

Independent Contractor Model Workgroup System Design Discussion Categories, Topics and Questions

Member Roles and Responsibilities							
	Contract Requirements and Compliance	Billing and Reimbursement	Oversight and Quality of Care Monitoring	Advantages/Disadvantages	HCBS Services Model Continuum	Model Compliance with Federal and State Law	Liability and Risk Mitigation
1	Is the member an employer or do they enter into a contract with a DCW/Agency?	Does the member negotiate the rate of pay for the DCW?	How is the determination made as to whether or not the member has the competency and capacity to enter into contracts? Can members utilize a legal or otherwise representative to assist them to enter into contracts?	What are the advantages and disadvantages for the member under this model?	Is this model a member-directed option? Does it fall into one or more of the current models? (I.e. Agency with Choice, Self-Directed Attendant Care.)	How are the member's risks of looking like an employer under the model mitigated?	How are the member's risks of looking like an employer under the model mitigated?
2	Does the member have a contract with the DCW, Agency or both?		What is the role of family members, particularly family members who are the provider of service? Will conflict of interest provisions be applied?				If there is no agency involved in the model, what entity is responsible to address challenges to the model made by DOL, IRS, UI, etc.?
3	What are the contractual obligations for members?		Who is responsible for developing contingency plans and addressing gaps in services?				
4	What are the required contract elements between members and DCWs and members and agencies?		Who is responsible for assisting the member in addressing issues with the DCW?				
5	Who do members report issues to and when are they required to report issues? (I.e. dissatisfaction, gaps in services, theft, etc.)		Who is responsible for investigating incidents between the member and the DCW? Who is responsible for addressing quality of care concerns identified by an ALTCS Contractor or AHCCCS?				
6	How do members change/end the contractual relationships with either a DCW or an agency?		What is the maximum response time for addressing member concerns/incidents?				

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DCW Roles and Responsibilities							
	Contract Requirements and Compliance	Billing and Reimbursement	Oversight and Quality of Care Monitoring	Advantages/Disadvantages	HCBS Services Model Continuum	Model Compliance with Federal and State Law	Liability and Risk Mitigation
1	Who is responsible for ensuring the DCW's contract compliance including contract obligations to an agency, members, ALTCS Contractor and AHCCCS?	Who negotiates the rate of pay with the DCW and how is this documented?	How do the current supervision requirements for DCW agencies translate to a DCW who is serving in the capacity of an Independent Contractor?	What are some costs associated with a DCW serving as an Independent Contractor? (I.e. training, insurance, etc.)	What is the scope of services that a DCW can provide as an Independent Contractor?		What kind of insurance requirements should there be for DCWs serving as an Independent Contractors?
2	Who is responsible for entering the Independent Contractors into the online training and testing database for direct care services?		How is the DCW incorporated into the care team model and the joint care planning discussions?	What are the advantages and disadvantages for the DCW under this model?			

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Agency Roles and Responsibilities							
	Contract Requirements and Compliance	Billing and Reimbursement	Oversight and Quality of Care Monitoring	Advantages/Disadvantages	HCBS Services Model Continuum	Model Compliance with Federal and State Law	Liability and Risk Mitigation
1	What are the agency's responsibilities related to recruiting, contracting (hiring), monitoring (supervising), paychecks, background checks, etc.?	Who negotiates the rate of pay with the DCW and how is this documented? Is the rate of pay different for each service type and how often is the contract (rate of pay) negotiated?	How do agencies ensure the DCW's contracts are in compliance? What steps are taken if the DCWs are out of compliance with the contract?		With an agency involved in the model, how does the model look or function different than the Traditional or Agency with Choice option?		
2	Who is responsible for ensuring the agency's contract compliance including contract obligations to members, MCOs and AHCCCS?	Would the use of an Independent Contractor require new service codes or service code modifiers?	How does a DCW serving as an Independent Contractor, not contracting with an agency, ensure contract compliance with ALTCS Contractors, AHCCCS and members?				
3	How do agencies change/end the contractual relationships with either a DCW or a member?						
4	Are members and DCWs free to transfer services/work to another agency?						
5	What additional staffing, if any, do agencies need to have to ensure quality of care and DCW contract compliance?						

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ALTCS Contractor Roles and Responsibilities							
	Contract Requirements and Compliance	Billing and Reimbursement	Oversight and Quality of Care Monitoring	Advantages/Disadvantages	HCBS Services Model Continuum	Model Compliance with Federal and State Law	Liability and Risk Mitigation
1	Are the ALTCS Contractors responsible for credentialing DCWs who serve in the capacity of an Independent Contractor?	Should there be different reimbursement rates for the agency and the DCW?		Who owns the risk if the member files a lawsuit?			What choices do ALTCS Contractors have to mitigate risks of looking like an employer under the model?
2	What choices do ALTCS Contractors have regarding who they contract with to provide services?	Will the DCWs be paid different rates based upon the model (i.e. Traditional versus Agency Independent Contractor model)? Should we ensure pay equity across all models?					
3		Should there be different reimbursement rates for agencies utilizing different models (i.e. Traditional versus Agency Independent Contractor model)?					
4		If an agency is involved in the model, what is the reimbursement rate and what is included in the development of the rate?					

