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PROGRAM INSTRUCTION (PI)

EOEA PI: 18-02
REF: PI-09-08

TO: Aging Services Access Points
Area Agencies on Aging

FROM: Alice F. Bonner, Secretary 

DATE: April 24, 2018

RE: Consumer Directed Care

Purpose:

This Program Instruction (PI) transmits the Executive Office of Elder Affairs guidelines for the operation of the Consumer Directed Care option within: Home Care Basic Non-Waiver Program, Home Care Over Income Program, Respite Over Income Program and Enhanced Community Option Program (ECOP).

Background:

Consumer Directed Care (CDC) is a service delivery model within the State Home Care Program (Home Care Basic Non-Waiver, Home Care Over Income and Respite Over Income, and ECOP) that empowers consumers to exert greater control over the provision of personal assistance services. CDC provides eligible consumers with greater choice and control of their care by having the option to hire, manage, and dismiss their own workers. All ASAPs shall offer this service delivery model in the manner described further in this Program Instruction as part of the State Home Care Program.

CDC is not an individual budgeting program; it is a service delivery model for personal assistance services such as Personal Care, Homemaker, Supportive Home Care Aide, and Home Health Aide.

When a need has been identified through a comprehensive assessment, the service plan is constructed in a manner similar to that used for consumers who choose traditional agency provided services. In CDC, rather than authorize a number of hours with an agency, the ASAP authorizes an average number of hours per week that the consumer may directly pay a worker that s/he has recruited, trained, and hired. The consumer is not responsible for the cost of other services that may be required, such as Fiscal Intermediary Services, Home Delivered Meals, or Occupational Therapy. As the cost of CDC may be lower in some instances, the ASAP has the flexibility to authorize more service hours than is generally the case with agency providers. The ASAP continues to be responsible for the overall management of program service costs within the limits imposed by the monthly consumer unit rates for Home Care and the Enhanced Community Options programs. This responsibility is not transferred to the consumer, but the consumer must ensure that s/he does not engage the worker for more hours than are authorized by the ASAP.

Required Actions:

ASAPs must adhere to the following rules in the operation of the CDC option.

I. Consumer Eligibility

Any consumer eligible to receive Home Care services is eligible to receive personal assistance services through the CDC model unless the consumer is enrolled in the Frail Elder Home and Community Based Services Waiver. At this time, Waiver consumers cannot receive their services through the CDC model as the Waiver does not include consumer direction. MassHealth members not enrolled in the Waiver may choose CDC through a Home Care program. In addition to an assessment to determine the need for services, the ASAP must perform an assessment to determine the need for a Surrogate¹ to perform some or all of the Employer of Record's responsibilities. In the CDC model, the consumer is the Employer of Record. The responsibilities of the Employer of Record are akin to those of a traditional employer and are described in detail below.

Consumer eligibility criteria for CDC includes the following:

- Financial and clinical eligibility for the Home Care Program, the Enhanced Community Options Program, or Respite Over Income Program;
- Not enrolled in the Frail Elder Waiver;
- A CDS assessment which identifies the need for personal assistance services; and,
- Appointed a Surrogate, if necessary, as determined by an assessment.

Continued eligibility is dependent on the above and on compliance with the terms of CDC agreements (see required forms).

¹ A Surrogate is a family member or personal advocate who may fulfill an aspect of the Employer of Record role and may act and sign documents on the behalf of the consumer. The Surrogate cannot serve as the paid worker.

II. Worker Eligibility

The consumer may hire any individual as long as the worker is not the Surrogate or Family Member as defined in 130 CMR 422.402. Pursuant to M.G.L. Chapter 6, §172c, a Criminal Offender Record Information (CORI) check must be completed on any individual who will provide care, treatment, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home or in a community- based setting for any consumer. Authorized personnel at the ASAP will obtain a CORI check on the individual to be hired on behalf of the consumer.

Please note that all decisions regarding the hiring of an employment candidate, acceptance of a volunteer, or referral of an individual to a consumer are within the jurisdiction of the hiring entity, in this case, the consumer.

If a candidate's CORI contains information that may be considered in making a hiring decision, the Certified CORI Officer at the ASAP (Certified CORI Officer) must describe the findings on the CDC CORI form which is then sent to the candidate. If the candidate chooses not to share the CORI form with the consumer, the candidate cannot be hired as a CDC worker. If the consumer has questions about the CORI information or the screening process, the consumer may contact the Certified CORI Officer for clarification. The consumer retains the final authority to hire, which shall be documented by her/his signature on the CDC CORI form. This form must be returned to the ASAP by the candidate. In turn, the Certified CORI Officer may contact the consumer to verify the consumer's decision and to answer any additional questions the consumer may have.

III. Services Offered

Consumers may instruct their workers to perform any personal assistance services, including:

- Homemaking
- Personal care
- Home Health Aide
- Transportation
- Chore
- Companion
- Other assistance with ADLs/IADLs such as assistance with medications or other health-related needs that otherwise would be self-administered.

Services provided must meet needs identified in the assessment process which are necessary for the health, welfare, and community independence of the consumer.

