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**PROGRAM INSTRUCTION**

EOEA PI-09-08

TO: Aging Services Access Points  
FROM: Eleanor Shea-Delaney  
DATE: June 29, 2009  
RE: Consumer Directed Care

**Purpose:**

This Program Instruction (PI) transmits Elder Affairs guidelines for the operation of the Consumer Directed Care option within the Home Care Basic Non-Waiver and ECOP Non-Waiver programs.

**Background:**

Consumer Directed Care (CDC) is a service delivery model within the State Home Care Program (Home Care, ECOP, and Respite) that empowers elders to exert greater control over the provision of personal assistance services. Elders who are eligible for the State Home Care Program will have greater choice and control of their care by having the option to hire, manage, and dismiss their own workers. By August 1, 2009, 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.

Consumer Directed Care 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. The service plan is constructed in a manner similar to that used for consumers who choose traditional agency services. In Consumer Directed Care, 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 Consumer Directed Care may be lower in some instances, the ASAP has the flexibility at times 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 unit rates for Home Care Basic 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 Consumer Directed Care option.

## **I. Consumer Eligibility**

Any elder eligible to receive Home Care services is eligible to receive services through the Consumer Directed Care model unless the elder 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 Consumer Directed Care. The ASAP must perform an assessment to determine the need for a Surrogate<sup>1</sup> 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.

The eligibility criteria for Consumer Directed Care are:

1. Financially and clinically eligible for the Home Care Program, the Enhanced Community Options Program, or Respite Care;
2. Not enrolled in the Frail Elder Waiver;
3. Either does not require a Surrogate as determined by an assessment or has appointed a Surrogate.

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

## **II. Worker Eligibility**

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<sup>1</sup> 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 elder. The Surrogate cannot serve as the paid worker.

The elder may hire any individual as long as the worker is not the elder's Surrogate. 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, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services in a home or in a community-based setting for any elderly person or disabled person. Authorized personnel at the certified agency (ASAP) will obtain a CORI check on the individual to be hired by the elder.

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

If a candidate's CORI contains information that may be considered in making a hiring decision, an ASAP CORI authorized individual must describe the findings on the Consumer Directed Care CORI form. This form must be sent to the candidate. If s/he chooses to do so, the candidate may share this form with the consumer. If the consumer has questions about the CORI information or the screening process, s/he may contact the ASAP CORI authorized individual for clarification. The consumer makes the decision to hire, which shall be documented by her/his signature on the Consumer Directed Care CORI form. This form must be returned to the ASAP by the candidate. In turn, the ASAP CORI authorized individual may contact the consumer to verify the consumer's decision and to answer any additional questions the consumer may have.

### **III. Services Offered**

Elders 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

Services provided must meet needs identified in the assessment process or otherwise identified as 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 certain 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 advisor must work with the consumer and family to ensure the services reimbursed through

Consumer Directed Care are provided exclusively to and for the benefit of the consumer.

#### **IV. Employer of Record Role**

The elder consumer will become the Employer of Record and (personally or through a Surrogate) will be responsible for the following:

1. Recruiting, hiring and training the worker.
2. Establishing the worker's tasks and work schedule.
3. Supervising the worker as to how specific tasks are to be performed.
4. Completing and submitting all necessary paperwork, including forms to become the Employer of Record, as well as time sheets and agreements.
5. Evaluating and, if necessary, discharging the worker.
6. Complying with all other terms of the ASAP-Consumer Agreement, Employer Responsibilities Agreement, and Employer-Worker Agreement(s).

#### **V. ASAP Role**

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

1. Assessing the elder for State Home Care eligibility and the appropriate Home Care program, specifically the Home Care or Enhanced Community Options Program.
2. Maintaining a regular visit schedule (in accordance with Home Care or ECOP guidelines) to reassess the consumer's eligibility for the program, to evaluate satisfaction with CDC, and to address issues the elder may have.
3. Facilitating the development of the consumer's service plan; assisting the elder in identifying the tasks that will be performed.
4. 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).
5. Ensuring that all required Consumer Directed Care forms are complete.
6. Providing the elder/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.
7. Obtaining Criminal Offender Record Information on potential CDC workers and following the instructions regarding CORI contained in this PI.
8. Helping to arrange for and/or authorizing additional needed services, such as worker training or an Occupational Therapist (OT) home safety evaluation.

9. Providing the elder with ongoing advice and information regarding elder rights, safety, and access to Protective Services.

## **VI. Worker Pay Rates**

Workers employed by Home Care Program and ECOP consumers will be paid \$12.00 per hour. 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 Consumer Directed Care. Any ASAP that is currently acting as an FI for its CDC consumers will have until August 1, 2009 to transition to a permitted FI. The Fiscal Intermediary's responsibilities for the CDC program are described in the Elder Affairs Non-Homemaker Provider Agreement Attachment A for Fiscal Intermediary Services.

## **VIII. Role of the Nurse**

The ASAP RN may have a consultative role in Consumer Directed Care and may create a recommended personal care plan to assist the consumer in identifying personal care tasks that will be performed. 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**

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 arranging for the appropriate training.

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

Consumer Directed Care, 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 Consumer Directed Care model into the Waiver at a future date. Until this change occurs, however, the following options should be explored when a Waiver-eligible elder wishes to direct her/his care:

- Refer the elder to the MassHealth PCA program, if appropriate. Under MassHealth rules, the worker may not be a spouse or legally responsible individual. Home Care/ECOP services can be provided in addition to PCA services as long as there is no duplication of tasks or services. Recommend that the elder'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, 2009

**Contact:** If you have any questions about this program instruction, please contact Joe Quirk, Director of Home and Community Programs at [Joe.Quirk@state.ma.us](mailto:Joe.Quirk@state.ma.us)

**Attachments:**

Required Consumer Directed Care forms:

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