



STATE OF RHODE ISLAND

Department of Behavioral Healthcare, Developmental Disabilities and Hospitals
DIVISION OF DEVELOPMENTAL DISABILITIES

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TECHNICAL BULLETIN

Technical Bulletin Number:	24-02
Date:	4/29/2024
Subject:	Employing DSPs in the Self-Direct Service Model
Applies to:	All self-directing participants

Purpose:

This bulletin provides information on requirements for self-directed employers and their employees.

Background:

The self-directed service model provides participants who are eligible for services through the Division of Developmental Disabilities (DDD) an opportunity to exercise choice and control in how their support services are provided in a manner consistent with the participant's approved Person-Centered Individual Support Plan (ISP). Participants using the self-directed service model choose their Direct Support Professional(s) (DSP). A participant may hire an individual the participant already knows (such as a parent, guardian, sibling, other family member, or friend) or someone else as their DSP. The participant is responsible to recruit, train, supervise, and manage their employees so that the participant's ISP goals can be supported.

Because services are funded by Medicaid dollars, Medicaid regulations require that the health and welfare of self-directed participants are safeguarded; that the individual's budget is not prematurely depleted; that any service delivery problems and budget underutilization are identified; that budget over- and under- expenditures are brought to the participant's attention; that funds are spent on supports and services related only to the goals of ISP; and that there is financial accountability for funds expended.

A fiscal intermediary assists the participant in handling some of the fiscal aspects of self-direction. For example, the fiscal intermediary collects and processes workers' timesheets for the participant; processes payroll, withholdings, employer-related taxes and workers' compensation insurance; maintains a separate account for each participant's budget; tracks and reports disbursements and balances of participant funds; processes and pays invoices for

goods and services approved in the ISP; and provides periodic reports of expenditures and the status of the approved service budget.

Information:

Employer Authority:

Under Medicaid, “Employer Authority” means the participant is supported to recruit, hire, supervise, and direct the workers who furnish supports. When the Employer Authority is utilized, the participant rather than a provider agency carries out employer responsibilities for workers.

The self-directing participant is the employer of record for workers who provide direct services and supports to the participant.

Participants in self-direction have employer authority for specific services:

- Participants select and hire staff to support them.
- Participants decide the wage for their employees, with a minimum of \$20 dollars per hour and maximum of \$35 per hour.
- DSPs may not be paid overtime unless approved by DDD.
- DSPs may not be paid to sleep overnight.
- Participants pay for services provided based on the time of the respective service.
- Participants are not allowed to provide bonuses.
- Participants can decide if they want to offer staff benefits.
 - Benefits are optional unless required by law.
 - Benefits may include health insurance premium payments, ISP goal-related training, and ISP goal-related travel reimbursement (e.g., mileage).
- Costs associated with benefits are different from staff wages. Benefits are an additional cost that come out of the self-directed budget. Participants are responsible for paying employer-related taxes and benefits from their flexible budget allocation.
- Participants need to document arrangements for the DSP to work on holidays (for which they would be paid overtime) at the start of the employer/employee relationship.
- Participants need to ensure each DSP is detailing in a case note what was done with the participant on their shift.
 - Documentation can be in either electronic or paper form.

- Documentation should be kept and stored in an easily accessible place. Employees should be able to immediately provide documentation upon request by the State and/or the participant's case manager.
- Documentation should be kept for seven (7) years.

Self-Direct Employees:

Employees include any person hired by the self-direct participant to perform the job duties outlined in ISP, including assisting the participant with Activities of Daily Living (ADLs), Instrumental Activities of Daily Living (IADLs), accessing the community, and other assistance as needed.

Self-Direct Employees/DSPs can include:

- Non-Family Member
- Sibling
- Parent, including adoptive parent and stepparent
- Guardian
- Extended Family Member
- Friend

Employees have certain requirements. Employees:

- Must be informed of their job duties.
- Must have the skill set to perform the job duties.
- Must sign off on a form stating that they will comply with Health Insurance Portability and Accountability Act (HIPAA) and comply with the related laws and regulations pertaining to privacy and information sharing.
- Must work with the participant to achieve goals set in the participant's ISP.
- Must understand and be able to follow any behavioral or medical care plan.
- Shall only work with one participant at a time.
- Shall document services provided by detailing what was done with an individual on that shift in electronic or paper form.

