



31.09 OPERATING POLICY & PROCEDURE

Subject: Self-Determination		Application: All Departments
First Effective 3/25/11	Revised 12/27/16	Reviewed 2/13/2023

PURPOSE

To define and guide the practice of self-determination and participant-driven support models within Pivotal and to promote greater accessibility and availability of such arrangements for individuals receiving services. To outline the methods utilized by Pivotal to support self-determined arrangements.

DEFINITIONS

Choice Voucher System

A set of methods for setting up contracts and payment mechanisms that support the accomplishment of self-determination by adult recipients of mental health and/or intellectual/developmental disability services. These methods make it possible for recipients to exercise authority over workers and budgets.

Fiscal Intermediary

A qualified third party entity that can perform payroll agent functions for individuals hiring their own staff. Individual service budget represents the expected or estimated costs of the services needed to accomplish the plan.

Self Determination

The philosophy that assures a person the opportunity to control a fixed sum of dollars, which is derived from the person-centered planning process and put forward in an individual budget. The person controls the use of resources in his or her budget, with the assistance of allies. The individual and team choose the supports and services that will be purchased, from whom and under what circumstances. The goal of self-determination is to assist individuals in achieving meaningful lives in the community.

Principles of Self-Determination

- **Freedom**
The ability for individuals, with assistance from allies, to plan a life based on acquiring necessary supports in desirable ways, rather than purchasing a program. This includes the freedom to choose where and with whom one lives, who and how to connect to in one's community, the opportunity to contribute in one's own ways, and the development of a personal lifestyle.
- **Authority**

The assurance and authority for a person to control a certain sum of dollars in order to purchase supports, with the backing of their allies as needed.

- **Support**

The arranging of resources and personnel, both formal and informal, to assist the person in developing a life dream, taking steps to reach toward the dream and living his/her desired life in the community, rich in community associations and contributions.

- **Responsibility**

The acceptance of a valued role by the person in the community through employment, affiliations, spiritual development, and caring for others, as well as accountability for spending public dollars in which ways which are life-enhancing.

POLICY

- A. Annually, individuals served will be provided with information regarding self-determination and will be informed of the various means for implementing self-determination.
- B. Self-determination will commence when Pivotal and the individual receiving services reach an agreement on a plan of supports and services and the amount of public community mental health resources authorized to accomplish the plan and agreement on the specific means through which authorized resources will be managed, applied and accounted for.

PROCEDURE

- A. Pivotal shall develop services planning and delivery processes that facilitate and encourage maximum individual direction and control over their own lives. Pivotal will implement methods for individuals to control and direct an individual service budget. The method will specify procedures that provide easy access for individuals receiving services to control and direct the delivery of supports and services from qualified providers selected by the individual (and impaneled through Pivotal).
- B. Legal compliance, Michigan Department of Health and Human Services instructions, fiscal responsibility and the economical and efficient use of public funds shall guide the individuals and Pivotal in reaching an agreement on the allotment and use of resources comprising an individual budget. Pivotal must identify and remedy unnecessary obstacles that impede individual direction, including potential or actual conflicts of interest between itself and its provider systems, and agency practices and processes that inhibit service arrangements and outcomes sought by the individual receiving services.
- C. There is a distinction between the legal right any individual may have to enter into a contract (including an employment contract) and his or her authority to direct funds under the stewardship of Pivotal paying for that arrangement. While the individual's right to enter into agreements under common law cannot be abrogated, the use of the funds of Pivotal to directly arrange for and control providers of services must be authorized by Pivotal for the sole purpose of accomplishing the individual plan of services and supports. If use of the Choice Voucher System is beyond the ability of the participant,

even with the provision of available support, authorizing such arrangements is inappropriate. This is especially true where there is a significant potential for harm to the individual.

