

September 23 2015  
Independent Contractor Workgroup  
Discussion Summary

### **State Model Research Committee Report**

- The State of Georgia recently enacted a new licensure law that does not allow for the use of Independent Contractors [*Gale Bohling*]
- The research conducted did not include research on state statutory or regulatory requirements. An employment law firm has conducted analysis of statutory requirements and has not found any state statutory language prohibiting the use of Independent Contractors [*Patrick LaVoie*]

### **Member, DCW, and Agency Considerations Committee Report**

- It was noted that when a systemic change such as a new model of care has been introduced, therefore, the Division of Developmental Disabilities (DDD) is required to build a new rate model once the Independent Contractor Model has been fully developed. The current construct of the rate model is built on the employer/employee model. [*Leah Gibbs*]
- The following are considerations expressed by attendees that should be noted and considered as part of rate model development:
  - The current DDD Qualified Vendor Agreement contemplates a model whereby service providers could sub-contract to provide services
  - Some agencies are already utilizing the Independent Contractors to provide care
  - There appears to be a market advantage for non-profits versus for profit companies that contract to provide care. For example, non-profit companies have less overhead because they are exempt from paying taxes.

### **Liability and Risk Mitigation Committee Report**

- The following are recommendations regarding the draft Addendum to the AHCCCS Provider Participation Agreement
  - Direct Care Workers are defined by the provision of attendant care, personal care or homemaker services. The Independent Contractor Model is being proposed for respite and habilitation services in addition to those services noted above. Therefore, the term “DCW” should be replaced with “Independent Contractor” in the attestation statement.
  - Use general neutral wording in the attestation statement.
  - Item #13 – re-phrase to state “The Independent Contractor is subject to little direct supervision, including over the way they dress, the tasks carried out and the order and manner in which tasks are carried out.”

- Add an item noting that the Independent Contractor does not get compensated for Overtime or travel time in between customers to highlight the protections of the DOL Companionship Exemption does not apply to Independent Contractors
- Item F – Indemnification of State by DCW
  - The indemnification should include either misclassification of employees or bonding insurance
  - Add occupational accident coverage
- Item H – reference both paragraphs F and G in the second sentence
- AHCCCS will be developing a streamlined process for Independent Contractors contracted by DCW Agencies to provide services to register with AHCCCS. The process will incorporate the following:
  - Fee waived for Independent Contractors
  - A process whereby an agency can identify whether or not an Independent Contractor is an AHCCCS registered provider
  - A process whereby an Managed Care Organization can check on the status of an Independent Contractor as an AHCCCS registered provider
  - Review the Provider Participation Agreement for modifications pertaining to Independent Contractors in addition to the draft proposed Addendum.

#### **Insurance Requirements Committee**

- It was noted the Committee does not currently recommend any specific coverage options, but rather that decision will be made once the model is clearly defined and established. The Committee focused on what researching if there are any insurable and uninsurable risks. For the latter, the Committee identified coverage options.
- The Committee findings are as follows:
  - Although the method of insurance under the IC (Independent Contractor) model differs from that under the current model (employer/employee model), none of the liabilities identified were unique to the IC model (It must be noted that under the current model certain liabilities would be attributed to employees rather than independent contractors)
  - There was no liability identified where the damaged party could not be protected in some way except for misclassification fines and penalties as outlined herein
  - There was no liability identified which resulted in upstream liability where that upstream liability could not be mitigated through proper insurance.
  - There was only one liability identified where the committee was unaware of an existing insurance product that would directly address the exposure; however, the committee is aware of products that address similar exposures in other industries; thus, the committee is confident that an insurance product can be sourced.
  - Based on the Risk Matrix, the committee feels that liability to the MCO/State of AZ can be mitigated if the appropriate requirements are in place and are specific to the IC model.

- Given that the committee found that the method of insurance and named insured for certain liabilities under IC model differ from that under the current model the committee strongly recommends a separate set of insurance requirements that specifically address the IC Model.
  - It must be noted that under the existing model employees do not carry insurance and the Agency does; however, under the IC Model the DCW would carry insurance in addition to that carried by the Agency adding an additional layer of protection for the MCO/State of Arizona.
    - If DCW's were required to carry the necessary coverages with reasonable limits of coverage it is likely that the MCO/State of Arizona would have more insurance protection under the IC model than under the current model (assuming these coverages would not be cost prohibitive to the DCW and compliance could be effectively monitored by the MCO, State, or a qualified third party).
- It was noted that both member and family member education and misclassification of employee coverage for the agency is important to mitigate risks undertaken by members or family members who may assert an employer role in the relationship with the Independent Contractor. *[Gale Bohling]*
- It was noted that in order for coverage option premiums to be paid on an hourly basis, a third party entity is integral to ensuring the validity of the documented hours worked.

### **Next Steps**

- AHCCCS will draft an Independent Contractor Model outline for review by the workgroup *[Monica Coury]*
- AHCCCS will initiate discussions with Provider Registration on Provider Participation Agreements and provider registration process *[Monica Coury]*
- AHCCSS will consult with the Arizona Department of Administration on proposed insurance requirements *[Julie Ambur]*
- AHCCCS will coordinate a meeting for mid-November with the workgroup *[Dara Johnson]*