



## **Definition**

An Employer of Record (EOR) is the individual responsible for directing the work of Mi Via employees and vendors for Mi Via participants. An EOR is the common law employer of workers who provide Mi Via Waiver services. EOR services provide a level of support to participants that is unique to their individual needs in order to maximize their ability to self-direct in the Mi Via Waiver. The EOR service helps individuals identify supports, services and goods that meet their need for waiver services and are specific to individuals, their disability or qualifying condition, and help prevent institutionalization.

Employer of Record is responsible for knowing the individuals they serve and having an awareness of each of their unique dreams, strengths, goals, health and safety needs and individualized support needs. Mi Vi Waiver recipients have the freedom of choice to work with any Mi Via approved Employer of Record agency in their region.

## **Scope of Service**

### **Enrollment and Service and Support Plan Development and Monitoring**

- Employer of Record will schedule a meet and greet with the Participant within five (5) working days of receipt of notification of EOR selection Form.
- Employer of Record will provide the Participant with information, support and assistance during the enrollment process, and development of the Service and Support Plan.
- Employer of Record will provide the Participant with monthly reports of expenditures and the status of the Mi Via service and support plan spending
- Employer of Record will monitor the access to services for the participants as documented in the service and support plan.

## Finding Qualified Employees and Vendors

### Hiring Employees and Vendors

When the EOR is not the participant themselves, the EOR should consider how to best include the participant in the interview and final decisions. The participant's comfort level and choice must be considered when making final hiring decisions. A participant or EOR can choose to hire employees or vendors to provide services. Refer to Employer of Record Guidebook for considerations when looking for qualified employee or vendors.

Once the potential employee has been chosen, the EOR will assist the potential employee with completing the paperwork that is required before the potential employee can start working for the participant. The following paperwork must be completed and submitted to the Financial Management Agency (FMA):

- ✓ Pre-hire Packet
- ✓ Employee Enrollment packet
- ✓ Fingerprint cards

Once a potential vendor has been chosen, the EOR will assist the potential vendor with completing the paperwork that is required before a potential vendor can start working for the participant. A provider is referred to as a vendor. The following paperwork must be completed and submitted to the Financial Management Agency (FMA):

- ✓ Vendor Forms

These documents are available from the FMA or the Consultant or on the New Mexico Medicaid Portal website: [Need to update the link](#)

The Employer of Record will review the process and paperwork for hiring Legally Responsible Individuals (LRI) as employees, as applicable. The EOR will assist the Individual they serve with submitting documentation to the Consultant to support review of LRI request.

### Employee Packet

The Employee Packet is a set of documents that is reviewed by the FMA for all tax documents and is required to be completed by all employees that want to provide services to a participant. This includes the employee information form, employment agreement, self-directed provider attestation form, declaration of relationship, Federal W-4 Tax Withholding form, New Mexico State Withholding form, I-9 Employment Eligibility Verification Form, direct deposit authorization and Publication 797 Earned Income Credit.

## **Background Check**

Before providing services, potential employees must complete a fingerprint- based background check and pass the New Mexico Consolidated On-line Registry (**NMCOR**) screening.

NMCOR is the State's current list of individuals who have substantiated (proven)

- Abuse;
- Neglect; and,
- Exploitation cases involving a recipient of care or services from a provider.

This screening is completed by the FMA usually within 24 hours from receipt of the employee packet.

## ***Fingerprints***

Potential employees must be fingerprinted and pass a criminal history background check. Below are automatic **DISQUALIFYING CONVICTIONS**.

- homicide;
- trafficking, or trafficking in controlled substances;
- kidnapping, false imprisonment, aggravated assault or aggravated battery;
- rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- crimes involving adult abuse, neglect or financial exploitation;
- crimes involving child abuse or neglect;
- crimes involving robbery, larceny, extortion, burglary, fraud, forgery,
- embezzlement, credit card fraud, or receiving stolen property; or
- an attempt, solicitation, or conspiracy involving any of the felonies in this previously listed

The EOR will receive notification through email or phone from the FMA regarding the potential employee's background check. If the employee is:

✓ **CLEARED**; the potential employee may begin or continue working

**OR**

X **DISQUALIFIED**; the employee must immediately stop providing services effective the date the FMA receives notification. The FMA will notify the EOR and will unlink the employee from the budget.

### **Budget Planning**

Based on the participant's identified needs, the EOR will work with the participant and their Consultant to keep the budget within the participant's approved Individual Budgetary Allotment (IBA). The IBA is the maximum budget amount established in the waiver for participant services and goods. One of these decisions is establishing pay rates to employees and vendors for services approved in the Mi Via budget.