- D. Self-determination and person-directed supports and services arrangements will be established as an option for individuals receiving services by Pivotal. Pivotal will develop a set of methods that afford individuals a range of alternatives and opportunities to direct and manage supports and services.
- E. Pivotal will inform individuals about self-determination and person-directed service options, how to access these options, and the range of alternatives that might be selected by the individual to direct and manage authorized services and supports. Information regarding an individual budget or resource allocation as a mechanism for exercising individual direction must indicate the method used to determine individual budget or resource amounts, procedures for adjusting the authorized amount to reflect the changing needs or circumstances of individuals receiving services, specific examples of alternative ways that an individual may control and direct an individual budget or allocation, and the obligations associated with doing this properly and successfully.
- F. The self-determination agreement is used as the mechanism for directing and managing the delivery of the supports and services the individual is authorized to receive, then:
 - 1. The development of the individual budget or allocation must be done in conjunction with development of the plan of supports and services, using a person-centered planning process.
 - 2. The individual budget or allocation must clearly distinguish the amounts for supports and services authorized and funded through Pivotal from amounts which represent service responsibilities and fiscal commitments by other entities, individuals or funding sources. The individual budget or allocation amount must be adequate to furnish necessary covered supports and services authorized under the approved plan of service and included in the individual budget or resource allocation of the person receiving services.
 - 3. The amount of the individual budget or allocation shall be formally agreed to by both the individual receiving services and Pivotal before it may be authorized for use by the individual. A copy of the individual budget or individual resource allocation, and the Consumer Handbook on Self-Determination must be provided to the individual prior to the arrangement.
 - 4. Medicaid appropriated mental health funds authorized for inclusion in an individual budget or allocation arrangement are the assets and responsibility of Pivotal. Authority over the direction of these resources is delegated to the individual receiving services, for the specific purpose of obtaining authorized medically and clinically necessary supports and services, and achieving particular goals and outcomes contained in the individual's plan of service.
 - 5. Cash payments shall not be made to an individual receiving services under an individual budget arrangement, nor reimburse the individual with Medicaid funds

for the costs of supports and services that the individual/beneficiary has purchased out of her or his own funds. The individual may not use resources of Pivotal included in the individual budget to purchase supports and services that are not authorized in the plan of service.

- a. All requirements related to the management, authorized uses, provider selection and qualifications, permissible reimbursement rates, documentation and data, financial reporting and monitoring of individual budgets or individual resource allocation arrangements shall be reflected in a written agreement between Pivotal and the individual receiving services, his or her authorized representative (if one is designated by the individual) and (if necessary to comply with legal requirements) the individual's guardian.
- b. An individual budget or allocation, once authorized, must be filed with the individual's approved plan of service. Individual budget or allocation arrangements. In accordance with the Person-Centered Planning Practice Guidelines, the plan – and authorized amounts for the individual budget or allocation - may be reviewed and reconsidered whenever the individual or Pivotal or its subcontract provider agency believes necessary.
- c. An individual budget or resource allocation arrangement should have some flexibility in its implementation and application.
 - 1) When an individual makes permissible adjustments in the application of resources authorized in an individual budget or allocation, these changes should be communicated to Pivotal according to whatever procedures or schedule has been established for reporting such modifications.
 - 2) Individuals receiving services should be notified that some resources included in an individual budget or individual resource allocation agreement may represent commitments by funding sources other than Pivotal and that flexibility in the use of these other resource commitments is therefore constrained by the specific limitations of the funding sources (e.g., Home Help, Vocational Rehabilitation, etc.).
- d. If each Pivotal decides to discontinue or modify a self-determination plan or a person-directed support or service arrangement it shall (**prior** to altering the arrangement) inform the individual of the issues that have led to the discontinuation or alteration decision and provide an opportunity for problem resolution. Typically, this will be conducted using the person-centered planning process.

G. Pivotal will design and implement alternative approaches that individuals electing individual budgets or individual resource allocations may use to obtain personally selected and directed provider arrangements.

1. An individual receiving services shall be able to select any qualified practitioner or provider entity or direct support worker within the service network of Pivotal that is available and credentialed to provide needed services and supports. These services and supports need to be the least restrictive available. An individual may

also select a provider through a Purchase of Service self-determination arrangement.

