - *The family should determine what services they want to purchase and how they should be delivered. This should be determined prior to approaching providers so the family can shop around. The provider should not determine this. The provider can always turn down the contract if it does not feel comfortable with what the family wants to purchase from them.*
 - *Keep in mind, as with all contracts, the terms of the contract result from negotiation between the parties to the contract.*
2. The responsible parent agrees to authorize his or her FI to pay the provider for the provision of the services described. Payment will be made only when authorized by the responsible parent. If the provider has a question about payment, it must contact the responsible parent to clarify the issue.
3. **[If the provider is providing staff, insert the following provisions:** The provider is an independent contractor of the responsible parent. **The provider shall provide staff to provide the services or supports described above consistent with this agreement. The provider is the sole employer of the staff and shall fulfill all federal and state employment obligations including, but not limited to:**
- maintaining worker’s compensation insurance;
 - complying with minimum wage standards and overtime regulations;
 - withholding and payment of employment taxes;
 - Complying with occupational health and safety standards and all other reasonable employer responsibilities.

The provider has the legal responsibility to recruit, screen, hire, manage and supervise the staff in accordance with all applicable federal and state laws. The provider shall, make every effort to meet the responsible parent’s preferences when employing and scheduling employees. This includes involving the responsible parent in the employee selection and assuring re-assignment of employees when they are not acceptable to the responsible parent. The responsible parent will have the maximum amount of control over staff as allowed by law.]

4. The parties agree and specifically acknowledge that the services may be performed in the family’s home. The provider agrees that its staff will abide by all of the responsible parent’s rules and PIHP/CMHSP regulations and the provider acknowledges receipts of the following rules and regulations:
- a. **[Responsible parent should insert can rules he or she may have (such as rules regarding phone use or smoking in the home)].**
 - b. **[Insert reporting and documentation requirements for verifying hours worked].**

5. If the responsible parent has a complaint regarding the provision of services under this contract, it should inform the provider and the provider shall respond to the complaint within seven days. If the complaint cannot be resolved directly by the parties, the responsible parent shall inform his or her case manager or supports coordinator.
6. If a dispute arises concerning an invoice or the authorization of payment on an invoice, the following procedure should be followed: **[Insert Applicable Dispute Resolution Procedure]**.
7. The provider agrees to complete illness and incident reports when necessary as required by the PIHP/CMHSP or the responsible parent.
8. The provider agrees not to sue the FI for its role as the financial administrator of the responsible parent's individual budget and not sue the PIHP/CMHSP in its role in administering the Choice Voucher System for Children.
9. The provider agrees to assist the participant in filing Recipient Right complaints. The provider also understands that it has a responsibility to report rights violations of which it is aware or any potential abusive or neglectful situations it observes. The provider understands that it may be requested to cooperate with a recipient rights investigation and/or assist the participant with exercising his or her rights. The parties agree to comply with all Recipient Rights protections and other rights in applicable state and federal law.
10. The provider agrees to the following compensation for the services performed: **[\$[Insert hourly wage]** an hour. The payment shall be paid at the following address **[insert provider address]** on a monthly basis.
11. The provider agrees to execute a Choice Voucher Provider Agreement with the PIHP/CMHSP and acknowledges that this agreement does not alter the fact that the PIHP/CMHSP is only the administrator of the Choice Voucher for Children, and that this contract for services or supports is solely with the responsible parent. The provider acknowledges that payment for services is contingent on completing the Choice Voucher Provider Agreement.
12. This agreement represents the entire understanding and contract between the parties, and supersedes any and all prior agreements, whether written or oral that may exist between the parties. Any modification to this agreement must be made in writing.

Provider's Signature **Date**

Responsible Parent Signature **Date**

**Prototype
Choice Voucher Provider Agreement**

The Choice Voucher Provider is a provider directly employed by or contracted by a person using arrangements that support self-determination. The sole purpose of this agreement is to assure compliance with federal Medicaid requirements. This agreement shall remain in effect until such time it must be terminated or modified. Any party can initiate a termination or modification by providing written notice to the other of the desire to terminate or modify this agreement.

