

SELF-DETERMINATION TECHNICAL ADVISORY

CHOICE VOUCHER SYSTEM

Self-Determination in Long-Term Care

Michigan Department of Community Health

**Office of
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CONTENTS

<u>Description</u>	<u>Section</u>
Preface	A
Description of the Choice Voucher System	B
Supporting Participant Success in Using the Methods of the Choice Voucher System	C
Fiscal Intermediaries in The Choice Voucher System	D
Self-Determination Agreement: Prototype	E
Fiscal Intermediary Agreement: Prototype	F
Employment Agreement: Prototype	G
Purchase of Service Agreement: Prototype	H
Medicaid Provider Agreement: Prototype	I
Employment Role Audit Format	J
Appendix I: List of Fiscal Intermediary Functions	K

A

PREFACE

PREFACE

The Choice Voucher System provides a concrete set of methods that support self-determination by individuals receiving MI Choice Waiver services. These methods make it possible for recipients involved with self-determination (referred to in this document as “participants”) to directly choose and control the providers of their services and supports. Self-determination embodies a set of concepts and values that these 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 Technical Advisory provides guidance to MI Choice Waiver Agents so that participants in concert with their allies¹ may be successfully guided and supported in achieving arrangements that accomplish personal goals and outcomes while meeting individual needs for care and support.

By itself, the Choice Voucher System 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 agents must ensure that individual and organizational self-interests do not compete with the opportunity and right of participants to responsibly define, direct and control the course of their lives.

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

The elements of the Choice Voucher System have been designed to meet the requirements of the Medicaid program, including the requirements MI Choice (1915(c)) waiver. The Choice Voucher System components make consumer control possible by creating mechanisms to maintain waiver agent accountability for service delivery and the use of public funds, particularly Medicaid funds, and to support the participant in self-direction as needed. This series of documents comprises technical guidance to waiver agents in the use of the Choice Voucher System. It is intended to provide waiver agents and fiscal intermediaries with the tools to protect themselves from liability to the extent allowed by law. This technical advisory includes interpretative statements from the Michigan Department of Community Health and is not the guarantee of the State of Michigan or the Michigan Attorney General’s Office. The Michigan Department Of Community Health cannot and will not indemnify any party for its actions under the Choice Voucher System. This technical advisory includes prototype agreements that local waiver agents and their counsel may adapt to meet local needs.

¹ An individual’s allies are chosen by the individual and may include: family members, friends, paid staff, other professionals, and community members, etc.

B

OVERVIEW
OF THE
CHOICE VOUCHER SYSTEM

THE CHOICE VOUCHER SYSTEM IN LONG-TERM CARE

INTRODUCTION

The Choice Voucher System is central to implementing self-determination in the MIChoice Waiver. It provides individuals receiving MI Choice Waiver services with a method to control and direct how the services and supports in their care plan are implemented. The individuals (described in this document as participants), with their allies,² work with their waiver agent to determine the funding to be allocated in their individual budget, based on the service plan; 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 chosen providers by utilizing the methods of the Choice Voucher System. The individual budget authorized by the waiver agent provides a defined amount of resources sufficient to implement the person's plan, which may be directed by the participant to pursue his or her plan's goals and outcomes. Service and support arrangements directly controlled by the participant may range from one specific service to all of those delineated in the person's plan. It should be the participant's choice whether to manage some or all of their services.

In the Choice Voucher System, participants control the allocated resources and directly enter into agreements with qualified providers (both individuals and organizations) of their choosing, who best meet their preferences. When individuals realize and are supported to make their own choices, they are better able to self-determine the course of their lives. Allotted resources are used 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 agent, its staff and provider agencies, and the priorities of a participant tend to be reduced through use of the Choice Voucher System. The waiver agent as well as direct providers of services 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 those services are utilized. The participant has the authority to terminate or replace a worker, when in his or her judgment, doing so is necessary. Likewise, the processing of payments and support and assistance 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.

² An individual's allies are chosen by the individual and may include: family members, friends, paid staff, other professionals, and community members, etc.

The Choice Voucher System is available to recipients in the MI Choice Waiver. This Technical Advisory is written to provide 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,³ the family member of an adult does not have the right to be involved without the participant's consent.

Successful use of the Choice Voucher System requires that all parties understand their rights and responsibilities. Once a service plan and an individual budget have been developed and agreed to, the participant signs a Self-Determination Agreement with the waiver agent. The funds allocated to support the individual budget are transferred to a fiscal intermediary, which 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 agent; 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 every other provider of services or supports. To ensure that Medicaid requirements are met, each provider must sign a Medicaid Provider Agreement with the waiver agent. Each of these components is described in detail in this Technical Advisory. The prototype agreements provided herein should not be used, "as is." They are presented as technical guidance only for the waiver agents and participants to use as starting points for the parties, with their local counsel, to develop individualized and locally viable agreements.

IMPLEMENTING CHOICE VOUCHER SYSTEM ARRANGEMENTS

The SELF-DETERMINATION AGREEMENT is a contractual arrangement between the waiver agent 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 agent and describes the obligations and responsibilities of each party involved in the Choice Voucher System. It confirms that the individual is participating in the Choice Voucher System voluntarily and provides his or her informed consent to such participation. The participant agrees to directly manage workers providing services and handle the other responsibilities of participation. It also confirms that the waiver agent affirmatively agrees to the participation, delegates to the participant the authority to manage the funds in the budget, and agrees to support successful use by the participant of the methods making up the Choice Voucher System. The participant's service plan and individual budget are referenced within, attached to the agreement, and updated as the plan changes. 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 agent

³ A 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 is to act in place of the participant in certain matters.

including assuring that selected providers meet applicable provider requirements.⁴ 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 agent to assure that chosen providers meet Medicaid provider requirements.

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 directly hire needed workers 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 has authority to continue or terminate the contract. Neither the waiver agent nor the fiscal intermediary is a party to these agreements.

