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Thank you for this opportunity to comment on the draft *Mental Retardation Bulletin: Intermediary Service Organizations (ISOs)*. The Pennsylvania Community Providers Association (PCPA) has discussed the bulletin at various meetings of providers of Mental Retardation services and supports, where we obtained the provider comments and concerns expressed in this letter.

The lack of the planned *Intermediary Service Organization Guidelines* makes it somewhat difficult to comment on this bulletin, since it is referenced in several places. We understand that a second draft will be written that will be accompanied by the Guidelines, and we will also respond to the second version.

Providers pointed out that a primary consideration for individuals and their representatives is that of the legal ramifications inherent in terminating employees. In a situation where a family terminates and an employee sues for wrongful discharge or discrimination, who would pay settlement costs? Would the individuals/representatives be held responsible? Could the individual budget be used? This would cause an individual's budget to be used for legal costs rather than services, which is an undesirable outcome. The bulletin does not reference compliance with labor law. It appears that OMR is giving people the power to employ people without educating them about the many legal ramifications and liabilities.

Another legal consideration is that of liability for a consumer, a family or an ISO if a consumer causes intentional or unintentional harm to another person or to property. There has been at least one Pennsylvania lawsuit in which a consumer's "Circle of Support" was found liable for actions of the consumer. This individual was not regularly taking medication for his serious mental illness and caused a vehicle accident that killed a woman. The family that had been supporting the consumer lost their home because they had to pay monetary damages to the family of the deceased mother of three. Will OMR educate counties, consumers, families, providers and ISOs about this type of risk?

The remainder of our comments proceed in the order of topics found in the Bulletin.

The "**Scope**" of the bulletin should be extended to providers, not limited to County Mental Health/Mental Retardation Administrators and Base Service Units. Broader dissemination will ensure that providers are kept informed of the ways in which consumers will pay for their services and supports. An informed provider network is necessary to help assure that changes are successful.

In **Section (A)** of the draft bulletin, OMR should offer to the counties some recommended or sample criteria for determination of an individual's or representative's ability and desire to use self-directed support and ISO services. OMR needs to take leadership in order to assure statewide consistency. In the draft MH/MR Dual Diagnosis Bulletin, there was a recommended format for an evaluation. A similar recommendation for criteria for the determination of ability and desire needs to be part of this bulletin.

The requirement in **Section (C)** that ISO service providers not provide direct services to the same individuals who receive services from them seems reasonable. It is difficult, however, given the definitions of the two ISOs, to see where there would be a true conflict requiring separation between "traditional agency-based mental retardation services" and ISO services. In one area of the state, for example, a service provider has offered ISO services for the Self-Determination Project while also being a provider of MR services and supports. The two parts of the agency are separate, have different functions, different staff and do not effect each other's service provision. We question why there is a requirement for a firewall since there do not seem to be any conflicts that would not otherwise be addressed through traditional monitoring, audits and evaluations.

In **Section (D)**, after the bulleted list of "rights" of people using self-directed support services and ISO services, there should be a list of responsibilities that go hand in hand with the rights. In the Attendant Care system, the state and providers have seen problems when consumers are not willing or able to learn about how to be reasonable, responsible employers. Some people have a long history, for example, of hiring and firing people numerous times within the year, or of losing attendants who cannot work for them. Sometimes they do not understand that their inability to retain employees is due to their own actions. Perhaps OMR should develop a consumer/representative training that would be mandatory for everyone who chooses an ISO. It is not easy to be an employer, even for those managers who are well educated and experienced.

Section (H) states the requirement that counties provide ISOs with a copy of the section of the Individual Support Plan (ISP) pertaining to services and

supports to be provided and the Individual Budget. It would be advisable to refer here to the need to get consumer consent to share this information. We have suggested in other forums that such consent will also be required in order for providers to have copies of the ISP pertinent to services purchased at their agencies. Providers also will need sections of the ISP that will keep them informed of needed collaboration with other providers. Consent and any pertinent HIPAA requirements are issues that should be addressed uniformly in bulletins and future regulations.

The Individual Budget is defined in **Section (H)**. Is this the correct vehicle for conveying this definition, since all people will eventually have individual budgets, no matter how they purchase their services? Or will it also be included in another bulletin?

Will fiscal personnel at the counties prepare the individual budgets defined in this bulletin or will supports coordinators perform this task? It seems too complicated a responsibility to expect of supports coordinators who generally come into the MR system because of people skills and interests, not financial/bookkeeping skills and interests.

The need to include an administrative rate for ISO services is discussed in **Section (J)**. The recommended 13% administrative rate for proposed rate setting guidelines should also be used here. It would provide consistency across the state and will be in compliance with the "new" 4300s.

There is no reference to the Invitation to Qualify (ITQ) in **Section (K)**, which is titled "Employee and Provider Qualifications". How will the ITQ tie into this requirement that support service workers be qualified? Will ISO's be able to use an ITQ checklist or subset to assess qualifications? This would help assure statewide consistency.

Can a person choose to purchase the criminal background checks with private money rather than with their individual budget? If this is the case, it should be stated in the bulletin.

Section (L) raises interesting questions. It seems that with a fiscal/employer agent ISO, the common law employer is to monitor health, safety and quality but this potentially requires a consumer to monitor their own health and safety. Is this practical? Is it acceptable to the Center for Medicaid and Medicare Services? It is another argument for required, consistent training for the individuals/representatives who use ISOs. Does OMR have the legal ability to require this of a consumer and/or their representative? Or is it actually a contractual requirement that occurs when a person signs up with an ISO?

Conducting an ISO Readiness Review within 14 days of an ISO becoming operational, as described in **Section M**, seems backward. If an ITQ subset on HCSIS were utilized, the county and state would have readiness information *before* the ISO was operational. An ISO shouldn't be up and running before they are informed that they are, or are not, ready to perform their function.

Again, thank you for this opportunity to comment on the first ISO draft bulletin. As providers, consumers, families and counties strive to understand the bulletin and the issues, we will all need to continue to work together to develop concepts and realities that strengthen consumer choice and a strong network of quality services and supports.

Sincerely,

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