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5	Who is responsible for reviewing/approving timesheets and authorizations for billing?	How do the reimbursement rate structures coincide with the DDD rate rebasing requirements?					

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AHCCCS Roles and Responsibilities							
	Contract Requirements and Compliance	Billing and Reimbursement	Oversight and Quality of Care Monitoring	Advantages/Disadvantages	HCBS Services Model Continuum	Model Compliance with Federal and State Law	Liability and Risk Mitigation
1	How do DCWs, serving in the capacity of an Independent Contractor, get screened for Medicaid exclusions?	Would the use of an Independent Contractor require new service codes or service code modifiers?	How are safeguards built to prevent or reduce fraud, waste and abuse?		Who is responsible for educating members on the model(s)?	How do we ensure the model developed by the workgroup is compliant with DOL, IRS, UI, etc.?	How do we ensure AHCCCS is not at risk of providing unemployment compensation for DCWs serving in the capacity of an Independent Contractor?
2	Do DCWs need to be AHCCCS registered providers and have individual AHCCCS provider numbers? What are the required elements of the Provider Participation Agreements?	If an agency is involved in the model, what is the reimbursement rate and what is included in the development of the rate?	If fraud is detected and requires recoupment, who is responsible for paying back the money?		Will AHCCCS develop standardized forms (i.e. agreements) for the model(s) similar to Agency with Choice?		If there is no agency involved in the model, what entity is responsible to address challenges to the model made by DOL, IRS, UI, etc.?
3	Who ensures the DCW and/or the agency carries the appropriate insurance coverage?	Should there be different reimbursement rates for the agency and the DCW?					
4		Should there be different reimbursement rates for agencies utilizing different models (i.e. Traditional versus Agency Independent Contractor model)?					

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Workgroup Recommendations – 05/30/15

- **Research other states that utilize an Independent Contractor model.** The research should incorporate:
 - The context of the 1115 Demonstration Waiver
 - How states have ensured compliance with DOL, IRS and UI.
 - State of Washington – Agency model
 - DCW pay parity requirement
 - Payroll functions are similar to a Fiscal Intermediary operated by the union
 - State of Florida and California– Registry model
- **Request an opinion letter, on the developed model, from DOL, IRS and UI.**

Workgroup Model Development Discussion Considerations – 06/17/15

- **Process**
 - The purpose of the workgroup is to develop a model of care delivery by Independent Contractors within a Medicaid environment.
 - It is important to consider the similarities and differences between Independent Contractor and employee-based models
 - The workgroup should ensure terminology utilized within the outline of the developed model is consistent with the use of Independent Contractors (i.e. use of 1099 versus W-2 language).
- **Discussion Topics**
 - **Contracted Rates and Rates of Pay for Direct Care Workers.** The workgroup should incorporate a discussion about contracted rates and rate of pay for Direct Care Workers. The methodology for rate development assumes the use of an agency and an employee-based model.
 - **Risks.** A consideration of risks to the State and AHCCCS must be part of the workgroup’s process along with risk to other parties (i.e. member, agency, Direct Care Worker, ALTCS Contractors, etc.). For example if an agency utilizing an Independent Contractor model comes under question by the Department of Labor, the entire system may come into question. It was noted, the assessed compliance of the developed model with federal and state law may be subjective in nature.
 - **Insurance Requirements/Liability.** This should be a topic of discussion across all parties involved (i.e. member, agency, Direct Care Worker, ALTCS Contractors, etc.).
 - **Healthcare Continuum of Care.** Although outside of the scope of the workgroup, the workgroup may be in a good position to discuss how the Direct Care Worker may have a role in the larger healthcare continuum of care (i.e. incorporating a role for the Direct Care Worker into the care team). It was noted; the integration of the Direct Care Worker into the continuum of care does not change or hinge on whether or not the Direct Care Worker is an employee or Independent Contractor. This discussion may have implications for Value Based Purchasing models.

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- **Structure.** If the model developed by the workgroup involved the role of an agency, would the State contract with a 3rd Party Administrator to offer back-office services to ensure compliance and mitigate risks to the State and Member? It was noted this support structure does not exist for employee-based models of service delivery.
- **Benefits of an Independent Contractor Model.** It was noted there are returns on investments with the use of an Independent Contractor Model. For example, Direct Care Workers have higher rates of pay and, therefore, more resources to purchase goods and services.