

Self-Directed Program Guidelines

Participant Agreement

Whereas

- A. The participant or representative (Managing Party) has the responsibility to hire and manage their own supports using a self-directed service option, under program rules and the following terms and conditions.
- B. Consumer Directions, Inc. is a Minnesota Health Care Provider and certified Fiscal Support Entity (FSE) and agrees to perform certain fiscal management and support services related to processing Support Worker timesheets and paying service providers or vendors, invoicing the payer source and providing program and tax reporting under the following terms and conditions.

Terms and Conditions

1. Responsibilities
 - a. A table of responsibilities of each of the parties to the Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.
2. New Hire Employment Verification and Determination of Support Worker Eligibility
 - a. Consumer Directions will provide, process and maintain all necessary new hire and payroll forms for Support Workers.
 - b. Consumer Directions will perform the applicable background check process on all Support Workers.
 - c. Consumer Directions will ensure that Support Workers are not on the OIG or Minnesota Excluded Providers List.
 - d. Consumer Directions will report all New Hires to the State of MN for the purposes of determining child support obligations.
 - e. Consumer Directions will verify all social security numbers.
 - f. Consumer Directions will verify all employment eligibility using *E-Verify* with the Department of Homeland Security.
 - g. As required by program rules, Consumer Directions will provide mandated training materials and information to the Support Worker regarding, but not limited to: Vulnerable Adults Reporting Act, Maltreatment of Minors Reporting Act, Minnesota Government Data Practices, Anti-Fraud Requirements, and HIPAA.
 - e. Consumer Directions, Inc. will provide Worker's Compensation coverage for all Support Workers.

3. Recruitment, Hiring, Firing, Supervising, Training, Scheduling, and Determination of Wages
 - a. The Participant controls all aspects of the Support Worker.
 - b. The Participant or Representative (Managing Party) is responsible to recruit, hire, fire, supervise, train, and schedule Support Workers.
 - c. In accordance with applicable State and federal laws against discrimination, the participant agrees to and will not illegally exclude any person from full employment rights and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, marital status, gender identification, public assistance, disability, sexual orientation or age.
 - d. The Participant or Representative (Managing Party) determines the wage of Support Workers, as long as they comply with the minimum wage floor.
 - e. The Participant or Representative (Managing Party) is responsible for the provision of services or back-up Support Workers in the event a Support Worker is late, unable to work, or does not show up.
 - f. The Participant or Representative (Managing Party) will be responsible for any disciplinary actions and termination of a Support Worker.
 - g. The Participant or Representative (Managing Party) agrees to provide information to document the rationale for any termination in order to respond appropriately to unemployment compensation requests.
 - h. The Participant or Representative (Managing Party) is responsible to complete an Exit Interview for each Support Worker leaving employment.

4. Payment to Support Workers
 - a. The Participant or Representative (Managing Party) will set the rate of pay for the Support Worker and will inform Consumer Directions of that rate.
 - b. The Participant or Representative (Managing Party) will be responsible for evaluation of the Support Worker's performance and will grant wage increases at their discretion. Rate of pay changes must be indicated on the timesheet and cannot exceed the maximum rate established in the Participant's Plan or Budget Worksheet.
 - c. Overtime is not allowed, unless specifically documented in the Participant's Plan or Budget Worksheet. Overtime occurs when an employee works more than 40 hours in a week. If overtime occurs, it is paid at one and a half times the agreed upon rate of pay.
 - Exception: Overtime is inherent when 24-hour periods are provided, as long as documented in the Plan and Budget Worksheet and within the total wages budgeted and approved.
 - d. The job description must specify all job activities and schedule of hours.
 - e. The Support Worker will be required to sign the timesheets, submit to the Participant or Representative (Managing Party) to confirm the accuracy and completeness of the hours indicated on the time sheets.
 - f. The Participant or Representative (Managing Party) agrees to submit accurate timesheets to Consumer Directions. All timesheets must be signed by the Support Worker and Participant or Representative (Managing Party).
 - g. Timesheets must be submitted to Consumer Directions in a timely manner per the Payment Schedule. Consumer Directions will issue paychecks to the Support Worker

every other Friday, per the Payment Schedule, provided that signed timesheets were received at Consumer Directions by the due date cut off.

h. Consumer Directions will maintain wage information and payroll records.

