

**DRAFT**

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
Mental Health and Substance Abuse Services  
SELF-DETERMINATION POLICY & PRACTICE GUIDELINE**

**INTRODUCTION**

Self-determination incorporates a set of concepts and values underscoring a core belief that people who require support through the public mental health system must have the freedom to define the life they seek, and obtain assistance to achieve that life. They need to have access to meaningful choices, and to be assured of control over the course of their lives. Arrangements that support self-determination must be sponsored by the public mental health system, assuring methods for the person to exert direct control over how, by whom, and to what ends they are served and supported.

Person-centered planning (PCP) is a central element of self-determination. The principles of self-determination recognize the rights of people supported by the mental health system to have a life with freedom, and to access needed supports that assist in the pursuit of their life, with responsible citizenship.

The methods applicable to self-determination provide a route for the person to engage in activities that accompany a meaningful life. Activities that promote deep community connections, the opportunity for real work, ways to contribute to one's community, and participation in chosen experiences must be among the purposes of supports the person may need. These supports function best when they build upon natural community experiences and opportunities. The person determines and manages needed supports in close association with chosen friends, family, neighbors, and co-workers as a part of an ordinary community life.

Person-centered planning and self-determination underscore a commitment in Michigan to move away from traditional service approaches for consumers of the public mental health system. In Michigan, the flexibility of the Mental Health and Substance Abuse Services Freedom of Choice waiver and the requirements of person-centered planning have reoriented organizations to respond in new and more meaningful ways. Recognition has increased among providers and professionals that many consumers do not need, want, nor benefit from a clinical regimen, especially when imposed without clear choice. Many provider agencies are learning ways to better support the consumer to choose, participate in, and accomplish a life with personal meaning. This has meant, for example, reconstitution of segregated programs into non-segregated intervention options that connect better with community life. But the move away from predefined programmatic approaches has many barriers. Conflicts of interest abound among many who manage the current system. They have obligations and underlying values that support the right of choice and control. Yet, they also have long-standing investments in existing programs and services, including their investments in capital and personnel resources. Even when options are expanded, the choices currently available seldom dissolve the isolation of

people with disabilities, reduce the segregation, nor necessarily promote participation in life and community as a first-class citizen.

The Department of Community Health is supportive of the desire of people who use the services of the public mental health system to have a full and meaningful role in controlling and directing their services and supports arrangements. This policy is intended to clarify the essential aspects of arrangements that promote opportunity for self-determination, and define required aspects of these arrangements.

## PURPOSE

- I. To provide policy direction that defines and guides the practice of self-determination for the public mental health system in order to assure that it makes self-determination available as a means for achieving consumer-designed plans of services and supports.

## CORE ELEMENTS

- I. Consumers shall have access to the tools and mechanisms supportive of self-determination, upon request. Self-determination shall be effective when the CMHSP and the consumer reach an agreement on a plan of services and supports, the amount of mental health and other public resources needed to accomplish the plan, and the arrangements through which resource use will be controlled and accounted for.
- II. CMHSPs shall ensure that their services planning and delivery processes are designed to encourage and support consumers to decide and control their own lives. The CMHSP shall offer and support easily accessed methods for consumers to control and direct an individual budget. This includes providing them with methods to authorize and direct the delivery of services and supports from qualified providers selected by the consumer.
- III. Consumers of services of the public mental health system shall direct the use of resources to choose meaningful services and supports in accordance with their plan as developed through a person-centered planning process.
- IV. Fiscal responsibility and the wise use of public funds shall guide the consumer and the CMHSP in reaching an agreement on the allotment and use of funds comprising an individual budget. Accountability for the use of public funds must be a shared responsibility of the CMHSP and the consumer.
- V. Self-determination arrangements are partnerships between the CMHSP and the consumer. They require the active commitment of the CMHSP to provide a range of options for consumer choice and control of personalized provider relationships within an overall environment of person-centered supports.
- VI. Issues of health, safety and well-being are central to assuring successful accomplishment of a consumer's plan of services and supports. These issues must be addressed and resolved using the person-centered planning process. Resolutions should be guided by

the consumer's preferences and needs, implemented in ways that maintain the greatest opportunity for consumer control and direction.