Please note that caregivers who reside with the consumer *may not* be reimbursed for assistance with IADLs that benefit the caregiver, such as homemaking, chore, grocery shopping, or meal preparation. Some IADLs, such as laundry in the case of a consumer with bladder incontinence, may be an exception. The care manager must work with the consumer and family to ensure the services reimbursed through CDC are provided exclusively to, and for the benefit of the consumer.

IV. Employer of Record Role

The consumer will become the Employer of Record (personally, or through a Surrogate) and will be

responsible for the following:

- Recruiting and hiring the worker
- Establishing the worker's tasks and work schedule
- Training and supervising the worker as to how specific tasks are to be performed
- Completing and submitting all necessary paperwork, including forms to become the Employer of Record, as well as time sheets and agreements
- Evaluating and, if necessary, discharging the worker
- Complying with all other terms of the ASAP-Consumer Agreement, Employer Responsibilities Agreement and Employer-Worker Agreement

V. ASAP Role

The ASAP will initially determine the consumer's eligibility for Home Care services and provide all necessary information to the consumer if s/he expresses interest in CDC. ASAP responsibilities include:

- Assessing the consumer for State Home Care eligibility and the appropriate Home Care program, specifically the Home Care Basic Non-Waiver, Over Income programs or Enhanced Community Options Program
- Maintaining a regular visit schedule (in accordance with Home Care Basic Non-Waiver or ECOP guidelines) to reassess the consumer's eligibility for the program, to evaluate satisfaction with CDC, and to address issues the consumer may have
- Facilitating the development of the consumer's service plan and assisting the consumer in identifying the tasks that will be performed
- Determining the number of hours per week of personal assistance services the ASAP will authorize (the service plan is limited by, but not restricted to the program unit rate (Home Care or ECOP))
- Ensuring that all required CDC forms are complete
- Providing the consumer/Surrogate with training and guidance on how to be an Employer of Record, including identifying and explaining the Employer of Record forms to be completed, providing education on how to recruit and hire a worker, and explaining how to give direction to and maintain a good working relationship with the employee (such assistance may be provided by the Care Advisor or by ASAP staff employed as Skills Trainers)
- Obtaining Criminal Offender Record Information on potential CDC workers and following the instructions regarding CORI contained in this PI
- Helping to arrange for and/or authorizing additional needed services, such as community resources or an Occupational Therapist (OT) for a home safety evaluation
- Providing the consumer with ongoing advice and information regarding consumer rights, safety, and access to Protective Services

VI. Worker Pay Rates

Workers employed by Home Care Basic Non-Waiver, Over Income and ECOP consumers will be paid at the current PCA Wage and Employer Expense Component Rates set forth by MassHealth. Additional costs, such as employer taxes and workers compensation, will be calculated by the Fiscal Intermediary (see below). The Fiscal Intermediary will inform the ASAP of the total hourly cost of the service.

VII. Fiscal Intermediary Role

All ASAPs will be required to use a Fiscal Intermediary (FI) that has an existing contract with MassHealth for the PCA program and is operating in good standing. Elder Affairs will provide a list of FIs that meet these criteria. The ASAP will pay the FI the MassHealth administrative rate for services provided.

No ASAP will be allowed to be an FI for CDC. The Fiscal Intermediary's responsibilities for the CDC program are described in the Elder Affairs Homemaker/Personal Care/Non-Homemaker Services Provider Agreement Attachment A for Fiscal Intermediary Services.

VIII. Role of the Nurse

If a consumer will require hands on care as part of the CDC service, then an initial home visit should be completed by an ASAP RN to make recommendations for safety equipment.

The ASAP RN may need to re-evaluate the consumer if there are significant status changes.

Consumers on the ECOP program will be re-assessed annually.

The ASAP RN is not responsible for directing or supervising the provision of personal care. All CDC consumers are expected to direct and determine their own care, including the supervision of workers providing personal care. At the consumer's request, the ASAP may arrange for assistance by a registered nurse, occupational therapist, or other professional.

IX. Worker Training Support

As the Employer of Record, the CDC consumer will determine if there is a need for worker training. If the consumer identifies this need, the ASAP will assist in providing resources for the appropriate training.

X. Consumer Directed Care and the Home and Community Based Services Waiver

CDC, as established in the above guidelines, is not an approved service delivery model under the Frail Elder Home and Community Based Services Waiver. Therefore, Waiver consumers (including those in the Community Choices program) may not receive services through this model.

Elder Affairs may incorporate the CDC model into the Waiver at a future date. Until this change occurs, however, the following options should be explored when a Waiver-eligible consumer wishes to direct her/his care:

- Refer the consumer to the MassHealth PCA program, if appropriate. Under MassHealth rules, the worker may not be a spouse or legally responsible individual. Home Care services can be provided in addition to PCA services as long as there is no duplication of tasks or services.
- Recommend that the consumer's worker seek employment through one of the ASAP's contracted agencies. Services would therefore be delivered through the traditional agency

model. The worker would have to meet the agency qualifications for personal care workers, be supervised as required within that model, and may not be a spouse or legally responsible individual.

Effective Date: August 1, 2018

Contact: If you have any questions about this program instruction, please contact Shannon Philbrick, Home Care Program Coordinator at: Shannon.Philbrick@state.ma.us

Attachments:

Required Consumer Directed Care forms:

ASAP/Consumer Agreement
Employer Service Agreement
Consumer/Worker Agreement
Consumer Directed Care CORI Form