

Liability and Risk Mitigation Committee Meeting Notes
August 3, 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), Dara Johnson, (AHCCCS); Virginia Rountree (AHCCCS); Monica Coury (AHCCCS) Facilitator: Jeff Coleman

General Discussion by Committee Members:

Considerable discussion about DOL document dated 7/15/15 took place.

- Concern expressed about possibility of State being at risk if there is a law suit RE: misclassification.
- Concern that members at risk if agency is sued for misclassification and about potential risk across the system.
- Question raised regarding whether there are actual examples in case law of misclassification liability going uphill from the agency to the MCO and State.
- Desire expressed by some committee members to ensure that agency accepts full responsibility if misclassification occurs.
- Concern that some agencies may not be financially healthy enough to sustain a lawsuit or adverse judgment.
- Agencies are audited but the audits are compliance in nature and do not address financial health of agency.
- Ideas raised about indemnification clauses, insurance, surety bonds, and verification of an agency's financial health as potential ways to mitigate risk.
- Concern expressed that W2 agencies also present risks of law suits and adverse judgments and that there needs to be parity in the requirements.
- The goal is to build an IC model that minimizes risk to the system and to members.

Discussion about seeking an opinion letter from DOL about the Independent Contractor model that is being developed.

- Some felt there was value in seeking a DOL opinion and that if the opinion was favorable it could help later if there were a law suit.
- Others concerned that DOL would take a biased perspective or at best offer a vague opinion.
- No agreement reached at this time.

Mitigation strategies discussed.

- Need to develop a model that mitigates risk of misclassification and that can be utilized by any agency wishing to utilize an IC model.
- Jeff Coleman began to outline strategies for addressing the 24 points considered key to ensuring proper classification. Points discussed included DCW's ability to work for others, DCW's ability to take risks, DCW purchases their own supplies (eg gloves), pays for their own insurance, agency does not schedule DCW's time,

end user (member/family) can fire DCW at will. Contracts between DCW and member define roles and responsibilities. Agency contract with member allowing member to choose his/her DCW.

- Suggestion that DCW who is Independent Contractor should sign a statement acknowledging that he/she is not an employee of the agency, MCO or AHCCCS.
- Clear contract between member and DCW mitigates risk to member and family.
- Agency's contingent liability insurance protects member.
- Suggestion that DCW's might be required to carry General Liability insurance to further protect member.
- Possible strategy to reinforce IC status is to have a third party make payments to the DCW rather than payments being made by the agency itself. (This might be recommended rather than required in the model.)

Tasks to be accomplished before next meeting

- Jeff will send out list of strategies to ensure that the 24 points in considered for proper classification are met.
- Kate and Christina will review recent DOL guidance point by point and list potential mitigation strategies.
- Dara and/or Ginny will connect with Insurance Work Group so that this work group can review and possibly have input into the insurance recommendations.

Next Meeting

August 24, 2015 from 2 – 4 PM at AHCCCS.

Next Meeting: August 3, 2015 2:00 – 3:30 PM @ AHCCCS