- VII. Self-determination requires recognition that there may be strong inherent conflicts of interest between the consumer's choices and current methods of planning, managing and delivering services and supports. The CMHSP must watch for and seek to minimize or eliminate either potential or actual conflicts of interest between itself and its provider systems, and the processes and outcomes sought by the consumer.
- VIII. Self-determination arrangements must be developed and operated within the requirements of the Prepaid Health Plan contract between the CMHSP and the State of Michigan. Involvement in self-determination does not change a consumer's eligibility for particular services and supports.

## POLICY

- I. Self-determination shall be available in each Community Mental Health Services Program, for adults with developmental disabilities and adults with mental illness. Each CMHSP shall make a set of methods available that provide opportunities for the consumer to control and direct their services and supports arrangements.
  - A. Participation in self-determination shall be a voluntary option on the part of the consumer.
  - B. Consumers shall have the authority to select, control and direct their own services and supports arrangements through authority over the resources allotted in an individual budget.
  - C. A CMHSP shall assure that full and complete information about self-determination and the manner in which it may be accessed and applied is provided to each consumer. This shall include specific examples of alternative ways that a consumer may use to control and direct an individual budget, and the obligations associated with doing this properly and successfully.
  - D. Self-determination shall not serve as a method for a CMHSP to reduce its obligations to the consumer, or to avoid the provision of needed services and supports.
  - E. A CMHSP shall actively support and facilitate a consumer's application of the principles of self-determination in the accomplishment of his/her plan of services.
- II. Self-determination shall be available to each consumer who requests the opportunity to participate, and for whom an agreement on a plan of services and supports, along with an acceptable individual budget, can be reached.

- A. Development of an individual budget shall be done in conjunction with development of a plan of services and supports, using a person-centered planning process.
- B. The individual budget represents the expected or estimated costs of a concrete approach to accomplishing the consumer's plan.
- C. The amount of the individual budget shall be formally agreed to by both the consumer and the CMHSP before it may be authorized for use by the consumer. A copy of the individual budget must be provided to the consumer prior to the onset of a self-determination arrangement.
- D. Proper use of an individual budget is of mutual concern to the CMHSP and the consumer.
  - 1. Mental Health funds included in an individual budget are the property and responsibility of the CMHSP. Authority over their direction is delegated to the consumer, for the purpose of achieving the goals and outcomes contained in the consumer's plan.
  - 2. An agreement shall be made in writing between the CMHSP and the consumer delineating the responsibility and the authority of both parties in the application of the individual budget, including how communication will occur about its use. The agreement shall include a copy of the consumer's plan and individual budget.
  - 3. An individual budget, once authorized, shall accompany the consumer's plan of service. It shall be in effect for a defined period of time, typically one year. Since the budget is based upon the consumer's plan of services and supports, when the plan needs to change, the budget may need to be reconsidered as well. In accordance with the Person-Centered Planning Practice Guidelines, the plan may be reopened and reconsidered whenever the consumer, or the agency, feels it needs to be reconsidered.
  - 4. An individual budget shall be flexible in its use.
    - a. The consumer may adjust the specific application of funds within the budget between budgetary line items and/or categories in order to adjust his/her services and supports arrangements as he or she deems necessary to accomplish his/her plan.
    - b. Unless the adjustment deviates from the goals and objectives in the consumer's plan, the consumer does not need to seek permission from the CMHSP nor be required to provide advance notification of an intended adjustment.