5. Status of Support Worker

- a. Definition of Common Law Employee, per Internal Revenue Service, Publication 15, Circular E, Employer's Tax Guide, "Under common-law rule, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed."
- b. The Support Worker is a common law employee of the Participant, by IRS definition.
- c. This Agreement between the Participant or Representative (Managing Party) and Consumer Directions is not a contract guarantee of employment for the Support Worker. The Support Worker, selected by the Participant or Representative (Managing Party), is employed at will by the Participant or Representative (Managing Party) and is not a common law employee of Consumer Directions.
- d. Any theft and damages that result from the Support Worker's presence in the Participant or Representative (Managing Party)'s home or when providing assistance to the Participant or Representative (Managing Party) is the liability of the Participant or Representative (Managing Party).
- e. The Participant or Representative (Managing Party) understands that the Support Worker is a mandated reporter under the Vulnerable Adults Reporting Act and Maltreatment of Minors Reporting Act. Consumer Directions is also a mandated reporter and must also report known incidents of maltreatment.

6. Payment of Services

- a. For the services provided under this Agreement, the assigned payer source will be billed or invoiced.
- b. Participants paying with private funds will have four payment options: (1) Check (2) Pay Pal link on our website (3) Credit or Debit Card or (4) EFT transfer deducted directly from a checking or savings account.
- c. Fees are charged according to the fees approved in the plan and within the established program rates and state set maximums.

8. Liability and Indemnification. The Participant or Representative (Managing Party) shall be liable for, indemnify, and hold Consumer Directions, Inc., harmless from any and all liabilities which may arise out of or related to the employment relationship. This indemnification shall include any and all liabilities to the Support Worker for any purpose including, but not limited to, breach of any employment laws in the course of the employment of the Support Worker. This indemnification shall also include any and all liabilities to any third parties including, but not limited to, any vicarious liability for the actions of the Support Worker related to the employment relationship. This indemnification shall specifically include, but not be limited to, any attorney's fees incurred by Consumer Directions in defending against any such liabilities and/or enforcing this indemnification agreement against the Participant or Representative (Managing Party).

9. Termination of this Agreement. Either party may terminate this contract pursuant to the following:
- a. By Consumer Directions with a ten (10) day written notice to the Participant or Representative (Managing Party) in the event:
 1. The Participant or Representative (Managing Party) is in default under any provision of this Agreement and the Participant or Representative (Managing Party) does not correct the default within such ten (10) day period; or
 2. Consumer Directions (FSE) discovers or suspects any fraud or negligence on the part of the Participant or Representative (Managing Party) or a Support Worker; and Consumer Directions (FSE) will report this information to the proper authorities.
 3. Participant becomes ineligible for medical assistance, grant or program funding; or medical assistance, grant or program funding ends or closes.
 4. Participant becomes ineligible for nonpayment of their responsibility or share of the services, spend down, or waiver obligation.
 5. If the County, State or Federal Government terminates the grant or program.
 6. If Consumer Directions ever loses its Fiscal Support Entity certification.
 - b. Without cause by Consumer Directions, for any reason or no reason at all, giving the Participant or Representative (Managing Party) written notice of its intent to terminate at least thirty (30) days before termination.
 - c. By the Participant or Representative (Managing Party) at any time.
 - **Payroll Model or F/EA transfers to another FSE can only be coordinated at quarter end. Furthermore, year-end transfers are the recommended best practice supported by the IRS national experts.**
10. Suspension of Services.
- a. Consumer Directions reserves the right to immediately suspend services to any Participant pursuant to the following:
 1. The Participant or Representative (Managing Party) is in default under any provision of this Agreement and the Participant or Representative (Managing Party) does not correct the default within such ten (10) day period; or
 2. The Participant's service authorization or approval has not been received from the Lead Agency.
 3. The Participant's spending patterns have left insufficient funds remaining to support continued services.
 4. Participant becomes ineligible for Medical Assistance, grant or program funding; or medical assistance, grant or program funding ends or closes.
 5. During a State or Federal government shut-down; if Consumer Directions does not obtain funding from the Minnesota Legislature, Minnesota or County agencies, Medicare, or other funding sources.
 6. Participant becomes past due on the submission of their responsibility or share of the services, spend down, or waiver obligation.
 - b. Consumer Directions will notify the Participant or Representative (Managing Party) when services are in jeopardy of service disruption and discuss a plan to remedy the situation. If the situation is not resolved in a timely matter, Consumer Directions may proceed to service termination.