FISCAL INTERMEDIARY

A fiscal intermediary is an independent legal entity that acts as the fiscal agent of the waiver agent for the purpose of assuring 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 agent 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 the Choice Voucher System 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 (attached as Appendix I) provides technical guidance regarding the functions of the fiscal intermediary in the Choice Voucher System. The list describes in detail the functions of the fiscal intermediary, the waiver agent 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 agents and fiscal intermediaries to assess capacity to begin services and annual performance. Waiver agents can use these documents to construct fiscal intermediary arrangements to meet the needs of participants and monitor fiscal intermediary performance. These duties are incorporated into a contract called a FISCAL INTERMEDIARY AGREEMENT.

⁴ Provider requirements are to be determined by the waiver agent and communicated to the participant, and are derived from such sources as the Medicaid Provider Manual.

USE OF MEDICAID FUNDS

Medicaid is the primary financing source for most services and supports through the Long Term Care System in Michigan. 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 agent. 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 process⁵. 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 agent or the FI a party to the agreements between the participant and the providers of services and supports.

IMPLEMENTATION

Waiver agents are responsible for implementing the Choice Voucher System. Each waiver agent must assure that the proper written agreements described above are in place and meet the purposes of each individual agreement. For example, the prototype Audit Form (Section I) is a checklist to assure that each piece of the Choice Voucher System is in place for an individual participant. The prototypes in this Technical Advisory are provided only for training and guidance purposes. They are not intended to be used “as is,” but should be adapted to meet the needs of the local waiver agents in consultation with their local legal counsel.

The waiver agent has a responsibility to support participants in the Choice Voucher System in their efforts to understand and apply the essential components of the system. The LIST OF FISCAL INTERMEDIARY FUNCTIONS contains a list of information and guidance functions the waiver agent can provide itself 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.

The Choice Voucher System is a partnership between the waiver agent and the participants. Participants and their allies shall inform the waiver agent of issues that affect the ability of participants to successfully understand, interpret and implement the Choice Voucher System. Issues might include completion of the required agreements or finding, selecting, and managing workers. The waiver agent shall address these issues

⁵ 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.).

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 in implementing the Choice Voucher System. The waiver agent is expected to develop and implement the Choice Voucher System in a participant-friendly manner, making the methods as easy to use as possible.

The involvement of participants as well as their allies and advocates is critical throughout the process of implementing the Choice Voucher System. These stakeholders must be involved in the development and use of fiscal intermediaries. Once the Choice Voucher System is implemented, the waiver agent must test the integrity of the system and develop both an individual and organizational approach to monitor its use. This may be done using a simple audit of at least ten percent of the system, which identifies the existence and sufficiency of the critical components. As the system may be new to all parties, a defined and regularly scheduled forum involving all of the stakeholders can serve as a useful approach to assure success and avoid potential problems.

In addition, participants must be given a mechanism to provide feedback concerning fiscal intermediary performance to ensure that:

- participants are supported in the direction and control of chosen providers of services;
- each individual budget is presented in a way that the participant can easily understand the budget and allocation of resources;
- waiver agent funds are handled correctly;
- reporting requirements can be easily followed by all parties;
- participants, and 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 of Choice Voucher System is dependent on the partnership between the waiver agent, the fiscal intermediary and the participant. The waiver agent is expected to assure that its policies and practices empower the participants to make meaningful choices about how the individual budget is spent, consistent with the service plan. Similarly, the fiscal intermediary must assist the participants to create arrangements that support self-determination. The participants and their allies are expected to give input on how the system is working and how the agencies and individuals involved could better facilitate self-determination by participants. As a result, individuals receiving MI Choice waiver services will be able to make decisions about their own lives.

C

**SUPPORTING
PARTICIPANT
SUCCESS**

SUPPORTING PARTICIPANT SUCCESS IN USING THE METHODS OF THE CHOICE VOUCHER SYSTEM

People who successfully use the methods of the Choice Voucher System to select, direct and control their providers do not do it alone. Often, they use informal support from others to assist them to implement arrangements that best meet their needs. There are a number of ways for a person to obtain and facilitate the informal support of the others in this process.

The involvement of informal supports starts in the person-centered planning process. Through this process, services plan, individual budgets, and the methods for their implementation are developed. The person (referred to in this document as the participant) chooses which of his or her allies⁶ 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 of the Choice Voucher System 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 that allies can provide informal support to assist the participant with the tasks involved.

The goal of arrangements that support self-determination is to provide the means and methods to enable people to have meaningful lives in their communities. Most people living in their community already have the involvement of family members, friends, co-workers (if employed), 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. Very few people will have no informal support at all.

THE ROLE OF INFORMAL SUPPORTS

A discussion of possibilities for informal support must start with this legal fact: All individuals, regardless of their abilities and disabilities, are presumed competent under state law 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 to be legally incapacitated. In cases where the

⁶ An individual's allies are chosen by the individual and may include: family members, friends, paid staff, other professionals, and community members, etc.

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."⁷ This guidance is applicable to all arrangements that support self-determination.

The general directive-that the person have the desire and the ability to be the employer-must be considered 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 who are 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 agent to authorize use of its funds for the participant him/herself to directly control methods associated with the Choice Voucher System until the participant and supports coordinator have worked together to cultivate friends, family and community members to serve as informal supports.

CHOOSING A REPRESENTATIVE

A participant who does not have a guardian may designate another person to help him or her with the arrangements either formally, by executing a power of attorney, or informally, by asking them. 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 agent 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 agent. Appropriate documentation of the issues discussed and the resulting agreements and decisions are expected to be found in the participant's record and service plan.

7 Section 4480 State Medicaid Manual, Center for Medicare and Medicaid Services

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 agent is expected to support 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 functions, both the participant and representative sign the relevant agreement (e.g., the Self-Determination Agreement or the agreements with providers or employees).

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 the methods of the Choice Voucher System. The person-centered planning process must produce a consensus regarding the appropriateness of particular arrangements.

In determining which sorts of arrangements are to be used, 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. Ability is gauged 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;
- Other related factors that appear to impinge on or assist the potential success of a given approach.

There is a distinction 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 agent 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 agent's funds to directly arrange for and control providers of services must be authorized by the waiver agent for the sole purpose of accomplishing the service plan. If use of the Choice Voucher System 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 the Choice Voucher System are deemed to be inappropriate for an individual, given his or her current circumstances, the waiver agent must document the basis for the decision and work with the individual and his or allies to determine how needed informal supports can be cultivated.