2. Pivotal will develop alternative approaches for relationships between individuals receiving services and providers, including ones that provide for the direct retention of individual-preferred providers through purchase of services agreements between the individual and the non-empanelled provider. Options shall include, upon the individual's request and in line with their preferences:
 - a. Provider with Choice-Supports and services to be provided by an entity operated by or under contract with Pivotal.
 - b. Employer of Record
Supports and services provided by an individual-nominated and directly hired as a provider with whom the individual executes an employment agreement consistent (for Medicaid specialty supports and services) with applicable federal regulations governing provider contracting and payment arrangements and utilizing a fiscal intermediary.
 - c. Purchase of Service
Supports and services to be provided by an entity or individual that is a non-empanelled provider and utilizing a fiscal intermediary.
 - d. Each of these arrangements shall encompass the following:
 - 1) Pivotal and individual receiving services will ensure that written agreements are developed with each provider entity or individual practitioner nominated by the individual and empanelled by Pivotal, or direct-hire, which specify the type of support or service, the rate to be paid, and the requirements incumbent upon the provider.
 - 2) Copies of all agreements shall be kept current, and will be available for inspection by any regulatory body - by both the individual receiving services and Pivotal. All employment-related agreements must be executed and signed prior to employee beginning work. (W-4, Employment Eligibility, New Hire, Employment Agreement, 42 CFR 431.107 and Release of Information, Criminal Background Check).
 - 3) In securing necessary supports and services, individuals receiving services will assist Pivotal in its role as a prudent purchaser of authorized supports and services to meet the approved plan of service. Existing personal and community resources shall be given first consideration before using public community mental health system resources.
 - 4) Pivotal will have developed contractual language with provider entities that facilitates individual selection of personnel, and removal or reassignment of personnel who fail to meet individual preferences. Applies to Provider with Choice only.
 - 5) Fees and rates paid to providers with a direct purchase-of-services or direct-hire agreement with the individual receiving services may be negotiated by the individual, within the boundaries of the individual's authorized individual budget or resource allocation, the established range of applicable rates for authorized services for

Pivotal, and consistent with the principle of economical and efficient operation of the managed specialty services program. Applies to Employer of Record and Purchase of Service only.

- H. Pivotal will select and make available qualified entities, organizations or individuals - consistent with Michigan Department of Health and Human Services Technical Assistance Instructions and applicable federal, state and waiver requirements and conditions - that may serve as an intermediary to execute payroll agent functions and provide other authorized employer supports, in support of individuals' use of the Choice Voucher System (if Pivotal chooses to utilize that system) or other mechanisms selected by Pivotal to facilitate individual employer functions.
1. Fiscal Intermediary entities, organizations or individuals will be under contract of Pivotal Medicaid specialty services waiver program or to a legally designated sub-contracted entity. Specific—functions for which an intermediary may be authorized and used include.
 - a. Payroll agent for direct support personnel employed by the individual receiving services (or chosen representative), including acting as an employer agent for IRS and other public authorities requiring payroll withholding and employee insurance payments.
 - b. Payment agent for authorized individual-held purchase-of-services and approved consultant agreements with empanelled providers of services and supports.
 - c. Provision of periodic financial status reports, submitted according to the schedule and requirements of Michigan Department of Health and Human Services or Pivotal, concerning the current status of an individual budget or individual resource allocation arrangement. Reports provided must also be transmitted to the individual receiving services, in a format that is useful to the individual in tracking and managing the status of the individual budget or resource allocation.
 - d. Provision of an accounting to Pivotal for the funds transferred to it (either prospectively or retrospectively depending upon the terms of the agreement), to pay for authorized supports and services rendered to the individual under the approved individual budget or individual resource allocation arrangement.
 - e. Assuring timely invoicing, service activity and cost reporting to Pivotal for authorized supports and services provided to the individual by empanelled individuals and entities that have a direct agreement with the individual and a provider agreement on file with Pivotal.
 - f. Other authorized and approved supportive activities for Pivotal that strengthen the role of the individual receiving services as an employer.
 2. Pivotal will ensure that if fiscal intermediary entities are utilized, they are oriented to and supportive of the principles of self-determination and individual-direction, and capable of working with a range of individual styles and characteristics.
 3. Where Pivotal utilizes a Fiscal Intermediary entity, it shall exercise due diligence in establishing the qualifications, characteristics and capabilities of the

intermediary entity, and in identifying (and remedying) any possible conflicts of interest that may – in the judgment of Pivotal - inhibit the intermediary in fulfilling its role of supporting individual-directed supports and services transactions.

4. Pivotal shall only utilize intermediary entities, organizations or individuals that are capable of meeting and maintaining full compliance with various state and federal requirements, and which can competently assist the individual receiving services in meeting all obligations under self-determination approaches and individual-directed supports and services arrangements.