11. Miscellaneous

- a. This Agreement may not be modified except in a written document signed by an authorized Representative of Consumer Directions and the Participant or Representative (Managing Party), and shall be construed and interpreted according to the laws of the State of Minnesota.
- b. This Agreement shall be binding upon the parties and their successors.
- c. The Participant or Representative (Managing Party) shall not assign this Agreement without the express written consent of Consumer Directions, and any attempt to assign this Agreement without the consent of Consumer Directions shall be void.

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EXHIBIT A

Consumer Directed Community Supports (CDCS) / Consumer Support Grant (CSG)	Agency with Choice Model	Payroll Model or F/EA	Consumer Directions
Roles			
Fiscal Support Entity certified by Minnesota DHS			X
Role of IRS Fiscal Agent under IRS revenue procedure 2013-39 under Section 3504 of Internal Revenue Code to process payroll and administer FICA, income tax withholding and provisions relating to unemployment tax for participant employers as authorized by Form 2678 under the Payroll or F/EA Model			X
Common law employer	X	X	
Participant Employer with assignment of employer number by the IRS and MN Revenue		X	
Management of Support Workers			
Recruit, interview, check references and hire Support Workers	X	X	
Complete necessary employment paperwork with new hires	X	X	
Process and maintain new hire employment paperwork/files			X
New hire employment verification and determination of eligibility			X
Setting support worker pay rates, within floor and approved maximum in plan and budget worksheet	X	X	
Develop job descriptions that do not assign any nursing tasks and are adequate to ensure health and safety of participant	X	X	
Provide initial and on-going training needs to support workers, as required to ensure health and safety of the participant and as identified in the plan.	X	X	
Scheduling of staff; ensuring the hours worked do not exceed the limits designated by the job description or approved plan and budget worksheet	X	X	
Overtime is not allowed under this program unless specifically budgeted as such in your plan			
Households with multiple participant employers, that are being managed by the same managing party are responsible to ensure that no support workers exceed 40 hours per week between all participants; unless overtime is approved in the plan(s) and paid at time-and-a-half.	X	X	
Supervise, coach, discipline and manage support workers	X	X	
Observe and comply with Department of Labor Laws, Child Labor Laws and Federal and State Employment Laws	X	X	X
Evaluate employees' job performance	X	X	
Terminate employees and complete employee exit interview	X	X	
Manage unemployment claims; gather required information			X
Provide relevant information to raise an issue with an unemployment claim if you believe the Support Worker should not be eligible for benefits or your account should not be charged	X	X	

Worker Injury			
Pay and maintain workers' compensation coverage			X
Supervisory authority over the worker's compensation insurance policy, instances of worker injuries and reporting point person			X
Report work related injuries to Consumer Directions immediately	X	X	
File <i>First Report of Injury</i> on-line or using the injury hotline			X
Payment of Support Workers & Reimbursement of Expenses			
Ensure accuracy of hours and expenses, sign-off approving and submit by deadline	X	X	
Administer any legislative or mandated wage or benefit changes			X
Collect, verify compliance with federal, state, program and collective bargaining agreement guidelines, process and maintain Support Worker timesheets			X
Withhold all appropriate taxes from support workers' pay; report and submit those withheld amounts to the federal and state governments, including Medicare, Social Security, Federal and State Unemployment, and Federal Income Tax (FICA, FUTA, SUTA)			X
Process all judgements, garnishments, tax levies or any related holds as may be required by local, State and/or federal laws			X
Prepare paychecks, including a payroll statement, as required by the MN Fair Labor Standards Act and the MN Department of Labor and Industry			X
Disburse paychecks, based on submitted time records, on the posted payroll schedule			X
Complete authorized, requested employment and wage verification forms			X
Prepare and issue annual W-2, Wage and Tax Statements			X
Per IRS guidance in Publication 926, refund over collected Social Security and Medicare at year-end to qualifying Support Workers under the Payroll Model or F/EA			X
Indicate on timesheet and report any overnight hospitalizations in a hospital, nursing home or mental health facility.	X	X	
In the event of an overnight admission, noted above, ensure that no hours or services are submitted past the time of admission or before the participant discharge.	X	X	