It is unacceptable for the waiver agent to arbitrarily determine which methods a person may access and use simply for the convenience of the waiver agent. For example, a waiver agent may not deny individual participants the right to select, employ and manage their own qualified providers simply because existing arrangements with traditional providers may be affected.

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

ADDRESSING HEALTH AND WELFARE ISSUES

During the planning process, issues of health, safety and welfare specific to the individual must be brought up, discussed and resolved. Overall, participants should not, by virtue of the sorts of support arrangements that are aimed for, find themselves in a situation where they are physically at risk without a plan of risk management strategies for addressing the potential risk. While this sort of dialogue and planning is already standard practice in the planning process, arrangements that are directly determined and controlled by the participant (or his/her representative) do not include the contingency plans that may be 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 work shift or duty. The prototype Self-Determination Agreement, in Article I, Section 1(c), requires the waiver agent 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.

CONCLUSION

An individual's allies can play an informal, but critical, role supporting the individual. Some people with very significant support needs can participate in arrangements that support self-determination because they have a high level of informal support. Sometimes, these informal supports are developed and fostered through meaningful participation in the community. The extent to which a person may be able to successfully use arrangements that support self-determination may depend on the extent of his or her informal supports.

D
FISCAL INTERMEDIARIES
IN
THE CHOICE VOUCHER SYSTEM

FISCAL INTERMEDIARIES IN THE CHOICE VOUCHER SYSTEM

A fiscal intermediary(FI) is a central component of the Choice Voucher System. The fiscal intermediary performs a number of essential tasks that support self-determined arrangements for individuals receiving MI Choice waiver services 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 agent of the waiver agent for the purpose of assuring fiduciary accountability for the funds comprising a participant's individual 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 the Choice Voucher System and managing their own supports.

The LIST OF FISCAL INTERMEDIARY FUNCTIONS (Appendix I) provides technical guidance regarding the functions of the waiver agent, fiscal intermediary in the Choice Voucher System. It describes in detail the functions of the fiscal intermediary, the waiver agent 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 agents 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 agent.

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 agent services for participants directly employing workers; and
- facilitate a smooth relationship between the parties and meet the needs of the waiver agent and participants.

FISCAL INTERMEDIARY ROLES AND RESPONSIBILITIES

A primary role of the fiscal intermediary is its fiduciary responsibility to the waiver agent to handle, manage and account for the funds in the individual budgets of participants in the Choice Voucher System. The waiver agent 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 the Choice Voucher System.

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 (or his/her chosen legal representative⁸) 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 agent. 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 agent services for the participant. An 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 IRS⁹, state and local income tax jurisdictions, and unemployment insurance regulators. (For a list of functions, refer to LIST OF FISCAL INTERMEDIARY FUNCTIONS in Appendix I.) In this role, the fiscal intermediary is providing a service to participants and not serving as their agent as that term is 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 and background checks. The fiscal intermediary also will be expected to perform other functions such as collecting and reporting data related to service delivery to the waiver agent 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 the Choice Voucher System. 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.

⁸ The participant may decide to use a power of attorney to authorize to a family member or trusted friend to handle the employment of workers. Some participants may have a legal guardian whose responsibility is to act in place of the participant includes functioning as the employer.

⁹ 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 agents who handle required IRS tasks for employers.

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 range of roles of an Intermediary is more fully explored in a publication describing the various roles of an intermediary services organization, available from the Federal Government.¹⁰

KEY ELEMENTS OF THE RELATIONSHIP BETWEEN THE WAIVER AGENT AND THE FISCAL INTERMEDIARY

The waiver agent is responsible for selecting one or more fiscal intermediaries to serve the participants in the Choice Voucher System in its area. It is suggested that selection be done using the Fiscal Intermediary Readiness Review Protocol.

Regardless of the procurement process used, the waiver agent must construct its contractual arrangements with the fiscal intermediary in terms that clearly define the fiscal intermediary and waiver agent'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 agent can use it as an instrument for assessing readiness to provide FI services and monitoring performance. When implementing the Choice Voucher System, the waiver agent has great flexibility to construct a unique relationship with the fiscal intermediary provided that all technical requirements are met. The administrative functions and the employer agent functions are required of all fiscal intermediaries. Each waiver agent 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 (Appendix I) provides a framework that describes these functions more fully, and provides a list of criteria for the waiver agent to use in developing and implementing its fiscal intermediary arrangements. The waiver agent must involve participants and their allies in the development and implementation of the FI arrangement.

¹⁰ "Consumer-Directed Personal Assistance Services: Key Operational Issues for State CD-PAS Programs Using Intermediary Service Organizations" by Susan A. Flanagan and Pamela S. Green, October 24, 1997, Developed for the US Department of Health & Human Services, Assistant Secretary for Planning and Evaluation. This report can be downloaded from: <http://aspe.hhs.gov/daltcp/reports/cdpases.htm>. Please note that you must click on each section of the report separately to read that section.

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 track record for managing funds and accounting. It also must be oriented to provide an individualized support and response to each participant. The waiver agent has a responsibility to provide clear guidance to the fiscal intermediary on the accounting requirements, reporting formats, and timelines to ensure that the fiscal intermediary properly accounts for public funds, particularly Medicaid funds.

In order 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 trustholder) with the exception of serving as the representative payee for Social Security benefits. The waiver agent 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 agent derives many benefits from the fiscal intermediary arrangement. It shifts the responsibility for handling the administration and employer agent role to the fiscal intermediary. The fiscal intermediary provides a guarantee that it will properly handle and account for public funds, particularly Medicaid funds. If properly constructed, the arrangement provides a buffer for the waiver agent and insulates the waiver agent from liability for all of the functions that are handled by the fiscal intermediary¹¹. As the potential for waiver agent liability is directly related to the specific contractual arrangement with the fiscal intermediary, local counsel should be actively involved in developing this arrangement.

