AHCCCS Independent Contractor Workgroup

Insurance Requirements Committee

Meeting Minutes

Date: Monday July 13; 2-330pm

Attendees: Ginny Roundtree (AHCCCS), Ben Garland (Sunbelt Insurance), Jose Mercado (DES/DDD), Ray Wallace (Soreo)

Scope of Work:

- Identify unique risks of the use of independent contractors to provide HCBS to AHCCCS members and to identify insurance products that may mitigate these risks.
- Risks will be identified by the player within the HCBS system (member, agency, managed care organization, AHCCCS/State of Arizona).
- Once risks are identified, Ben Garland to provide suggestions on how insurance products may mitigate the identified risks.
- Some risks may not be mitigated by insurance or insurance products may be cost prohibitive.
- Assumptions:
    - Lowest level of care provided by DCW (non-skilled or low-skilled versus higher-skilled [medical])
    - Variable place of care (members home rather than group facility)

Types of Risks identified:

Member: due to the intimate nature of services in the member's home, the following risks were noted:

- Bodily/physical injury – members may suffer personal/physical injury
- Property damage – members' property may be damaged
- Crime/identity theft – members suffer identity theft as DCWs may have access to sensitive member information (example: SS#, address, banking information, tax returns, etc.)
- Crime/fraud – members may suffer loss of fiscal/physical property (theft of cash, personal property, etc.)
- Sexual abuse – members my suffer unwanted sexual physical contact
- Automobile – members may suffer physical injury when transported by DCW
- Household family members – members my live with other people who may be vulnerable to the same type of loss as the member

Direct Care Worker: due to the nature of services, the following risks were noted:

- Bodily/physical injury – DCW may suffer physical injury
- Professional liability – DCW may injure member receiving services
- Property damage – the DCW may damage the members' property

- Crime/Fraud – the DCW may commit a crime against the member or household
- Sexual Abuse – the DCW may commit a sexual assault against member or household
- Automobile – the DCW may be responsible for auto accident while transporting member

Agency: due to the contracting relationship with the Direct Care Worker, the Agency may be vulnerable to the following risks:

- Member and DCW bodily/physical injury
- Member property damage – the DCW may damage the members' property
- Crime against member – the DCW may commit a crime against the member or household
- Sexual Abuse against member/household – the DCW may commit a sexual assault against member or household
- Automobile accident caused by DCW – the DCW may be responsible for auto accident while transporting member
- Records/Cyber risk – Agency has personal data of members and DCWs and may suffer catastrophic loss of data due to system breach (electronic or physical breach)
- Medical/Malpractice – Agency may be at risk if DCW performs procedures considered medical in nature or if Agency provides certain services that are medical in nature (e.g. flu shots)
- Fraud – Agency may be at risk for fraudulent submission of service hours if DCW falsifies timekeeping records
- Contracts – contracts may not be properly created to document the contractual relationship between Agency, DCW and member
- Misclassification of DCW as 1099 contractor – Agency at risk if the DOL/IRS determines the Agency improperly classified the DCW at 1099 contractor

Managed Care Organization/AHCCCS/State of Arizona: due to the contracting relationship with the Agency, the MCO/AHCCCS/State of Arizona may be vulnerable for the same risks as the Agency

Next Meeting: August _____, 2015

Liability and Risk Mitigation Committee Meeting Notes
July 13, 2015

Participants: Gale Bohling (ResCare), Jeff Coleman (Soreo), Kate King (Governor's Office), David Lara (DDD), Patrick LaVoie (Contractor Mgt. Svcs.) , Michael Sumner (AZ in Home Care Association), Alan Tiano (United Healthcare Comm. Plan), Jennifer Carusetta (AHCCCS) Facilitator: Jeff Coleman

General Discussion by Committee Members:

- Need to architect an Independent Contractor model with protections to AHCCCS & MCO's
- Must be done correctly to avoid problems
- Need to establish best practices to avoid liability
- Past problems with IC model resulted when AHCCCS paid Unemployment for IC's on Reservations
- Past problems occurred when only a partial IC model was implemented
- Concern that IC model may not be suitable for all members and families

Discussion of Potential Risks

- Potential exposure for families when roles are not clearly defined, contract not in place. Risk that families will assume greater role of employer than they should.
- Risk of getting IC's reclassified as employees (potential misclassification)
- Potential wage and hour liability
- Class action law suits
- Injuries to workers
- Injuries to member/family
- Risk of inadequate insurance coverage

Discussion of Potential Mitigation Strategies

- Occupational Accident Insurance carried by IC's
- Contingent liability insurance carried by agency
- Indemnification of AHCCCS and MCO's
- Naming of Additional Insured on policies
- Background checks (e.g. fingerprinting) of IC's
- Contract structure, delineation of requirements, roles and responsibility
- Contract between agency and AHCCCS/MCO's
- Contract between agency and IC workers
- Contract between agency and member
- Contract between State and MCO

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

AHCCCS Independent Contractor Workgroup
State Model Research Committee
Meeting Minutes
07/13/2015

Committee Members Present:	Committee Members Absent:
Mohamed Arif (AHCCCS)	**Patti Dorgan** (United HealthCare)
Carolin Leong (Prileo Home Care)	**Leslie Mitchell** (Consumer Direct of Arizona)
Megan Neal (ResCare)	**Megan Akens** (DES/DDD)