- c. When a consumer makes adjustments in the application of funds in an individual budget, these should be communicated to the CMHSP.
    - d. The funds aggregated and used to finance an individual budget may be controlled by more than one funding source. Flexibility in the use of these funds is therefore constrained by the specific limitations of funding sources (e.g., Home Help, Vocational Rehabilitation, etc.)
  - 5. Either party -- the CMHSP or the consumer -- may terminate a self-determination agreement, and therefore, the self-determination arrangement. Prior to the CMHSP terminating an agreement, and unless it is not feasible, the CMHSP shall inform the consumer of the issues that have led to considering termination and provide an opportunity for problem resolution. Typically this will be conducted using the person-centered planning process, with termination being the option of choice if other mutually agreeable solutions cannot be found. If necessary, the local process for dispute resolution may be used to address and resolve these issues.
  - 6. Termination of a self-determination agreement shall not, by itself, change the consumer's plan of services, nor eliminate the obligation of the CMHSP to assure services and supports required in the plan.
- III. A CMHSP shall design and implement alternative approaches that will be available for the consumer to use in applying their individual budget to obtain consumer-selected and -directed provider arrangements.
- A. A consumer shall be able to access any willing and qualified provider entity who is available to provide needed services and supports.
  - B. Approaches shall provide for a range of control options up to and including the direct retention of consumer-preferred providers through purchase of services agreements between the consumer and the provider. Options shall include, upon the consumer's request and in line with their preferences:
    - 1. Services/supports to be provided by an entity or individual currently operated by or under contract with the CMHSP.
    - 2. Services/supports to be provided by a qualified provider chosen by the consumer, with the CMHSP agreeing to enter into a contract with that provider.
    - 3. Services/supports to be provided by a consumer-selected provider with whom the consumer executes a direct purchase-of-services agreement.

- a. Consumers shall be responsible for assuring those individuals and entities selected and retained meet applicable provider qualifications. Methods that lead to consistency and success must be developed and supported by the CMHSP.
  - b. Consumers shall assure that written agreements are developed with each provider entity or individual that specify the type of service or support, the rate to be paid, and the requirements incumbent upon the provider.
  - c. Copies of all agreements shall be kept current, and shall be made available by the consumer, for review by authorized representatives of the CMHSP.
  - d. Consumers shall act as careful purchasers of services and supports necessary to accomplish their plan. Arrangements for purchasing services shall not be excessive in cost. Existing personal and community resources shall be given first consideration before using public mental health system resources.
  - e. Fees and rates paid to providers with a direct purchase-of-services agreement with the consumer shall be negotiated by the consumer, within the boundaries of the consumer's authorized individual budget. The CMHSP may provide guidance as to the range of applicable rates, including maximum amounts that a consumer may spend to pay specific providers.
4. A consumer shall be able to access alternative methods to choose, control and direct personnel necessary to provide direct support, including:
  - a. Acting as the employer of record of personnel.
  - b. Access to a provider entity that can serve as employer of record for personnel selected by the consumer.
  - c. CMHSP contractual language with provider entities that assures consumer selection of personnel, and removal or reassignment of personnel who fail to meet consumer preferences.
  - d. Use of CMHSP-employed direct support personnel, as selected and retained by the consumer.
5. A consumer participating in self-determination shall not be required to utilize CMHSP-employed direct support personnel or a CMHSP-operated or -contracted program/service.

6. All individuals selected by the consumer, whether she or he is acting as employer of record or not, shall meet applicable provider requirements for direct support personnel, or the requirements pertinent to the particular professional services offered by the provider.
  7. A consumer shall not be required to select and direct needed provider entities or his/her direct support personnel if she or he does not desire to do so.
- IV. A CMHSP shall assist a consumer participating in self-determination to select, employ, and direct his/her support personnel, to select and retain chosen qualified provider entities, and shall make reasonably available access to alternative methods for directing and managing support personnel.
- A. A CMHSP shall select and make available qualified third-party entities that may serve as fiscal intermediaries to perform payroll agent functions and provide other employer supports, in order to support the consumer in the use of the Choice Voucher System.
  - B. Fiscal intermediaries shall be under contract to the CMHSP or a designated sub-contracting entity. Contracted functions may include:
    1. Payroll agent for direct support personnel employed by the consumer (or chosen representative), including acting as an employer agent for IRS and other public authorities requiring payroll withholding and employee insurances payments.
    2. Payment agent for consumer-held purchase-of-services and consultant agreements with providers of services and supports.
    3. Provision of periodic (not less than monthly) financial status reports concerning the individual budget, to both the CMHSP and the consumer. Reports made to the consumer shall be in a format that is useful to the consumer in tracking and managing the funds making up the individual budget.
    4. Provision of an accounting to the CMHSP for the funds transferred to it and used to finance the costs of authorized individual budgets under its management.
    5. Assuring timely service activity and cost reporting to the CMHSP for services and supports provided by individuals and entities that have a direct agreement with the consumer.