Fiscal intermediaries must be carefully selected to ensure they have the capacity to perform the required functions and maintain accountability for the allocated funds. The waiver agent must develop and implement a plan for assessing and monitoring fiscal intermediary performance to ensure that the fiscal intermediary is properly performing its functions. (For a list of plan elements, please refer to the LIST OF FISCAL INTERMEDIARY FUNCTIONS in Appendix I and the FISCAL INTERMEDIARY READINESS REVIEW To best monitor the fiscal intermediary, the waiver agent must

¹¹ While the use and proper functioning of the fiscal intermediary insulates the waiver agent from liability for those functions, the waiver agent has potential employer liability if it fails to separate itself waiver agent from the participant's role in directly contracting with workers and providers. The participants are the sole employer in charge of hiring and managing their employees. As such, participants, with their allies, must fully and independently select, orient and direct chosen workers. In general, the perspective needs to be that waiver agent provides support as well as information and guidance to participants directly employing workers rather than performing the selection and management duties itself. While the design of the Choice Voucher System is intended to limit the potential for liability, the particular realities of a relationship between a participant, service provider, FI and waiver agent may be result in liability. For more information, consult "Addressing Liability Issues in Consumer-directed Personal 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.

actively involve participants and their allies in its assessment plan that includes focus groups, performance loops, and satisfaction surveys (dissemination of surveys by mail is insufficient). The elements of this plan must minimally include: (1) fulfillment of the requirements of Fiscal Intermediary Agreement and indemnification of the waiver agent, (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 agent duties) and the waiver agent does not discover the situation through its monitoring process and take corrective action, the waiver agent may be held responsible and exposed to liability and potential financial penalties. The waiver agent 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 fiscal intermediary is compensated separately from the individual budgets it manages. Compensation for its services on a flat fee or case-mix rate basis is recommended. The waiver agent 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 agent and the participants.

THE VALUE OF USING AN INDEPENDENT INTERMEDIARY

In order for the Choice Voucher System 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 service plan 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 agent. Some barriers that have been reported 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 agent should offer a choice of intermediaries located in the participant's community, when it is able to do so.

PUTTING IT ALL TOGETHER

The fiscal intermediary is a central component to use of the Choice Voucher System in promoting the opportunity for arrangements that support self-determination for individuals receiving services from Long-Term Care System and for promoting family-directed and controlled arrangements for minors. 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 agent. The waiver agent must map out the specifics of the model it will use to support implementation of the Choice Voucher System. Local legal and accounting professional consultation should be sought to verify that the proposed administrative arrangements between the waiver agent and the fiscal intermediary are properly constructed. The waiver agent must consider whether to contract with the fiscal intermediary to handle employment support functions. Issues concerning potential conflicts of interest need to be identified and managed.

As a central matter, the waiver agent 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 agent should walk through them with representative participants and their allies to assure that they can be used easily. The best fiscal intermediaries properly handle the administrative management tasks required by the waiver agent, while making their complexities invisible to the participant. Once the fiscal intermediary arrangement is implemented, the waiver agent should use survey methods, focus groups, and/or an ongoing participant oversight process to obtain feedback on how the system is working. When the participant is properly supported by a successful fiscal intermediary 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.

E

**SELF-DETERMINATION
AGREEMENT**

Prototype

SELF-DETERMINATION AGREEMENT

The Self-Determination Agreement is a contract between the waiver agent and the participant that defines the roles and responsibilities of the parties regarding participation in the Choice Voucher System. This prototype agreement can be used as a template for waiver agents to create local agreements that meet their unique needs.

The provisions of the Self-Determination Agreement:

- Describe the responsibilities of the waiver agent, including ways that the waiver agent 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 for the agreement, the service plan, 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 specific information must be inserted. To make the agreement clearer for the participant, his or her name should be substituted for the term “participant” throughout the document.

This agreement is made on **[insert date]** between **[insert name of waiver agent]** (A waiver agent@) and **[insert name of participant]** (“participant”). The waiver agent 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 agent and has developed a service plan 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. This agreement may be changed only through a written agreement by both parties. If one party wants a change, that party must provide written notice of the desired change to the other party. The waiver agent 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 agent.

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 service plan, and authorize an individual budget.

Funds in the individual budget are the property and responsibility of the waiver agent and must be used consistently with statutory and regulatory requirements. The authority over control and direction of the funds is delegated by the waiver agent to the participant for the purpose of assuring the participant the maximum freedom in choosing providers of goods and services that provide the best opportunity for achieving the goals and outcomes in the service plan in ways that best fit the participant’s preferences.

ARTICLE I

WAIVER AGENT RESPONSIBILITIES

The waiver agent agrees to the following responsibilities:

1. The waiver agent will provide support coordination in the following ways:
 - a. The waiver agent will participate in the development of a service plan and an individual budget for the participant through a person-centered planning process.
 - b. The waiver agent will assist in accessing sources of financial support. Specifically, the waiver agent will provide assistance in maximizing and maintaining eligibility for SSI, SSDI, Social Security, Food Stamps, Adult Home Help, Medicaid and/or any other sources of financial support.
 - c. The waiver agent will develop and assure a back-up plan is in place for essential services in case of worker absences, emergencies or unforeseen circumstances.
 - d. The waiver agent 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 to be provided by the waiver agent.]***
2. The waiver agent 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 agent will fund services and supports directed by the participant and authorized through the service plan and the corresponding individual budget (see attachments A and B). The individual budget will be administered by the fiscal intermediary (FI) **[insert name and contact information for the fiscal intermediary]**, which will be responsible for completing and submitting paperwork associated with billing, payment for services and supports upon participant authorization, and handling the employer agent functions if the participant directly employs workers.
4. If the services of a fiscal intermediary will be used, the waiver agent will assign **[if there is a choice of fiscal intermediary, replace “assign” with “assist the participant with selecting”]** a fiscal intermediary. Further, the waiver agent will convene a meeting with the participant and the fiscal intermediary at least two weeks prior to beginning the use of the fiscal intermediary’s services. At this meeting, the participant and the fiscal intermediary will receive an approved copy of the participant’s individual budget.