Payment of Vendors			
Responsibility to request and obtain copies of invoices from vendors to ensure that correct payments are being made on their behalf	X	X	
Ensure accuracy of reimbursements, sign-off approving and submit by deadline	X	X	
Enter into a formal agreement (ideally written) with vendors or independent contractors	X	X	
If using an independent contractor and paying for that service directly and requesting reimbursement from Consumer Directions; responsible to ensure correct independent contractor status, obtain applicable W-9 and issue any required 1099 Forms at year-end.	X	X	
When using an independent contract and Consumer Directions is paying for that service directly to the independent contractor; responsible to ensure correct independent contractor status, obtain applicable W-9 and issue any required 1099 Forms at year-end.			X
Manage Spending			
Fully understand what is included in your plan and the budget limits imposed on each category and item	X	X	
Provide monthly or real-time online access to spending utilization			X
Monitor spending utilization monthly, at a minimum	X	X	X
Responsibility to stay within budget limits without going over	X	X	
Responsible to pay back any expenses incurred over the budget limits	X	X	
Other Self-Direction Responsibilities			
Responsibility to complete, get approved and make any required revisions to your plan and spending budget in a timely manner	X	X	
Responsibility to pay any co-pays, spenddowns or waiver obligations assessed by the State of Minnesota	X	X	
Responsibility to check with your insurance agent regarding any additional liability, property or umbrella insurance that may be recommended in role as a common-law employer of domestic/household employees. Additional costs incurred for adding this insurance, for this purpose, may qualify for reimbursement under your plan.	X	X	
Responsible for care, supervision, health and safety of child or adult using Self Directed Services	X	X	
Obtain service authorization and approved plan, bill the payer(s) source for program expenditures, track accounts receivable and manage/secure adequate cash flow			X

EXHIBIT B

Minnesota Home Care Bill of Rights

PER MINNESOTA STATUTE, SECTION 144A.44.

THESE RIGHTS PERTAIN TO CONSUMERS RECEIVING HOME CARE SERVICES FROM LICENSED ONLY HOME CARE PROVIDERS.

Statement of Rights

A person who receives home care services has these rights:

1. The right to receive written information about rights before receiving services, including what to do if rights are violated.
2. The right to receive care and services according to a suitable and up-to-date plan, and subject to accepted health care, medical or nursing standards, to take an active part in developing, modifying, and evaluating the plan and services.
3. The right to be told before receiving services the type and disciplines of staff who will be providing the services, the frequency of visits proposed to be furnished, other choices that are available for addressing home care needs, and the potential consequences of refusing these services.
4. The right to be told in advance of any recommended changes by the provider in the service plan and to take an active part in any decisions about changes to the service plan.
5. The right to refuse services or treatment.
6. The right to know, before receiving services or during the initial visit, any limits to the services available from a home care provider.
7. The right to be told before services are initiated what the provider charges for the services; to what extent payment may be expected from health insurance, public programs, or other sources, if known; and what charges the client may be responsible for paying.
8. The right to know that there may be other services available in the community, including other home care services and providers, and to know where to find information about these services.
9. The right to choose freely among available providers and to change providers after services have begun, within the limits of health insurance, long-term care insurance, medical assistance, or other health programs.
10. The right to have personal, financial, and medical information kept private, and to be advised of the provider's policies and procedures regarding disclosure of such information.
11. The right to access the client's own records and written information from those records in accordance with sections 144.291 to 144.298.

