

# **North Country Community Mental Health Northern Affiliation**

## **Self-Determination Policy & Practice Guidelines**

### **INTRODUCTION**

Self-determination incorporates a set of concepts and values that emphasize participation and the achievement of personal control for individuals served through the public mental health system. These concepts and values stem from a core belief that people who require support through the public mental health system must have freedom not only to define the life they seek, but to be supported to direct the assistance they require in pursuit of that life. Persons who rely on the public mental health system for necessary supports and services must have access to meaningful options from which to make choices, and be supported to control 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. PCP is the crucial medium for expressing and transmitting personal needs, wishes, goals and aspirations. As the PCP process unfolds, the appropriate mix of paid/non-paid services and supports to assist the individual in realizing/achieving these personally defined goals and aspirations are identified. 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 and direct 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 personally valued 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 provided through the Medicaid 1915(b) Specialty Services waiver, together with the Mental Health Code requirements of PCP, have reoriented organizations to respond in new and more meaningful ways. Recognition has increased among providers and professionals that many consumers may 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. However, the move away from predefined programmatic approaches and professionally managed models has any barriers. Conflicts of interest abound among many who manage the current system. Agencies and providers have obligations and underlying values that affirm the principles 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 community life and the realization of full citizenship rights.

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 specialty mental health services and supports arrangements. At the same time, the Department knows that the system change requirements, as outlined in this policy and practice guideline, are not simple in their application. The Department is committed to continuing dialogue with stakeholders and to the provision of support, direction and technical assistance so the system may make successful progress to resolve technical difficulties and apparent barriers, to achieve real, measurable progress in the implementation of this policy. This policy is intended to clarify the essential aspects of arrangements that promote opportunity for self-determination, and define required elements of these arrangements.

## **PURPOSE**

- I. To provide policy direction that defines and guides the practice of self-determination within the public mental health system in order to assure that arrangements, which support self-determination, are made available as a means for achieving consumer designed plans of specialty mental health services and supports.

## **CORE ELEMENTS**

- I. Consumers are to be provided with information about the principles of self-determination and the possibilities, models and arrangements involved. Consumers shall have access to the tools and mechanisms supportive of self-determination, upon request. Self-determination arrangements shall commence when the CMHSP and the consumer reach an agreement on a plan of specialty mental health services and supports, the amount of mental health and other public resources to be authorized to accomplish the plan, and the arrangements through which authorized public mental health resources will be controlled, managed, and accounted for.

- II. Within the obligations that accompany the use of funds provided to them, 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 specialty mental health 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 in order to choose meaningful specialty mental health 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, consistent with the fiduciary obligations of the CMHSP.
- V. Realization of self-determination principles requires arrangements that 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. In the context of this partnership, CMHSPs must actively assist consumers with prudently selecting qualified providers and otherwise support the consumer with successfully using resources allotted in an individual budget.
- VII. Issues of health, safety and well-being are central to assuring successful accomplishment of a consumer's plan of specialty mental health services and supports. These issues must be addressed and resolved using the person-centered planning process, balancing consumer preferences and opportunities for self-direction with CMHSP obligations under federal and state law and applicable Medicaid Waiver regulations. Resolutions should be guided by the consumer's preferences and needs, implemented in ways that maintain the greatest opportunity for consumer control and direction.
- VIII. 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 specialty mental health services and supports. The CMHSP must watch for and seek to minimize or eliminate either potential or actual conflicts of interest between it and its provider systems, and the processes and outcomes sought by the consumer.

- IX. Arrangements that support self-determination, allowing a consumer to choose, control and direct providers of specialty mental health services and supports are not themselves covered services under the Specialty Mental Health Plan. They are administrative mechanisms. 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 and in accordance with federal and state law. Involvement in self-determination does not change a consumer's eligibility for particular specialty mental health services and supports.