6. Other supportive services that strengthen the role of the consumer as an employer, or assist with the use of other agreements directly involving the consumer in the process of securing needed services.
- C. A CMHSP shall assure that fiscal intermediary entities are oriented to and supportive of the principles of self-determination, and able to work with a range of consumer styles and characteristics.
- D. An entity acting as a fiscal intermediary shall be free from other relationships involving the CMHSP or the consumer that would have the effect of creating a conflict of interest for the fiscal intermediary in relationship to its role of supporting consumer-determined services/ supports transactions. This typically would include the provision of direct services to the consumer.
- E. A CMHSP shall collaborate with and guide the fiscal intermediary and each consumer involved in self-determination to assure compliance with various state and federal requirements, and to assist the consumer in meeting his/her obligations to follow applicable requirements.

## DEFINITIONS

### Fiscal Intermediary

A Fiscal Intermediary is an independent legal entity that acts as a fiscal agent under contract with a CMHSP or its designated sub-contractor. The purpose of the fiscal intermediary is to receive funds making up a consumer's individual budget, and make payments as authorized by the consumer to providers and other parties to whom a consumer using the individual budget may be obligated. A fiscal intermediary may provide a variety of supportive services that assist the consumer in selecting, employing and directing individual and agency providers. Examples of entities that might serve in the role of a fiscal intermediary include: bookkeeping or accounting firms; local ARC or other advocacy organizations; a subsidiary of a service provider entity.

### Qualified Provider

A qualified provider is a provider of services or supports that can demonstrate compliance with the requirements contained in the contract between the Department of Community Health and the CMHSP, including applicable requirements that accompany specific funding sources, such as Medicaid. Where additional requirements are to apply, they should be derived directly from the consumer's person-centered planning process, and should be specified in the consumer's plan, or result from a process developed locally to assure the health and well-being of consumers, conducted with the full input and involvement of local consumers and advocates.

### Consumer

For the purposes of this policy, "consumer" means the adult consumer of direct services or his/her selected representative. That is, the consumer may select a representative to enter into the self-determination agreement and for other agreements that may be necessary for the consumer to participate in consumer-directed supports and services arrangements. Where the



consumer has a guardian, the role of the guardian shall be as the consumer's representative, if the guardianship arrangement so requires. A person selected as the representative of the consumer shall not supplant the role of the consumer in the process of person-centered planning, in accordance with the Mental Health Code and the requirements of the contract between the CMHSP and the Department of Community Health. Where a consumer has been deemed to require a legal guardian, there is an extra obligation on the part of the CMHSP and those close to the consumer to assure that it is the consumer's preferences and dreams that drive the use of self-determination arrangements, and that the best interests of the consumer are primary. It is not the obligation of the CMHSP to afford direct control arrangements to a guardian when the planned or actual use of those arrangements by that guardian are in conflict with the expressed goals and outcomes of the consumer.

### **Individual Budget**

An individual budget is a fixed allocation of public mental health resources, and may also include other public resources whose access involves the assistance of the CMHSP, denoted in dollar terms. These resources are agreed upon as the necessary cost of services and supports needed to accomplish a consumer's plan of services/supports. The consumer served uses the funding authorized to acquire, purchase and pay for services and supports that support accomplishment of the consumer's plan.