The Committee decided to volunteer to research Independent Contractor models in other states for the provision of direct care services (attendant care, personal care and homemaker services). The following is a listing of the states each Committee Member will research. Committee Members, absent, from the meeting will be contacted to see if they would like to research models in states that currently have not been identified. *Note: Subsequent to the meeting, Leslie Mitchell and Patti Dorgan volunteered to research states. The minutes were amended on 07-21-2015.*

Mohamed Arif	Carolin Leong	Megan Neal	Leslie Mitchell	Patti Dorgan
Idaho	Florida	California	Alaska	Maine
Illinois	New Mexico	Colorado	Montana	New Hampshire
New York	Minnesota	Kansas	Nevada	Ohio
Pennsylvania	Texas	Louisiana	Wisconsin	South Carolina
	Washington	Oklahoma		Tennessee
		Utah		Vermont

The following is a listing of states not yet currently identified for research.

Alabama	Kentucky	Nebraska	Rhode Island
Arkansas	Maryland	New Jersey	South Dakota
Connecticut	Massachusetts	North Carolina	Virginia
Delaware	Michigan	North Dakota	West Virginia
Georgia	Mississippi	Oregon	Wyoming
Hawaii	Missouri		
Indiana			
Iowa			

Next Steps:

- AHCCCS staff will create a matrix to ensure that each Committee Member captures and documents the research in a uniform fashion.
- The Committee will reconvene on August 13, 2015 from 1-3pm to discuss the outcomes of the research and how to present the findings to the AHCCCS Independent Contractor Workgroup on September 23, 2015.
- AHCCCS staff will reach out to Committee Members absent in the meeting to solicit their availability to conduct research of models in states not yet currently identified for research.

7/13/2015
Member, DCW and Agency Considerations Committee

In attendance: Melissa (AHCCCS), Steve (Tungland), Pat (Mercy Care), Dan (Bridgeway), Keffory (All Valley), Ann (AAPPD), Uma (My House), Phil (ABIL), Wendy (Soreo). Also other AHCCCS individuals in attendance as well as Dara and Ginny as "floaters" through all the groups.

Dara instructed to work all parts of the outline, and have discussions and other thoughts available to add/present to the larger group.

Steve was made the Facilitator of the group

AHCCCS provided handouts of the outline, and then Wendy also offered hand-outs of how the Independent Provider Model works in her organization - she "answered the questions" listed on the outline for a point of reference.

Biggest concerns shared/discussed by the group: Oversite, responsibility, rates, and current rules and regs that would need to be modified.

-Member roles and responsibilities - oversite is the main issue.
Contract or employer -who is responsible for all of this - is it an independent model? Per Steve, agencies have used these models for years and years, and Dan brought up that there is a need to define on the AM/PM what is appropriate for member. Pat says that there are some responsibilities that members (or their families) cannot take on.

-Questions arose over the "AGENCY MODEL" only? HOW DO WE GET AHCCCS NUMBER? If we work out an ALL independent providers, not agency only, how would that work? The group seemed to mostly agree that the agency model is the best way for independent contractors to work. Dara instructed us not to limit ourselves (how does an individual get an AHCSSS ID number?) and/or other issues that may come us, put those aside for the time being to come up with the best/most appropriate model.

Concerns were raised by the plans/MCO's as to who is responsible when there is an issue or problem? Who takes on the Liability and responsibilities?

Pat expressed concern that there are a lot of problems with taxes, and that the level of provider who works independently is typically a lower level provider and that they are not savvy enough to understand the issues and responsibilities surrounding the model. Wendy disagreed and said they have better providers and that there is lower turnover with independents. Wendy said that since no OT is paid, you can pass on savings to the providers.

Regarding the rates, Ann said she's concerned that the rate model with DDD is inclusive of an "employment relationship" as included in the rate methodology are amounts for overhead: benefits, (insurance), 401K/retirement plans, certifications, payroll taxes, trainings etc. None of which is paid for by an independent provider agency to an independent provider.

Steve reiterated that many providers already use this model.

Phil expressed his concerns for the member and worker. Specifically without oversite, Many chimed in as to how the member would get through a day with a no-show, who do they call, how are they taken care of?

Phil's concerns were mirrored by the MCO representatives - AMPM need to change by adding individual type of providers. But bottom line their concern is - WHAT IS BEST FOR THE MEMBER?

Ann asked Dara if this was a CMS issue (is that why AHCCCS moved to the employee only model?) Dara said (paraphrasing) no, it was an AHCCCS review and implementation as these types of services lend themselves to the employee model.

There were questions surrounding ADH & CDH and how those are working as they all do the this type of work/set-up.

What do we recommend? We couldn't seem to get past the independent model -true independent model, versus agency independent model requirements.

Suggestion: Each new meeting is focused on one of the 3 components, all seemed to agree with that

1. Members - only discuss the members part in this issue

2. DCW/Providers - only discuss the DCW part in this issue

3. Agency - only discuss the agency part in this issue.

THREE MEETINGS need to be held by SEPT 23RD

Schedule agreed upon-

1. MEMBER MEETING - JULY, 27 1:30-3:30
2. DCW - AUGUST 10TH 1:30-3:30
3. AGENCY -AUGUST 24TH - 1:30-3:30