## **POLICY**

- I. Opportunity to pursue and obtain a plan incorporating arrangements that support self-determination shall be established in each Community Mental Health Services Program, for adults with developmental disabilities and adults with mental illness. Each CMHSP shall develop and make available a set of methods that provide opportunities for the consumer to control and direct their specialty mental health services and supports arrangements.
- A. Participation in self-determination shall be a voluntary option on the part of the consumer.
  - B. Consumers involved in self-determination shall have the authority to select, control and direct their own specialty mental health services and supports arrangements by responsibly controlling the resources allotted in an individual budget, towards accomplishing the goals and objectives in their plan of specialty mental health services and supports.
  - 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 specialty mental health 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. Arrangements that support self-determination shall be made available to each consumer for whom an agreement on a plan of authorized specialty mental health services and supports, along with an acceptable individual budget, has been reached. A consumer initiates this process by requesting the opportunity to participate in self-determination. For the purposes of self-determination, reaching agreement on the plan must include delineation of the arrangements that will, or may, be applied by the consumer to select, control and direct the provision of those services and supports.

- A. Development of an individual budget shall be done in conjunction with development of a plan of specialty mental health services and supports, using a person-centered planning process.
- B. As part of the planning process leading to an agreement about self-determination, the arrangements that will, or may, be applied by the consumer to pursue self-determination shall be delineated and agreed to by the consumer and the CMHSP.
- C. The individual budget represents the expected or estimated costs of a concrete approach to accomplishing the consumer's plan.
- D. Both the consumer and the CMHSP shall formally agree to the amount of the individual budget 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.
- E. 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 assets and responsibility of the CMHSP, and must be used consistent with statutory and regulatory requirements. Authority over their direction is delegated to the consumer, for the purpose of achieving the goals and outcomes contained in the consumer's plan. The limitations associated with this delegation shall be delineated to the consumer as part of the process of developing the plan and authorizing the individual budget.
  - 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. The directions and assistance necessary for the consumer to properly apply the individual budget shall be provided to the consumer in writing when the agreement is finalized.
  - 3. An individual budget, once authorized, shall be filed with the consumer's approved plan of service. An individual budget shall be in effect for a specified period of time. Since the budget is based upon the consumer's plan of specialty mental health 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. The individual budget is authorized by the CMHSP for the purpose of providing a defined amount of resources that may be directed by the consumer to pursue accomplishing their plan of specialty mental health services and supports. An individual budget shall be flexible in its use.

- A. The consumer may adjust the specific application of CMHSP authorized funds within the budget between budgetary line items and/or categories in order to adjust his/her specialty mental health services and supports arrangements as he or she deems necessary to accomplish his/her plan.
  - B. Unless the planned 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 shall occur within a framework that has been agreed to by the consumer and the CMHSP, and described in an attachment to the consumer's self-determination agreement. When changes are made, these shall be promptly communicated to the CMHSP.
  - D. If an adjustment in the use of the budget is intended for a service/support that does not serve to accomplish the direction and intent of the person's plan, then the plan must be appropriately modified before the adjustment may be made. The CMHSP shall attempt to resolve such situations in an expedient manner.
  - E. 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.) Consumers must be informed when some of the resources associated with accomplishing their plan of services and supports involve commitments from funding sources other than the CMHSP, and assisted to work within constraints that accompany them.
  - F. Funds allotted for specialty mental health services may not be used to purchase services, which are not specialty mental health services, nor should contracts with providers of specialty mental health services be entered into if they are not fiscally prudent.
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 consideration of a discontinuation or alteration decision, in writing, 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. In any instance of CMHSP discontinuation or alteration of a

self-determination arrangement, the local processes for dispute resolution may be used to address and resolve the issues.