5. The waiver agent will assure that the fiscal intermediary will provide a monthly spending report to the participant.
6. If the waiver agent is to make services and supports arrangements directly with any provider on behalf of the participant, the waiver agent 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 agent honors the participant=s preferences in selecting provider agencies;
 - c. the waiver agent=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 agent will assure and pay for appropriate background checks of support providers as requested and/or needed by the participant. The waiver agent will inform the participant of the Medicaid requirements for providers (such as age, relationship to participant).
1. The waiver agent will provide the participant=s fiscal intermediary 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]**.
8. The waiver agent will assist the participant with the process of providing the fiscal intermediary with copies of required employment agreements and documents, and provide the fiscal intermediary with a copy of a completed Medicaid Provider Agreement for each provider selected and employed or contracted by the participant.
9. The waiver agent and the participant will review the service plan at least annually and the individual budget periodically.
10. The waiver agent will provide assistance to the participant in monitoring expenditures and reviewing financial reports monthly or as requested.
11. The waiver agent will assure that its policies and practices empower the participants to make meaningful choices about how the individual budget is spent, consistent with the service plan.
12. The waiver agent will facilitate modification of the service plan through a person-centered planning process at the request of the participant or when the waiver agent determines that modification is necessary. The waiver agent will not reduce the participant=s service plan and/or budget without holding a person-centered planning meeting and providing adequate notice as required.
13. The waiver agent will provide the necessary forms, information and material relevant to the waiver agent=s reporting requirements for the participant.
14. The waiver agent 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 in order to directly manage a portion or all of his or her services and supports. 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 service plan through the waiver agent.
2. The participant will direct the person-centered planning process and the development of a service plan and an individual budget. The plan of services and supports 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. This plan will be reviewed at least annually with the waiver agent or more often, if requested by the participant.
3. The participant will use services and supports consistent with the goals and outcomes in the service plan.
4. The participant will communicate with the waiver agent on the effectiveness of purchased supports and the person-centered plan in achieving the goals and outcomes in the service plan. The participant may initiate a change to the service plan 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 expenditures in the aggregate do not exceed the amounts identified in the individual budget. The participant will notify the waiver agent of a material change in circumstance or an emergency that may require a modification of the service plan or the individual budget. (For example, the loss of a natural support).
6. The participant will make arrangements, as necessary, for obtaining formal and informal providers of services and supports sufficient to accomplish the goals and outcomes of the his or her service plan.
7. If the participant directly employs workers, the fiscal intermediary will provide employer agent 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 agent 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 agent and/or the fiscal intermediary with necessary documentation supporting expenditures of funds provided by the waiver agent 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 agent and fiscal intermediary 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 agent and the fiscal intermediary 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 fiscal intermediary serves as employer agent, the participant will provide the fiscal intermediary with the information and documentation necessary for it to perform the employer agent duties.
13. The participant agrees to allow a the waiver agent to review his or her financial situation for purposes of assessing financial eligibility for SSI, SSDI, Social Security, Adult 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 service plan 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 Fiscal Intermediary and waiver agent and to seek assistance from these entities as needed.
16. When requested to do so, the participant agrees to provide feedback to the fiscal intermediary to enable it to improve its service delivery system.

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

Participant [¹²]

Date

Waiver Agent Self Determination Coordinator

Date

Executive Director or Self Determination Coordinator

Date

¹² Some individuals may have a guardian or a chosen legal representative. If the participant has a guardian or a chosen legal representative, a place should be inserted for that person to sign and the appropriate documentation verifying that person's authority should be attached to that agreement.

F

**FISCAL INTERMEDIARY
AGREEMENT**

Prototype

FISCAL INTERMEDIARY AGREEMENT

The purpose of this contract is to define the roles and responsibilities the waiver agent and the fiscal intermediary in the use of the fiscal intermediary to perform a number of essential tasks that support self-determination arrangements for adult recipients of MI Choice Waiver services while assuring accountability for the public funds allotted to support those arrangements. The use of a fiscal intermediary assures the opportunity for participants in the Choice Voucher System to control and direct the use of funds allocated in their individual budgets in order to acquire supports and services to accomplish the goals and purposes of their service plans developed through the person-centered planning process. This prototype should be used to develop a specific agreement for use locally.

The provisions of this Agreement:

- Explain the Choice Voucher System and the role of the fiscal intermediary in supporting self-determined arrangements for participants;
- Describe the duties of the waiver agent;
- Describe the duties of the fiscal intermediary;
- Describe the importance of the Medicaid Provider Agreement.

Prototype

FISCAL INTERMEDIARY 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 agent]*** (the “waiver agent”) and ***[Insert name of fiscal intermediary]*** (the “fiscal intermediary”). The purpose of this contract is to define the roles and responsibilities of the parties in the use of the fiscal intermediary’s services to assure the opportunity for participants in the Choice Voucher System to control and direct the use of funds allocated in their individual budgets in order to acquire supports and services to accomplish the goals and purposes of their individual plans of services and supports developed through the person-centered planning process.

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

ARTICLE I

WAIVER AGENT RESPONSIBILITIES

The waiver agent agrees to the following:

1. To designate a liaison person, who shall be the primary contact person with the fiscal intermediary, and a procedure for the fiscal intermediary to use to obtain and access the funds necessary to implement the individual budget for each person who is a participant in a Choice Voucher System through the waiver agent using this fiscal intermediary.
2. To provide the fiscal intermediary with funds to be expended by each participant, in accordance with the service plan and individual budget. These funds shall be sent in monthly payments, reflecting 1/12th of the approved budget, by the 10th business day of each month.
3. That the fiscal intermediary is acting as the agent of the waiver agent in administering agency funds for services and supports authorized in the service plan for each assigned participant.