I. Annual Person Centered Planning

Pivotal will inform individuals about self-determination and person-directed service options, how to access these options, and the range of alternatives that might be selected by the individual to direct and manage authorized services and supports. Also, in preparation for an annual person centered planning meeting, an individual's costs for services for the previous year will be identified and a copy of the previous year's cost will be provided to the individual, family and team during the pre-planning process. A copy of the budget for the current year will also be given to the individual, family and team after the person center plan has been finalized. The costs for services and budget for the current year can be run on Streamline reports under the Financial folder.

J. Self-Directed Options

The individual may serve as the employer of record of personal assistants, have a purchase of service agreement in which Pivotal purchases services or goods from someone who is not on the provider panel or receive services from an existing provider with a say on how these services will be provided. Each of these arrangements shall encompass the following:

1. Pivotal and the individual receiving services will ensure that written agreements are developed with each provider entity, individual practitioner or direct-hire, which specify the type of support or service, the rate to be paid, and the requirements incumbent upon the provider.
2. Copies of all agreements shall be kept current in the electronic health record, and will be available for inspection by both the individual receiving services and Pivotal. All employment-related agreements must be executed and signed prior to employee beginning work. The agreements must be updated annually.
3. In securing necessary supports and services, individuals receiving services will assist Pivotal in its role as a prudent purchaser of authorized supports and services to meet the approved plan of service. Existing personal and community resources shall be given first consideration before using public community mental health system resources.
4. Fees and rates paid to providers with a direct purchase-of-services or direct-hire agreement with the individual receiving services may be negotiated by the individual, within the boundaries of the individual's authorized individual budget or resource allocation, Pivotal established range of applicable rates for authorized services, and

consistent with the principle of economical and efficient operation of the managed specialty services program. Applies to Employer of Record and Purchase of Service only.

GUIDELINES

- A. All personal assistants selected by the individual shall meet applicable provider requirements for direct support personnel.
- B. The individual budget will reflect the services outline in the person centered plan.
- C. A self-determination agreement shall be made in writing between Pivotal and the individual delineating the responsibilities of each party.
- D. Flexibility in the use of funds is constrained by the specific limitations of funding sources.
- E. Medicaid appropriated mental health funds authorized for inclusion in an individual budget or allocation arrangement, are the assets and responsibility of Pivotal. Authority over the direction of these resources is delegated to the individual receiving services, for the specific purpose of obtaining authorized medically and clinically necessary supports and services, and achieving particular goals and outcomes contained in the individual's plan of service.
- F. The Handbook on Self-Determination must be provided to the individual prior to the arrangement.
- G. Either party (Pivotal or the individual) may terminate a self-determination arrangement. Prior to termination, Pivotal shall inform the individual of the issues that have led to considering termination and opportunity for problem resolution and allowing time for other supports to be put in place.
- H. The individual receiving services may terminate the arrangement through changes to their person centered plan.
 - 1. Individual receiving services can discontinue their budget for any reason by notifying their supports coordinator/case manager.
 - 2. The budget can also be terminated by Pivotal if safety concerns arise, if the individual does not demonstrate the ability to follow the agreed on plan or if the planning team is not able to keep costs within the budget after several attempts.
 - 3. An individual can access the grievances and appeal process if he/she disagrees with Pivotal's decision to discontinue the budget.
- I. Cash payments shall not be made to an individual receiving services under an individual budget arrangement, nor reimburse the individual with Medicaid funds for the costs of supports and services that the individual/beneficiary has purchased out of her or his own funds. The individual may not use Pivotal's resources included in the individual budget to

purchase supports and services that are not authorized in the plan of service.