- The EOR has the authority to negotiate rates on the behalf of the participant. The EOR and participant are the only ones who can determine the rates.

### **Training Employees**

The EOR will work with the participant and the employee to ensure that the employee is providing services in the way that supports the participant's preferences and choices. The EOR will

- Provides detailed directions in a manner that can be easily understood;
- Explains the types of tasks that need to be performed;
- Uses helpful tools like a checklist and provides a copy to the employee;
- Makes sure the employees understand the tasks by asking them to demonstrate the task. If the task is not completed correctly, take a moment to provide clarification;
- Always sets clear expectations during initial and ongoing training. The EOR should not ask employees to do work outside of the approved SSP or outside the qualifications of the employee;
- ***Trains the employee to call 911*** in case of an emergency and provides instructions on what they should do while help arrives;
- Let's employee know of any health and safety concerns in the event of emergency. This is best reinforced by keeping a list of:

- Medical conditions
- Allergies
- Emergency contacts, such as doctors, specialist, and preferred hospital
- Keep the list updated and readily available.

Ongoing training will assist with setting and maintaining a routine as well as introducing changes to processes. Trainings will be provided through the CDD-NM Waiver Training Hub. See Appendix H.

### **Scheduling Employees**

The EOR will establish a mutually agreeable schedule with employees. EOR will fill in the gaps in the event of an employee calling in due to illness, emergencies or any other instance that prevents them from coming to work or arriving on time.

EOR will create a backup plan for planned and unplanned events. The backup plan should include paid and unpaid supports that will be available to provide services when a regular schedule employee cannot work, a list of family members, neighbors, friends, or any other paid provider. It should contain the name of the individual and their contact number; A backup plan is an alternate plan to cover unforeseen circumstances as well as planned events when the employee cannot work their regular schedule for:

- Unforeseen events can be illness or emergencies.
- Planned events can be holidays, planned vacations.
- Dates/times they are available to assist.

### **Authorizing Timesheets and Payments**

The EOR also has responsibility to manage employees and service records. This includes approving timesheets, signing payment request forms (PRFs), safeguarding protected health information, tracking expenses, keeping employee and vendor files, etc. Communicating with the FMA and correcting issues in a timely manner will ensure employees and vendors are paid correctly and on time. Be familiar with due dates and deadlines such as when timesheets must be entered and approved, when vendor Payment Request Forms (PRFs) are due and approved, filing system for PRFs and invoices and other EOR duties.

### **Access to the FMA online system**

Prior to entering and approving timesheets online, the EOR must have access to the FMA online system. To get access:

1. Send a request to the FMA for access to the FMA online system
2. Create a username and password
3. Complete the FMA online system training
4. Charge Entry and Charge Review Training

## Approving Timesheets

***Timesheets:*** used to pay for services provided by hourly employees. Timesheets are submitted and processed on a two-week pay schedule. Reviewing and approving timesheets accordingly will prevent delay in payment.

**Timesheets are entered and approved in the FMA online system.**

The EOR is responsible for:

- Ensuring that employees are paid correctly and on time;
- Reviewing timesheets carefully to ensure the hours reported are the hours worked; and,
- Ensuring that the employee is not working more than the authorized hours and the time worked does not overlap or become duplicated.

## Approving Payment Requests Forms:

When the EOR approves a timesheet or signs a PRF, they are certifying that the service has been provided. A timesheet and/or PRF must only be signed by the EOR after the service has been provided. Payment Request Forms (PRFs): used to pay for one-time and ongoing vendor services. These services may include:

- Ongoing therapies
- One-time purchases for related goods
- Monthly fees and memberships

Vendors will submit a PRF to the EOR for review and signature. Once the EOR has reviewed, approved and signed the PRF, the EOR must submit the PRF to the FMA for processing. Payment requests cannot be submitted through the FMA online system, but they can be dropped off, mailed or faxed.

PRFs and invoices may be submitted to the FMA on any day of the week and are processed in approximately 2 weeks. The EOR will be:

- Completing;
- Signing and
- Submitting PRFs

Payment requests must:

- Fall within the approved SSP/budget year;
- Match the approved budget amount for the service/good and
- Be signed and dated accordingly

The FMA will mail the vendor check to the EOR and the EOR will forward the check to the vendor as soon as possible to ensure prompt payment. The vendor can also set up direct deposit and receive payment directly through their designated bank account. The EOR will have access in FMA online system to review payments and monitor them as they are being processed.