4. That the role of the fiscal intermediary is that of an agent of the waiver agent, through this contract, for the purpose of assuring for each assigned participant maximum control over the selection of providers of goods and services, within the framework of the participant's service plan and his or her individual budget.
5. The fiscal intermediary is not an employer of workers directly employed by the participant or a party to any contract in which the participant enters.
6. To develop and provide a written set of procedures for the fiscal intermediary including clear guidance on the minimum requirements for accounting.
7. To provide the necessary forms, information and material relevant to the waiver agent's reporting requirements for the participant.
8. To assist each participant with the use of his or her individual budget, as requested or needed.
9. In consideration for the above outlined services, to provide the following administrative fee of [Insert fee] to the fiscal intermediary. This fee shall be paid in the following manner [Insert manner of payment].
10. 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 agent, especially a Medicaid Provider Agreement between each provider of services and the waiver agent.
11. It is understood that payments of Medicaid funds held by the waiver agent and administered by the fiscal intermediary cannot be made to a provider of goods or services unless a Medicaid Provider Agreement is in place with that provider.

ARTICLE II

FISCAL INTERMEDIARY RESPONSIBILITIES

The fiscal intermediary agrees to the following:

2. 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.
3. To receive, safeguard, manage and account for funds provided by the waiver agent on behalf of each participant and maintain complete and current financial records and supporting documentation verifying expenditures paid by the fiscal intermediary and a chart of accounts [Reference and attach approved verification forms, and chart of accounts format].
4. To assist participants to understand billing and documentation responsibilities.

5. To perform the financial administrative duties of employer as described in the LIST OF FISCAL INTERMEDIARY FUNCTIONS attached and provide employer agent services to the participant directly employing workers. The fiscal intermediary shall abide by all federal and state laws regarding payroll taxes and shall remain current with all payroll tax requirements. Both the waiver agent and the participant shall provide copies of all required employment documents including the Medicaid Provider Agreement to the fiscal intermediary.
6. To disburse funds to vendors and other providers of services and supports as directed by each participant for the services and supports selected by the participant and in accordance with his or her service plan and individual budget, 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.
7. To maintain complete current financial records, copies of all agreements, and supporting documentation verifying expenditures paid by the fiscal intermediary on behalf of each participant. These records shall be retained for seven years from the start of fiscal intermediary services.
8. To record and maintain a monthly spending report for each participant to keep each participant informed of his or her own individual budget expenditures and to keep the waiver agent of the expenditures in all individual budgets. These reports are due within five (5) calendar days of the close of each month. The year-end report is due within twenty (20) calendar days of the close of the fiscal year. The year-end report will include a listing of accounts payable and other accrued expenses, not included in the accounts payable and accounts receivable. [Replace time periods in this section with specific requirements of the waiver agent]. These records shall be retained for seven years.
9. 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 agent.
10. To flag for the waiver agent and the participant any deviation in an individual budget of ten (10) percent in either under or over expenditures at any time.
11. To reconcile all accrued expenses/accounts payable by [Insert applicable time period] following the end of the fiscal year.
12. To make records regarding participants available to the waiver agent as requested and to allow each participant access to his or her own records.
13. To commission a full financial audit of the fiscal intermediary's books and records [Insert specific requirements of the waiver agent].
14. To indemnify the waiver agent and maintain a valid insurance policy for its role as a fiduciary of the funds in the participants' budgets in the amount sufficient to indemnify the waiver agent for potential losses.

The Parties also agree to the following

1. That the fiscal intermediary shall be kept informed of any changes such as a change in the employment status of an employee or a contract modification or termination.
2. This agreement is subject to and governed by the laws of the State of Michigan.
3. 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 agent.]

[Insert contact information and person for fiscal intermediary.]

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

Fiscal Intermediary Representative

Date

Waiver Agent Executive Director

Date

G

**EMPLOYMENT
AGREEMENT**

Prototype

EMPLOYMENT AGREEMENT

This agreement should be used as a prototype for developing an agreement between an individual with a disability (or his or her chosen legal representative¹³) who is a participant in the Choice Voucher System and a person directly employed by the participant 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 the Choice Voucher System, 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 Medicaid Provider Agreement;
- Outline the requirements that the employee must meet.

¹³ A 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.

PROTOTYPE

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 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 the Choice Voucher System administered by the waiver agent. If my employer ends 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 the waiver agent. 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 agent 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 agent 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. 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 waiver agent shall insert its policies and/or procedures for the Choice Voucher System 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 sole employer and that I am not an employee of the waiver agent, which 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 the waiver agent for its role in administering the Choice Voucher System.
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].***
10. **I agree to execute a Medicaid Provider Agreement with the waiver agent and acknowledge that this agreement does not alter the fact that the waiver agent is only the project administrator of the Choice Voucher System, and that my employer is [insert name of employer]. I understand that my employment is contingent on completing this agreement.**

ARTICLE II
EMPLOYER RESPONSIBILITIES

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

1. I will provide my fiscal intermediary 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 my fiscal intermediary ***[Insert name of fiscal intermediary]***, 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 agent.**

Employee Signature **Date**

Employer Signature¹⁴ **Date**

¹⁴ Some individuals may have a guardian or a chosen legal representative. If the employer has a guardian or a chosen legal representative, a place should be inserted for that person to sign and the appropriate documentation verifying that person’s authority should be attached to that agreement.

H

**PURCHASE OF SERVICES
AGREEMENT**

Prototype

PURCHASE OF SERVICES AGREEMENT

This agreement should be used as a model for designing a locally sanctioned agreement to be used between the individual with a disability (or his/her chosen legal representative¹⁵) who is a participant in self-determination, and a provider agency from which they choose to purchase services. This agreement can be modified and used when the agency is providing all or some supports coordination to the individual. 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 used as such.

The provisions of this agreement:

- Describe the Choice Voucher System, the nature of the contractual relationship, and the structure of service authorization and payment mechanisms;
- Describe the duties required of the service provider;
- Detail the service provider's compensation and benefits;
- Outline the rules and regulations affecting the provision of services;
- Explain the importance of the Medicaid Provider Agreement.

¹⁵ A 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.

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 participant, his or her name and the service provider's name should be used throughout the document.

This agreement is made on **[Insert date]** between **[Insert name of participant]** ("participant") and **[Insert name of service provider]** ("service provider"), a provider of [Insert type of services] to describe the services or supports the participant is purchasing from the service provider and how the service 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 conditioned on the participant's participation in the Choice Voucher System administered by the waiver agent. If the participant ends participation in the Choice Voucher System, this contract may be terminated.