1. All requirements related to the management, authorized uses, provider selection and qualifications, permissible reimbursement rates, documentation and data, financial reporting and monitoring of individual budgets or individual resource allocation arrangements shall be reflected in a written agreement between Pivotal and the individual receiving services, his or her authorized representative (if one is designated by the individual) and (if necessary to comply with legal requirements) the individual's guardian.
 2. In accordance with the Person-Centered Planning Practice Guidelines, the plan and authorized amounts for the individual budget or allocation may be reviewed and reconsidered whenever the individual or Pivotal or its subcontract provider agency believes necessary.
 3. An individual budget or resource allocation arrangement should have some flexibility in its implementation and application.
 - a. When an individual makes permissible adjustments in the application of resources authorized in an individual budget or allocation, these changes should be communicated to Pivotal within one week.
 - b. Individuals receiving services should be notified that some resources included in an individual budget or individual resource allocation agreement may represent commitments by funding sources other than Pivotal and that flexibility in the use of these other resource commitments is therefore constrained by the specific limitations of the funding sources (e.g., Home Help, Vocational Rehabilitation, etc.).
- J. Fiscal Intermediary entities, organizations or individuals will be under contract of Pivotal and may serve as an intermediary to execute payroll agent functions and provide other authorized employer supports, in support of individuals' self-determination arrangements. Specific-functions for which an intermediary may be authorized and used include:
1. Payroll agent for direct support personnel employed by the individual receiving services (or chosen representative), including acting as an employer agent for IRS and other public authorities requiring payroll withholding and employee insurance payments.
 2. Payment agent for authorized individual-held purchase-of-services and approved consultant agreements with empanelled providers of services and supports.
 3. Provision of periodic financial status reports, submitted according to the schedule and requirements of Michigan Department of Health and Human Services or Pivotal, concerning the current status of an individual budget or individual resource allocation arrangement. Reports provided must also be transmitted to the individual receiving services, in a format that is useful to the individual in tracking and managing the status of the individual budget or resource allocation.
 4. Provision of an accounting to Pivotal for the funds transferred to it (either prospectively or retrospectively depending upon the terms of the agreement), to pay for authorized supports and services rendered to the individual under the approved individual budget or individual resource allocation arrangement.
 5. Assuring timely invoicing, service activity and cost reporting to the Pivotal for authorized supports and services provided to the individual by empanelled individuals and entities that have a direct agreement with the individual and a

provider agreement on file with each PIHP/CMHSP.

6. Other PIHP/CMHSPs authorized and approved supportive activities that strengthen the role of the individual receiving services as an employer.

K. Yearly Documentation Required

1. Traditional Person Centered Plans and Self-Determination Agreements:

- a. Self-Determination Initial/Annual Contact Sheet- Individual Served and Case Manager/Supports Coordinator sign
- b. Costs for Last Year
- c. Budget for This Year

2. Employer of Record (Hire Your Own Staff):

- a. Self-Determination Initial/Annual Contact Sheet- Individual Served and Case Manager/Supports Coordinator sign
- b. Criminal Background Check-employee signs
- c. Release of Information-employee signs
- d. Pivotal Release of Information-individual served signs
- e. 42 CFR 431.107 Agreement- case manager/supports coordinator and employee signs
- f. Self-Determination (SD) employment agreement-individual served (employer) and employee signs
- g. SD agreement employer of rec/purchase of service- individual served (employer) and case manager/supports coordinator sign
- h. Job Description and Requirements-individual served (employer), employee and case manager/supports coordinator sign
- i. As well as all the other employee related forms required by the fiscal intermediary

3. Provider with Choice (Using an Existing Provider):

- a. Self-Determination Initial/Annual Contact Sheet- Individual Served and Case Manager/Supports Coordinator sign
- b. SD agreement/provider with choice–individual served (employer), provider and case manager/supports coordinator sign

4. Purchase of Service:

- a. Self-Determination Initial/Annual Contact Sheet- Individual Served and Case Manager/Supports Coordinator sign
- b. 42 CFR 431.107 Agreement– case manager/supports coordinator and provider signs
- c. SD agreement employer of rec/purchase of service – individual served and case manager/supports coordinator sign
- d. SD purchase of service agreement –individual served and the provider of the service
- e. We also require a copy of liability insurance, any licensure, DBA license, our contract dept. does additional credentialing checks for us.

REFERENCES

- A. MDHHS/CMHSP Managed Mental Health Supports and Services Contract FY 12:

Attachment C3.4.4

- B. Medicaid Managed Specialty Supports and Services Concurrent 1915(b)/(c) Waiver Program FY 12: Attachment P3.4.4
- C. Self-Determination Policy and Procedure Guidelines
- D. Southwest Michigan Behavioral Health Policy - 4.7 (Self Determination Policy)