### **CMHSP**

For the purposes of this policy, a Community Mental Health Services Program or an entity under contract with the CMHSP and authorized to act on its behalf in providing access to, planning for, and authorization of services and supports for people eligible for mental health services.

### **Choice Voucher System**

The Choice Voucher System is a term describing a set of arrangements whereby a consumer served by the public mental health system may be authorized to use an individual budget to directly procure one or more of the services and supports required to accomplish the consumer's plan of services. The system supports ways to apply these resources to the costs of services and supports obtained from qualified providers as chosen by the consumer. The system supports the consumer to be a direct employer of personal assistants, the contractor for services/supports with qualified providers, and therefore in a lead role concerning how, where, and by whom needed services and supports are provided. A key aspect of the system is the use of an independent fiscal intermediary to handle the funds making up the consumer's budget, and to assure compliance with tax and labor law requirements. Use of the Choice Voucher System derives from the authority provided to the CMHSP to issue a voucher to a consumer in accordance with their plan of services and supports as provided for in the Mental Health Code. The Choice Voucher System requires the CMHSP to assist and support its use through development of the proper set of agreements and contracts, linking qualified providers to the consumer, and assuring that provider agreements fit with pertinent local, state and Federal requirements. Included in this is the use of agreements between each provider and the CMHSP that assure provider compliance with requirements associated with the use of Medicaid funds.

### **Self-Determination**

Self-determination incorporates a set of concepts and values that underscore a core belief that people who require support from the public mental health system as a result of a disability should be able to define what they need in terms of the life they seek, have access to meaningful choices, and have control over their lives. Within Michigan's public mental health system, self-determination involves accomplishing system change to assure that services and supports for people are not only person-centered, but person-defined and person-controlled. Self-determination is based in four principles. These principles are:

**FREEDOM:** The ability for individuals, with assistance from significant others (e.g., chosen family and/or friends), to plan a life based on acquiring necessary supports in desirable ways, rather than purchasing a program. This includes the **freedom** to choose where and with whom one lives, who and how to connect to in one's community, the opportunity to contribute in one's own ways, and the development of a personal lifestyle.

**AUTHORITY:** The assurance for a person with a disability to control a certain sum of dollars in order to purchase these supports, with the backing of their significant others, as needed. It is the **authority** to control resources.

**SUPPORT:** The arranging of resources and personnel--both formal and informal--to assist the person in living his/her desired life in the community, rich in community associations and contributions. It is the **support** to develop a life dream and reach toward that dream.

**RESPONSIBILITY:** The acceptance of a valued role by the person in the community through employment, affiliations, spiritual development, and caring for others, as well as accountability for spending public dollars in ways that are life-enhancing. This includes the **responsibility** to use public funds efficiently and to contribute to the community through the expression of responsible citizenship.

A hallmark of self-determination is assuring a person the opportunity to direct a fixed amount of resources, which is derived from the person-centered planning process and called an individual budget. The person controls the use of the resources in his/her individual budget, determining, with the assistance of chosen allies, which services and supports he or she will purchase, from whom, and under what circumstances. Through this process they possess power to make meaningful choices in how they live their life.

Attachment K

Resources

The following resources are available on the MDCH web site: [www.mdch.mi.us](http://www.mdch.mi.us)

- Plan for Procurement, September 2000
- Implementation Guide, October 11, 2001
- 1915(b) Waiver Renewal Application and Approval Letter from Centers for Medicare and Medicaid Services (with terms and conditions)
- Self-determination Guideline
- Choice Voucher
- All Guidelines
- Legal Arrangements for Organization (web links)
- 42CFR.434 (web link)

The following resources are available on the Michigan Association of Community Mental Health Boards web site: [www.macmhb.org](http://www.macmhb.org)

- Limited English Proficiency Guidance from the federal Office of Civil Rights, and U.S. Census estimates by county of persons who are unable to use English to communicate with a service provider
- Balanced Budget Act of 1997, Proposed Rules of 2001
- Health Insurance Portability and Accountability Act of 1996, Transaction Standards Implementation Guides