Upon receipt of this agreement, the PIHP/CMHSP will certify the Choice Voucher Provider as available to provide services to individuals who receiving services and/or supports in accordance with their individual plans of services (IPOS) developed in a person-centered planning process, authorized by the PIHP/CMHSP or one of its subcontractors, and financed through Michigan’s Medicaid Specialty Pre-paid Mental Health Plan.

The Choice Voucher Provider stipulates that it will do the following

1. Accept payment, in form of check(s) or direct deposit, from (Name of Fiscal Intermediary), doing business in the State of Michigan.
2. No additional payments (beyond payment agreed to in the employment or purchase-of-service agreement and paid by the fiscal intermediary) will be accepted directly from individuals using arrangements that support self-determination.
3. Agree to keep records of the service(s) or purchase(s) provided as required by the individual(s) using arrangements that support self-determination or the PIHP/CMHSP.
4. Provide only the service(s) or item(s) described in the employment or purchase-of-service agreement with the employer (as authorized in the person’s IPOS) and do not exceed the hours set forth in the employment or purchase-of-service agreement except in emergency situations or with authorization from the PIHP/CMHSP.
5. Accept the check(s) or direct deposit(s) as payment in full for service(s) or item(s) purchased.
6. Upon request, provide information regarding the service(s) or purchase(s) for which payment was made to and to provide such information and any related invoices or billings, upon request, to the individual using arrangements that support self-determination, PIHP/CMHSP, the State Medicaid Agency, the Secretary of the Department of Health and Human Services or the State Medicaid fraud control unit.

Choice Voucher Provider Agency/Individual

Date

PIHP/CMHSP Representative

Date

Checklist of Compliance with Employer Role Requirements

Participant: _____ Case Manager: _____

FISCAL INTERMEDIARY INFORMATION:

1. Is there a signed employment agreement between the responsible parent and each worker he or she employs?
2. Does the FI have a copy of each?
3. Is there a current worker's compensation insurance policy in effect for each worker?
4. Where is this policy located?
5. Has the Choice Voucher Provider Agreement been signed by each worker employed by the responsible parent and each provider with which the responsible parent directly contracts?
6. Does the FI possess a copy of each of these?

PROVIDER REQUIREMENTS

7. Does the provider meet the qualifications for the service he/she will provide?
8. Have criminal background checks been conducted for each worker?
9. Where is this documentation located?
10. Is there evidence that each worker is able to prevent the spread of communicable diseases?
11. Where is this documentation located?
12. Is there evidence that each worker has received required training?
13. Where is this documentation located?
14. Are there any specialized training requirements which are indicated or required, and specified in the IPOS which relate to the child's health or welfare?
15. Is there evidence that each worker has been trained in these requirements?
16. Where is this documentation located?
17. Does the IPOS include an emergency back-up plan?
18. Does each worker possess a copy of his or her Employment Agreement?
19. Does each worker possess a copy of a job and/or tasks description?

Audit Conducted by: _____ Date: _____

REMEDIAL
ACTION:

Activity

(Party Responsible

Confirmation by:
(Responsible parent &
Date)

Appendix A Habilitation Supports Waiver

The following services can be obtained through choice voucher arrangements:

- Enhanced Pharmacy
- Supports Coordination
- Supported Employment
- Private Duty Nursing
- Respite
- Personal Emergency Response System
- Prevocational Services
- Goods & Services
- CLS
- Family Training
- Out-Of-Home Nonvocational Habilitation

The following services cannot be obtained through choice voucher arrangements:

Environmental Modifications
Enhanced Medical Equipment & Supplies

Children's Waiver Program

A responsible parent of a child on the CWP can use choice voucher arrangements for all Medicaid state plan services except for targeted case management and private duty nursing.

The following CWP services can be obtained through choice voucher arrangements:

- Community Living Supports
- Home care training, non-family
- Home care training, family
- Respite
- Specialty services (Music, Art, Recreation and Massage Therapies)

The following CWP services cannot be obtained through choice voucher arrangements:

- Environmental accessibility adaptations/specialized medical equipment/supplies
- Financial management services