12. The right to be served by people who are properly trained and competent to perform their duties.
13. The right to be treated with courtesy and respect, and to have the client's property treated with respect.
14. The right to be free from physical and verbal abuse, neglect, financial exploitation, and all forms of maltreatment covered under the Vulnerable Adults Act and the Maltreatment of Minors Act.
15. The right to reasonable, advance notice of changes in services or charges.
16. The right to know the provider's reason for termination of services.
17. The right to at least ten days' advance notice of the termination of a service by a provider, except in cases where:
 - (i) The client engages in conduct that significantly alters the terms of the service plan with the home care provider;
 - (ii) The client, person who lives with the client, or others create an abusive or unsafe work environment for the person providing home care services; or
 - (iii) An emergency or a significant change in the client's condition has resulted in service needs that exceed the current service plan and that cannot be safely met by the home care provider.
18. The right to a coordinated transfer when there will be a change in the provider of services.
19. The right to complain about services that are provided, or fail to be provided, and the lack of courtesy or respect to the client or the client's property.
20. The right to know how to contact an individual associated with the home care provider who is responsible for handling problems and to have the home care provider investigate and attempt to resolve the grievance or complaint.
21. The right to know the name and address of the state or county agency to contact for additional information or assistance.
22. The right to assert these rights personally, or have them asserted by the client's representative or by anyone on behalf of the client, without retaliation.

IF YOU HAVE A COMPLAINT ABOUT THE PROVIDER OR PERSON PROVIDING YOUR HOME CARE SERVICES, YOU MAY CALL, WRITE, OR VISIT THE OFFICE OF HEALTH FACILITY COMPLAINTS, MINNESOTA DEPARTMENT OF HEALTH. YOU MAY ALSO CONTACT THE OFFICE OF OMBUDSMAN FOR LONG-TERM CARE OR THE OFFICE OF OMBUDSMAN FOR MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES.

Office of Health Facility Complaints

Phone: (651) 201-4201 or 1-800- 369-7994

Fax: (651) 281-9796

Website: <http://www.health.state.mn.us/divs/fpc/ohfcinfo/contohfc.htm>

Email: health.ohfc-complaints@state.mn.us

Mailing Address:

Minnesota Department of Health
Office of Health Facility Complaints
85 East Seventh Place, Suite 300
P.O. Box 64970
St. Paul, Minnesota 55164-0970

Ombudsman for Long-Term Care

Phone: (651) 431-2555 or 1-800-657-3591

Fax: (651) 431-7452

Website: <http://tinyurl.com/Ombudsman-LTC>

Email: mba.ooltc@state.mn.us

Mailing Address:

Home Care Ombudsman
Ombudsman for Long-Term Care
PO Box 64971
St. Paul, MN 55164-0971

Ombudsman for Mental Health and Developmental Disabilities

Phone: 651-757-1800 or 1-800-657-3506

Fax: 651-797-1950 or 651-296-1021

Website: <http://mn.gov/omhdd/>

Email: ombudsman.mhdd@state.mn.us

Mailing Address:

121 7th Place East
Suite 420 Metro Square Building
St. Paul, Minnesota 55101-2117

Licensee Name: Consumer Directions, Inc.

Phone: 320-420-3423

Email: Shantel@yourfse.com

Address: 425 East St. Germain Street, Suite 200, St. Cloud, MN 56304

Name/Title of Person to Whom Problems or Complaints May be directed: Shantel Jaszczak

For informational purposes only and is not required in the Home Care Bill of Rights text:

MN Statute, section 144A.44 Subd. 2. **Interpretation and enforcement of rights.**

These rights are established for the benefit of clients who receive home care services. **All home care providers, including those exempted under section 144A.471, must comply with this section.** The commissioner shall enforce this section and the home care bill of rights requirement against home care providers exempt from licensure in the same manner as for licensees. A home care provider may not request or require a client to surrender any of these rights as a condition of receiving services. This statement of rights does not replace or diminish other rights and liberties that may exist relative to clients receiving home care services, persons providing home care services, or providers licensed under sections 144A.43 to 144A.482.

