CONSUMER MANAGED CARE INTERMEDIARIES

January 5, 1996

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Fiscal intermediaries may handle payments to the service organizations with whom consumers contract. They may also pay individuals and perform the employer-related tax functions for individuals whom consumers hire. They may perform still other functions such as screening and maintaining registries of prospective providers, training consumers and providers, and quality assurance.

There isn't any direct experience, at least that we know of, with the use of intermediaries as part of consumer managed care arrangements per se. However, there is considerable experience with the use of intermediaries in conjunction with consumer-directed attendant care arrangements (Flanagan, 1994), home health care, supported living and family supports.

Provider payments

Technically speaking,, intermediaries cannot be used to make Medicaid payments to providers according to Section 1902 (a)(32) of the Social Security Act. According to this section of the law, Medicaid payments must be made directly to providers. This section, designed to prevent the trafficking of Medicaid Claims, effectively outlaws the use of intermediaries. Still, many states have been able to get around this provision by designating the intermediaries as billing agents or by having providers voluntarily assign the Medicaid payments due them to a government intermediary (Smith and Gettings, January, 1991).

The most common method used to pay for services rendered persons with developmental disabilities is the third party payment method. This method is used almost exclusively for Medicaid-funded programs. By this method, the intermediary issues a check to the provider in response to a provider invoice for services delivered. While this method is generally considered to represent the least amount of risk to the state in terms of fraud and abuse, the consumer, the recipient of the services for which payment is claimed, plays no role in it. The consumer has no hold on the payment and thus is unable to use it to influence the provider. Considering the widely recognized importance of consumer preference in fashioning services and supports for people with developmental disabilities, this is a major shortcoming of the method.

There are two methods by which consumers may gain a hold on the payment: 1) cash payments are made directly to the consumer and the consumer is responsible for in turn paying providers, or 2) the consumer authorizes payment to providers through the use of two-party checks, warrants, or vouchers. There is the risk with cash payments that the consumer will fail to make the proper payments due at all or in a timely fashion. However, it is the method used in a number of state and county home care programs (Flanagan, 1994). It would be difficult (perhaps technically impossible) to craft such a method to be in compliance with Section 1902 (a)(32) of the Social Security Act. Though it has been used in at least one Community Supported Living Arrangement (CSLA) Program, Rhode Island).

In California, the state controller issues warrants to each recipient of services as part of its In-Home Support Services (IHSS) Program. The warrant authorizes the named consumer to purchase, and the named provider to deliver services to the consumer. The warrant is issued for the exact amount due the consumer's provider (less payroll tax deductions). In a number of state personal care, homemaker, chore and attendant care programs, consumers are required to co-sign checks issued by the payor before the provider can cash them. As part of the Oregon HCB Waiver program, and in a few other state programs, the state issues the consumer a voucher authorizing certain services to be delivered and the amount to be paid for services rendered at the beginning of the service period. The consumer then gives the voucher to the provider whom they choose to deliver the services. The provider must then submit both the service authorization voucher and an invoice for the services actually delivered for payment. The invoice/voucher may have to be signed by the consumer and the provider.

Tax and benefits administration

The administration of payments and tax matters relating to a-agencies contracted to serve consumers is relatively simple. The intermediary need only file a 1099 reporting the amount (over $600) paid to contractors during the year. On the other hand, there are many employee-related tax filings and benefits administration requirements associated with the hiring of individuals as providers. There are social security taxes, federal and state income tax withholding, unemployment insurance, worker's compensation, and possibly health benefits. As a rule, state and local governments, intermediaries and consumers would prefer to treat individual service and support workers as independent contractors rather than as employees in order to avoid the costs and administrative burden associated with employee income taxes, insurance and other benefits. This would also help them avoid responsibility for workers compensation insurance and tort liability for injury or damage. Many workers prefer being treated as independent contractors as it maximizes their take-home pay.

Nonetheless, it is clear that the vast majority of individual workers serving people with developmental disabilities would meet the twenty common law factors used by the IRS to determine whether they are employees, as well as the criteria in the Internal Revenue Code that defines statutory workers for whom FICA and FUTA are required. The references cited above elaborate on these criteria. When in doubt, a determination of the status of a provider as an employee or independent contractor may be requested from the IRS using a form SS-8. Where it is determined that providers are indeed employees, the payment of employees and employee taxes is a must function, one that cannot be responsibly left to many consumers or families.

There are two basic ways in which employer responsibilities might be discharged under a consumer managed care arrangement: 1) the intermediary serves as the employer, or 2) the consumer is the employer of record with the intermediary serving as the IRS fiscal intermediary--the organization granted the power to pay employees of the consumer and to handle employee-related tax filings and payments. The first option limits consumer choice; the second does not. Where the intermediary serves as the employer, consumer choice is limited to those individuals employed by the intermediary. It is further limited by the availability of particular individuals to the extent that there are competing demands for their time. The intermediary may still further limit consumer control through the imposition of policies and procedures governing the range of services and supports that employees are authorized to provide.

Several years family support services in Arizona were provided by such intermediaries with the intermediaries recruiting screening, and scheduling as well as paying these employees. However, many families came to look upon these providers as unnecessary go-betweens. They were able to work out tacit agreements with some providers where the providers left much of the recruiting and scheduling to the families. Recognizing this, the state piloted a voucher program that effectively allowed families to recruit, choose, manage-e and authorize payment to support workers directly. Under the second option, the intermediary may be a private agency or an agency of the state. It could be an organization established specifically to serve persons with developmental disabilities or it could be a generic agency such as ADT, Paychex, or other payroll service.

While the intermediaries role might be limited to payroll and tax functions for employees of consumers; it may include many of the same functions that the intermediaries have under the first option, e.g. the recruitment and screening of prospective employees, employee training, and performance oversight. The more employer-like responsibilities that the intermediary assumes, the greater the possibility that the agency would be considered the legal employer of record (as in the first option) rather than the consumer, and thus be open to tort liability, subject to collective bargaining, and obliged to meet an benefit payment requirements that kick in for large employers.

Organizational Auspices

Intermediaries may be state or local agencies of government, MCOS, providers or independent contractors.

- RI CHOICES plans to offer consumers the option of utilizing their primary providers as the intermediaries with a state unit acting in that role for people who do not wish to utilize a provider.

- Monadnock Developmental Services, a quasi-governmental, non-profit area agency for developmental disabilities in New Hampshire has assumed the intermediary role for 45 consumers.

- In Florida, consumers and families can contract with independent agents/brokers to handle the fiscal intermediary functions associated with Medicaid claims filing and reporting under the Home and Community-based Waiver.

- Private payroll services commonly used by employers to manage employee payments and tax filings represent another option.

- A still untested model is a consumer purchasing alliance. Under this arrangement, the alliance would collect and manage the public funds due members of the alliance. The alliance could also work to build informal support networks among the participating consumers and families and local communities on a barter basis.

Flanagan, S. (1994). Consumer-directed attendant services: How states address tax, legal and quality assurance issues. Prepared for: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Division of Aging and Long Term Care Policy. Cambridge: SysteMetrics.

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