1. During the term of this Agreement, the service provider shall provide support to the participant 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 of the provider agency will provide which services, or cover which shift.***
 - ***This will be different in each situation. The individual, with support from their allies¹⁶ and supports coordinator, should determine what services they want to purchase and how they should be delivered. This should be determined prior to approaching providers so the individual 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 individual 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.***

¹⁶ An individual's allies include chosen: family members, friends, paid staff, other professionals, and community members, etc.

- ***If all supports coordination and/or personal agent functions are to be provided by the agency, those should be specifically outlined. This will be very important if some of the supports coordination and/or the functions of a personal agent will be provided by another party, for example the waiver agent).***
2. The participant agrees to authorize his or her fiscal intermediary to pay the service provider for the provision of the services described on a **[insert appropriate period such as weekly or monthly]**. Payment will be made only when authorized by the participant. If the service provider has a question about payment, it must contact the participant to clarify the issue. If more information is necessary, the service provider may contact the fiscal intermediary directly to process payment under this agreement and to understand requirements of the Choice Voucher System. If further clarification is still needed, then the service provider may contact the waiver agent for information.
 3. **[If the service provider is providing staff, insert the following provisions:**
The service provider is an independent contractor of the participant. **The service provider shall provide staff to perform the services or supports described above in a manner consistent with this agreement. The service provider is the sole employer of the staff members 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 service provider has the legal responsibility to recruit, screen, hire, manage and supervise the staff in accordance with all applicable federal and state laws, and the requirements of the Choice Voucher System. The provider shall, make every effort to meet the participant's preferences when employing and scheduling its employees. This includes involving the participant in the employee selection and assuring re-assignment of employees when they are not acceptable to the participant. The participant 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 participant's home. The service provider agrees that its staff will abide by all of the participant's rules and waiver agent regulations and the service provider acknowledges receipt of the following rules and regulations:
 - a. **[participant should insert can rules he or she may have (such as rules regarding phone usage or smoking in his or her home)].**
 - b. **[The waiver agent shall insert its policies and/or procedures for the Choice Voucher System or other policies that the employee needs to understand and follow].**
 - c. **[Insert reporting and documentation requirements for verifying hours worked].**
5. If the participant has a complaint regarding the provision of services under this contract, it should inform the service provider and the service provider shall respond to the complaint within seven days. If the complaint cannot be resolved directly by the parties, the participant shall inform his or her 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. **[Optional Provision: The service provider shall immediately notify [insert the name and contact information of the contact person chosen by the participant [for example, it may be an ally] if the participant experiences a medical emergency or illness. The service provider will also notify [insert name of contact person] before taking the participant to the physician, except in case of an emergency.]**
8. The service provider agrees to complete illness and incident reports when necessary as required or requested by the waiver agent or my employer.
9. The service provider understands and acknowledges that this contract is with the participant only and that the waiver agent, which authorizes the supports provided, and the fiscal intermediary, which is the financial administrator of the Choice Voucher System funds used to fund the services or support, are not parties to this contract.
10. The service provider agrees not to sue the fiscal intermediary for its role as the financial administrator of the participant's Choice Voucher System funds and not to sue the waiver agent in its role in administering the Choice Voucher System.
11. The service provider agrees to the following compensation for the services performed: **[\$[Insert hourly wage] an hour**. The payment shall be paid within fourteen (14) business days of receipt of authorization at the following address **[insert service provider address].**

12. The service provider agrees to execute a Medicaid Provider Agreement with the waiver agent and acknowledges that this agreement does not alter the fact that the waiver agent is only the administrator of the Choice Voucher System, and that this contract for services or supports is solely with the participant. The service provider acknowledges that payment for services is contingent on completing this agreement.
13. 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.

Service Provider's Signature **Date**

Participant Signature¹⁷ **Date**

¹⁷ Some individuals may have a guardian or a chosen legal representative. If the participant has a guardian or a chosen legal representative, a place should be inserted for that person to sign and the appropriate documentation verifying that person's authority should be attached to that agreement.

I

**MEDICAID PROVIDER
AGREEMENT**

Prototype

MEDICAID PROVIDER AGREEMENT

The purpose of the Medicaid Provider Agreement is to assure that all providers of services and supports funded by Medicaid agree to comply with the federal Medicaid Requirements. Every Medicaid provider must complete the Medicaid Provider Agreement and this agreement must be on file with the fiscal intermediary prior to the first payment for services.

PROTOTYPE

MEDICAID PROVIDER 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 agent]** (A waiver agent@) and **[Insert name of Medicaid Provider]** ("Medicaid Provider"). The purpose of this agreement is to define the roles and responsibilities of the above named parties. 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 agent will certify the Medicaid Provider as available to provide services to individuals who receiving services and/or supports in accordance with their service plans developed through the person-centered planning process, authorized by the waiver agent or one of its subcontractors, and funded through the MI Choice Waiver.

The Medicaid Provider stipulates that it agrees to the following:

1. To keep any records required by the participant or the waiver agent regarding the services provided to participants and to provide such information and any related invoices or billings, upon request, to the participant, waiver agent, 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.¹⁸

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 agent 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.

Executive Director

Date

Medicaid Provider Agency/Individual

Date

¹⁸This 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.).

J

AUDIT FORM

SELF-DETERMINATION PARTICIPANT AUDIT OF COMPLIANCE WITH EMPLOYER ROLE REQUIREMENTS SAMPLE

Participant: _____ Supports Coordinator: _____

FISCAL INTERMEDIARY INFORMATION:

1. Is there a signed employment agreement between the participant & each worker he or she employs?
2. Does the fiscal intermediary 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 Medicaid Provider Agreement been executed between the waiver agent and each worker employed by the participant and each provider with which the participant directly contracts as applicable?
6. Does the fiscal intermediary possess a copy of each of these?