EXHIBIT C

**The Federal Health Insurance Portability
and
Accountability Act of 1996 (known as HIPAA)**

Consumer Rights

Consumer Directions provides services to people who have disabilities or receive other services. Families and the people we serve have a right to privacy, under state and federal law. As a Consumer Directions employee, you must treat any and all personal health information about people you work with as confidential. “Confidential” means that any health information about a consumer you work with should not be used, disclosed, discussed, or shared with anyone outside of the family or Consumer Directions, unless you have the permission of the family or Managing Party. There are penalties for using or disclosing protected health information when it is not necessary for the care of the consumer or for the business operation of Consumer Directions.

Health information about individuals includes all records, files, and other information that contains any health data in which an individual is or can be identified. It includes information that is collected, stored, and disseminated by paper, electronic, oral, or any other means.

Federal Law: the Health Insurance Portability and Accountability Act (HIPAA)

The federal Health Insurance Portability and Accountability Act of 1996 (known as HIPAA) established consumer rights and health provider responsibilities as they relate to the use and disclosure of protected health information. Consumer Directions is considered a “health provider” and its employee must comply with the Act.

“Protected health information” is defined as any information, in any form, related to an identified individual’s past, present, or future health condition, health care or payment for health care. The information can be written, oral, paper, or electronic format. As part of their jobs, many Consumer Directed Support Staff employees will have access to a person’s health information, such as the nature of their disability, types of medications taken, and other similar information.

In general, Consumer Directed Support Staff should not disclose any protected health information for any reason other than for the care of the individual. Information should not be shared with anyone except as necessary to carry out the duties of the job. If a Consumer Directed Support Staff is in the possession of any written files or records, care must be taken not to allow anyone to view those records.

When information must be disclosed for legitimate purposes related to the care of an individual, a Consumer Directed Support Staff must be careful to disclose only the minimum amount of information necessary. If the Consumer Directed Support Staff has any questions about the release of information, the Managing Party or the Guardian should be consulted.

Protected health information may be disclosed in an emergency, for law enforcement purposes, in cases of abuse or neglect or domestic violence, and in other situations as required by law. Great care should be taken to ensure that health information is not used for non-health purposes. If there is any question about whether a use or disclosure is appropriate, the Consumer Directed Support Staff should consult with the Managing Party or the Guardian.

The federal government may impose severe civil and criminal penalties for violating a person's health privacy, including fines up to \$250,000 and ten years imprisonment.

Self-Directed Services Participant Agreement

THIS AGREEMENT made this _____ day of _____, 20____,
by and between **Consumer Directions, Inc. as the Fiscal support Entity (FSE)** and
_____, Participant or Representative (Managing Party).

WITNESSETH: That in consideration of the mutual agreements to be kept and performed on the part of both parties, respectively as stated:

- I. The Participant or Representative is choosing to and has the responsibility of managing their own support or the support for _____.
(Name of Participant)
- II. As a Minnesota Health Care Provider and certified Fiscal Support Entity, Consumer Directions, Inc. agrees to perform certain fiscal management and support services related to processing employee timesheets and paying service providers or vendors, invoicing the payer source, and complete all program and tax reporting.
- III. Both parties agree to the terms set forth in the current and future updates to the **Self-Directed Program Guidelines**, as posted on our website, and the table of the responsibilities of each party, incorporated herein, referenced as **EXHIBIT A**.

IN WITNESS WHEREOF, the parties execute this Agreement this day and year above written.

Consumer Directions, Inc.

Participant/Representative

This Statement of Review and Receipt is to verify that Consumer Directions has provided copies of the Federal Health Insurance Portability Act of 1996 (known as HIPAA) and the Minnesota Home Care Bill of Rights, per Minnesota Statutes, Section 144A.44, included as Exhibit B and C. I and/or my responsible party have read and understand my rights and know that I can also view my rights on www.consumerdirections.info.

Participant/Representative

Sign & Return this Copy

Self-Directed Services Participant Agreement

THIS AGREEMENT made this _____ day of _____, 20____,
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Participant/Representative