6. Discontinuation 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 specialty mental health services and supports required in the plan.
  7. In any instance of CMHSP discontinuation or alteration, the consumer must be provided an explanation of applicable appeal, grievance and dispute resolution processes and (where required) appropriate notice.
- III. Assuring authority over an individual budget is a core element of self-determination. This means that the consumer may use, responsibly, an individual budget as the means to authorize and direct their providers of services and supports. A CMHSP shall design and implement alternative approaches that consumers electing to use an individual budget may use to obtain consumer-selected and -directed provider arrangements.
- A. Within prudent purchaser constraints, a consumer shall be able to access any willing and qualified provider entity that is available to provide needed specialty mental health 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. The CMHSP shall provide guidance and assistance to assure that agreements to be executed with consumer-selected providers are consistent with applicable federal regulations governing provider contracting and payment arrangements.
      - 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 specifies 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 specialty mental health services and supports necessary to accomplish their plan. Arrangements for purchasing services shall not be excessive in cost. Consumers should aim for securing a better value in terms of outcomes for the costs involved. Existing personal and community resources shall be pursued and utilized before using public mental health system resources.
  - e. The consumer, within the boundaries of the consumer's authorized individual budget, shall negotiate fees and rates paid to providers with a direct purchase-of services agreement with the consumer. The CMHSP shall provide guidance as to the range of applicable rates, and may set 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 obligated 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, consistent with

MDCH Technical Advisory instructions, their access to alternative methods for directing and managing support personnel.

- A. A CMHSP shall select and make available qualified third-party entities that may function as fiscal intermediaries to perform employer agent functions and/or provide other support management functions, in order to assist the consumer in selecting, directing and controlling providers of specialty services and supports.
- 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 invoicing, service activity and cost reporting to the CMHSP for specialty mental health services and supports provided by individuals and entities that have a direct agreement with the consumer.
  - 6. Other supportive services, as denoted in the contract with the CMHSP 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. The CMHSP shall exercise due diligence in establishing the qualifications, characteristics and capabilities of the entity to be selected as a fiscal intermediary, and shall manage the use of fiscal intermediaries consistent with MDCH Technical Assistance Advisories addressing fiscal intermediary arrangements.
- 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. These other relationships typically would include the provision of direct services to the consumer. The CMHSP shall identify and require remedy to any conflicts of interest of the entity that, in

the judgment of the CMHSP, interfere with the performance of its role as a fiscal intermediary.

- 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. It is the obligation of the CMHSP to assure that the entities selected to perform intermediary functions are capable of meeting and maintaining compliance with the requirements associated with their stated functions, including those contained in relevant MDCH Technical Assistance Advisories.
- F. Typically, funds comprising a consumer's individual budget would be lodged with the fiscal intermediary, pending appropriate direction by the consumer to pay consumer-selected and contracted providers. Where a consumer selected and directed provider of services has a direct contract with the CMHSP, the provider may be paid by the CMHSP, not the fiscal intermediary. In that case, the portion of funds in the individual budget would not be lodged with the fiscal intermediary, but instead would remain with the CMHSP, as a matter of fiscal efficiency.

## **DEFINITIONS**

### **Fiscal Intermediary**

A fiscal Intermediary is an independent legal entity (organization or individual) that acts as a fiscal agent of the CMHSP for the purpose of assuring fiduciary accountability for the funds comprising a consumer's individual budget. A fiscal intermediary shall perform its duties as specified in a 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 also 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 if no conflict of interest exists.

### **Qualified Provider**

A qualified provider is an individual worker, a specialty practitioner, professional, agency or vendor that is a provider of specialty mental health 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 specialty mental health services and supports, and/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 legal guardian, the role of the guardian in self-determination shall be consistent with the guardianship arrangement established by the court. 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. A CMHSP shall have the discretion to limit or restrict the use of self-determination arrangements by a guardian when the planned or actual uses 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 specialty mental health 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 specialty mental health services and supports that support accomplishment of the consumer’s plan.

### **Plan**

A plan means the consumer’s Individual Plan of Services and/or Supports, as developed using a person-centered planning process.

### **CMHSP**

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

### **Specialty Mental Health Services**

This term includes any service/support that can legitimately be provided using funds authorized by the CMHSP in the individual budget. It includes alternative services and supports as well as Medicaid-covered services and supports.

### **Choice Voucher System**

The Choice Voucher System is the designation for set of arrangements that facilitate and support accomplishing self-determination, through the use of an individual budget, a fiscal intermediary, and direct consumer-provider contracting. Its use shall be guided by MDCH Technical Assistance Advisories that may be issued from time to time by the Department.

### **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 on 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 is 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.