PROVIDER REQUIREMENTS:

7. Have criminal background checks been conducted for each worker?
8. Where is this documentation located?
9. Is there evidence that each worker is able to prevent the spread of communicable diseases?
10. Where is this documentation located?
11. Is there evidence that each worker is trained in first aid & CPR?
12. Where is this documentation located?
13. Are there any specialized training requirements which are indicated or required, and specified in the individual plan of services and supports, which relate to the individual's health or welfare?
14. Is there evidence that each worker is aware of these requirements?
15. Is there evidence that each worker has been trained as indicated in the person's service plan?
16. Where is this documentation located?
17. Does the service plan 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: (PERSON & DATE)
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K

LIST OF FISCAL INTERMEDIARY FUNCTIONS

APPENDIX I

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 recipients of MI Choice Waiver services (participants) to direct the services and supports they need. The list includes functions of the waiver agent, fiscal intermediary (FI) and the participants.

<p>I. The Role of the waiver agent and Fiscal Intermediary Selection <i>The waiver agent is responsible for selecting and contracting with at least one fiscal intermediary. The following sections describe the role of the waiver agent, the qualifications of the fiscal intermediary, and the criteria to be used to monitor the fiscal intermediary.</i></p>
<p>A. Waiver Agent Functions <i>The waiver agent may have the following functions:</i></p>
<p>1. Develop a Fiscal Intermediary Agreement that outlines the minimum functions of both the waiver agent and the FI;</p>
<p>2. Develop and provide a written set of procedures for the FI including clear guidance on the minimum requirements for accounting;</p>
<p>3. Require FI to maintain liability insurance and indemnify waiver agent for performance of FI functions;</p>
<p>4. Involve participants and their allies¹⁹ 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 Agent funds are handled correctly; and (c) the reporting requirements can be easily followed by all parties;</p>
<p>5. Implement monitoring and safeguards to avoid and minimize potential conflicts of interest by FI;</p>
<p>6. Develop a procurement process (such as a RFP Process) with clear delineation of the FI requirements and functions;</p>
<p>7. Create reporting formats and timelines;</p>
<p>8. Compensate the FI on a flat fee basis, case rate, or other payment process that is not a percentage of individual budgets;</p>
<p>9. If the waiver agent has more than one fiscal intermediary, provide participants with choice of FI entity;</p>
<p>10. Define and inform participants of procedures to request an adjustment to an individual budget.</p>

¹⁹ An individual's allies include chosen: family members, friends, paid staff, other professionals, and community members, etc.

B. Fiscal Intermediary Qualifications

The following attributes have been identified as qualifications for a fiscal intermediary and are to be considered in the selection process:

1. Cannot be a direct provider of waiver services;
2. Cannot be a guardian or trust holder of any participant or have any other compensated fiduciary relationship with a participant (except representative payee);
3. Must be able to fulfill the functions (which may include Employee Verification, Employer Agent, and/or Information and Guidance Functions) required by waiver agent as identified in the Fiscal Intermediary Agreement;
4. Has a positive track record of managing money and accounting;
5. Is oriented to support and respond to each participant with an individualized response;
6. Is able to work with participants to consider creative approaches both in payments and in arrangements (such as weekly payroll payments).

C. Criteria For waiver agent To Use To Assess & Monitor FI Performance

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)
2. Elements of the plan must minimally include:
 - a. Fulfillment of Fiscal Intermediary Agreement requirements;
 - b. Competency in safeguarding, management and disbursement of funds;
 - c. Ability to indemnify waiver agent pursuant to Fiscal Intermediary Agreement requirements;
 - 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);
 - e. Involvement of participants and their allies in the development and implementation of the FI arrangement;
 - f. Performance of an audit of a sample of the budgets.

II. Fiscal Intermediary Functions

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 agent and participants.

A. Administrative Functions

The following are the general administrative functions of the fiscal intermediary:

1. Safeguard, manage and account for funds disbursed from the waiver agent;
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 representative²⁰.
3. Assist each participant in assuring all necessary documentation is in place including, but not limited to, all agreements required by the waiver agent including a Medicaid Provider Agreement from each service provider;
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;
5. Record, maintain and provide a monthly spending report for each participant and provide a copy to the waiver agent and the participant and maintain records for seven years;
6. Indemnify waiver agent for FI Functions and maintain liability insurance;
7. Flag for the waiver agent and the participant any deviation in an individual budget of ten (10) percent either in under or over expenditures at any time;
8. Reconcile all accrued expenses/accounts in the period defined in the Fiscal Intermediary Agreement following the end of the fiscal year;
9. Make records regarding participants available to the waiver agent as requested and allow each participant access to his or her own records;
10. Perform an audit as required by the Fiscal Intermediary Agreement;
11. Accumulate and report service activity and encounter data if a contractual requirement applies.

²⁰A 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 successfully use the Choice Voucher System. The waiver agent 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 agent 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 agent;
 - 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 agent 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.

B. Information and Guidance Functions

The waiver agent 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:

1. Assist the participant to understand reporting, invoice processing and documentation responsibilities.
2. Provide information on how to recruit workers;
3. Provide of sample job interview formats and job descriptions;
4. Arrange and facilitate participation in peer discussion groups aimed at supporting a participant to be successful in the employer role;
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;
6. Assist each participant with the use of his or her individual budget, as requested or needed;
7. Support participants to facilitate timely authorization of payments and accurate record keeping;
8. Assist participants to find and select options for support arrangements including locating and selecting qualified workers;
9. Assure that an emergency back-up staffing arrangement is defined in the participant's individualized plan of services and support.

The waiver agent 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 agent contracts with FI to perform them, the waiver agent must monitor and assess the FI's performance and involve participants and their allies in that process.

C. Participant Role

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:

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 agent and FI about any change in circumstances that may require a modification of the individual plan of services and supports or the individual budget;
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;
3. Assure that each service provider retained by them is in compliance with the provider requirements of the waiver agent;
4. Provide the FI with necessary authorization and documentation (such as timesheets and invoices) to support expenditures of funds;
5. If FI serves as their employer agent, provide FI with the information and documentation necessary to perform employer agent duties;
6. Attempt to resolve any dispute with the FI through the local dispute resolution process, when possible;
7. Communicate with the FI and waiver agent and seek assistance from these entities as needed;
8. Provide feedback to FI to enable it to improve its service delivery.