

Liability and Risk Mitigation Committee Meeting Notes
August 24, 2015

Participants: Gale Bohling (ResCare), Jeff Coleman (Soreo), Kate King (Governor's Office), Christina Corieri (Governor's Office); Tanya Jones, (Home Sweet Home), Ferrell Quinlan (NFIB), Alan Tiano (United Healthcare Comm. Plan), David Lara, DES/DDD, Patrick La Voie, CMS, Dara Johnson, (AHCCCS); Jennifer (AHCCCS); Monica Coury (AHCCCS) Facilitator: Jeff Coleman

General Discussion by Committee Members:

- Jeff Coleman distributed and reviewed a document entitled “ Independent Contractor Model for Home Care Industry Best Business practices for 1099 model.”
- Dara Johnson stated that the Insurance sub-committee would consider adding the recommendation of requiring surety bonds.
- There was more discussion of recent law suits alleging misclassification. Jeff Coleman emphasized that there has not been a law suit that rolled uphill to the State. Patrick Lavoie stated that the goal would be to develop an IC model that is done correctly and legally compliant so that it is defensible.
- Some committee members expressed concern with risk to the network if for example a significant number of agencies adopted the IC model and there were problems identified later with it.
- Much discussion about the issue of control/direction with the IC model. It was stated that the contracting agency would not actually be directing. The IC would be required to follow regulatory requirements and the individual care plan for the member served. The contracting agency would ensure compliance but not be directing.
- Kate King reviewed the DOL document of 7/15/15 point by point to see how the IC model could meet the criteria DOL discusses to determine IC status.
- It was suggested that one strategy to lessen risk of lawsuit is to require workers to be reimbursed at least at the minimum wage level. Jeff Coleman stated that this should apply both to the IC model and employee model. There was some concern that if a floor were created there would not be enough of a range left for reimbursement negotiations between the IC and the contracting agency.
- Another suggestion was made to require the contracting agency to consult with a lawyer, CPA and/or a management agency to ensure that the IC model being implemented is legally compliant.
- The Committee acknowledged the timetable for making recommendations is by Sept. 23rd. In view of this, Kate King, Christina Corieri and Monica Coury agreed to work on a draft, based on discussions and input, of strategies to mitigate risk and liability. This draft will be distributed to Committee members prior to the next meeting.

Next Meeting

September 15, 2015 from 1:30– 3:30 PM at AHCCCS.