Restrictions on Employees:

- A participant cannot hire staff with funding from their self-direct budget to support the participant's own business (i.e., someone to assist with business development, an accountant, marketing person, website developer, etc.).
- A participant may not hire an employee, including a DSP, who resides with the participant unless DDD approves in advance.

Employee Screening Process:

All self-direct employees shall meet the requirements below prior to beginning work with a self-direction participant.

- Be at least eighteen (18) years old.
- Be able to perform job tasks as outlined in the job description provided by the participant consistent with the ISP.
- Have a Bureau of Criminal Identification and Investigation (BCI) check with no disqualifying offense.
- Be authorized to work in the United States.
- Submit proof of the following (if providing transportation):
 - Driver's License;
 - Clean Driving Record check;
 - Vehicle Registration;
 - Vehicle Insurance; and
 - Vehicle Inspection.

Scheduling Employees/DSPs:

- Participants must manage their staff's schedule so that no one works more than 40 hours a week unless an unexpected need comes up. This means that a participant should hire enough self-direct employees to meet their support needs.
- Employees should not work more than 12 hours per day unless there are circumstances that necessitate this (i.e., there is an emergency or call out and the person needs care that typically would have been provided by someone else).

Managing Employees:

- Employees are only paid for the time they are working with a participant (i.e., performing work in alignment with the individual's ISP).

- The standard weekly schedule for employees should be 40 hours or less a week.
- If an employee is working more than 40 hours per week, a written explanation for the overtime is required and DDD approval in advance. There are two forms for exceptional circumstances that must be submitted for approval. The forms must be submitted to the FI. The FI will submit the forms to DDD.
- Participants should minimize the need for self-direct employees to work overtime.
- Participants are responsible for paying for overtime as required by law if the employee is required to work overtime.
- If overtime is related to staffing issues, documentation of efforts to recruit employees is required.
- Use of overtime adds additional cost to the participant's self-directed budget, so overtime should only be used when necessary to avoid cutting into needed services.
- Employees must inform their employer of any changes to their driving record and any convictions.

Information Specific to Employees Who Are Parents, Stepparents, or Guardians:

- Participants can hire a parent, guardian, or stepparent as a self-directed employee. However, the participant must sign off on a consent form.
- Parents, guardians, and stepparents cannot exceed a combined total of 40 hours per week unless there is more than one adult child. In instances where more than one adult child is being supported, there can be a combined total of 60 hours per week.
 - For example: If two parents are paid employees, both parents can work 20 hours for a combined total of 40 hours, or one parent can work more hours than the other however, the combined hours cannot exceed 40 hours per week for one child or 60 hours per week if working with more than one child. This applies regardless of whether the employee(s) live in the same household as the participant or in a separate household.
- Parents/Guardians/Stepparents cannot work with multiple children at the same time. This means, when working with one adult child, the parent/guardian/stepparent should be focused on and following the ISP for that one adult child.
- If a parent/guardian/stepparent is an employee, support brokerage services must be used and include quarterly in-person visits to review and document progress toward ISP goals. This means participants are required to allocate 4 hours of Support Brokerage per year from their annual budget.

- Documentation of parent/guardian as an employee must be included in the ISP and reviewed annually.

Providing Support During a Participant’s Vacation:

- Employees can accompany a participant while they are on vacation except when it is out of the Country.
- Employees’ costs while on vacation cannot be paid by the participant’s self-direct funding (i.e., travel costs, food expenses, lodging expenses, activity costs). The participant’s self-direct funding can only be used for direct services.

Back-Up Plan:

A back-up plan is designed to ensure coverage if an employee does not show up as scheduled, leaves without notice, or a situation arises which would place the participant at risk.

Participants in self-direction are required to have a back-up plan. A back-up plan can include paid staff and/or unpaid natural supports who are willing to provide supports should the need arise. Back-up plans ensure the participant does not go without services or supports in case of emergency.

Version Control and Change History:

Version	Effective Date	Rescinded Date	Amendment/Update	Replaces Previous Technical Bulletin
1.0	4/30/2024	current	Original Version	No