### ***Incorrect and/or Incomplete Timesheets and PRFs***

If a timesheet or invoice is submitted to the FMA and it does not contain the appropriate signatures or information, the FMA will contact the EOR to notify that payment could not be made. If the FMA is not able to contact the EOR via phone call, the FMA will send an e-mail and will copy the eligible participant's consultant. If the EOR does not have an e-mail address in FMA online system, the FMA will send an e-mail to the consultant regarding the details. The consultant will contact the EOR for further actions.

If the EOR is notified of an incorrect or incomplete timesheet or PRF, the EOR will need to:

1. Gather or correct the information requested by the FMA (example: copy of an invoice or receipt from the vendor, correct amount requested, etc.)
2. Submit the corrected PRF or requested information to the FMA by dropping it off, fax or by mail

***The employees or vendors should not request that the EOR provide them with pre-signed forms. This could be considered Medicaid Fraud and can result in:***

- Technical assistance;
- Fraud referral to Office of the Inspector General (OIG); and
- Termination from the program.

The Human Services Department (HSD) will refer cases related to Medicaid Fraud to the Office of Inspector General (OIG) for investigation.

### **Timely-Filing Requirements**

All payment requests forms must be submitted within 90-days of the date the service was provided. If timesheets or invoices are submitted more than 90 days after the service has been provided, payment will not be processed and the EOR will be notified.

## **The Role of the Fiscal Management Agency (FMA) in EOR services**

Financial Management Agent (FMA) acts as the intermediary between the participant and the Medicaid payment system. They assist the Participant and the Employer Of Record with employer/vendor related responsibilities. The FMA is under contract with the HSD/MAD to provide the following supports in the Mi Via program:

- Assure program compliance with State and Federal employment and Internal Revenue Service (IRS) requirements;
- Assist each participant to set up a unique Employer Identification Number (EIN) if they intend to hire employees;
- Answer participant inquiries, EOR inquiries, and solve related problems, and offer periodic trainings for participants and their representatives on how to handle the Mi Via billing and invoicing processes. The FMA will provide all participants with necessary documents, instructions and guidelines;
- Collect all documentation necessary to verify that providers, employees, and vendors have the qualifications and credentials required by Mi Via regulations; MI Via Waiver Service Standards Effective date July 1, 2022 Page 20 of 62;
- Collect all documentation necessary to support the participant's specific arrangements with each employee and vendor, including employment agreement forms and vendor agreement forms;
- Complete criminal history and/or background investigations for service providers/supports, pursuant to 7.1.9 NMAC and in accordance with 1978 Section 29-17-1 NMAC of the Caregivers Criminal History Screening Act;
- Check the Department of Health Employee Abuse Registry, pursuant to 7.1.12 NMAC Consolidated Online Registry (COR), to determine whether service providers/vendors or employees of participants are included in the registry. If a provider, vendor, or employee is listed in the Abuse Registry, that person may not be employed by a Mi Via participant;
- Check the Certified Nurse Aide Registry, pursuant to 16-12.20 NMAC to determine whether service providers, vendors or employees of participants are included in the registry. If a provider, vendor or employee is listed in the Registry, that person may not be employed by a Mi Via participant
- Check the Office of Inspector Exclusion List, pursuant to Section 1128B(f) of the Social Security Act, to determine whether service

providers, vendor, or employees of participants are included in the list. If a provider, vendor, or employee is listed in the List, that person may not be employed by a Mi Via participant;

- Check the National Sex Offender Registry, pursuant to 6201 as federal authority for active programs, to determine whether service providers, vendors or employees of participants are included in the registry. If a provider, vendor, or employee is listed in the Registry, that person may not be employed by a Mi Via participant
- Process and pay invoices for services and goods that are approved in the participant's SSP and AAB, when supported by required documentation;
- Handle all payroll functions on behalf of the participants who hire direct service employees and other support personnel, including collecting and processing timesheets of support workers, processing payroll and withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurances; and
- Track and report on employee payment disbursements and balances of participant funds, including providing the participant and his/her consultant with a monthly report of expenditures and budget status.

### **The FMA Online System**

In addition to the above functions, the FMA operates the FMA online system through which the Mi Via program is operated. The FMA online system is a web-based system that is used for traditional FMA functions like tracking the credentialing status of employees and vendors, timesheet submission, payment processing for employees and vendors, and tracking SSP and budget expenditures.

The FMA online system is also used by participants and consultants to develop and submit SSP and budgets for TPA review. The TPA uses the FMA online system to receive SSP and budget requests and request additional information from the participant and consultant, and to indicate what services and supports have been approved or denied.

### **Preventing Accidents in the Workplace**

Every employer should provide a safe environment for the individuals they support and their employees. A few things on preventing injury are listed below:

- Be aware of any dangers in the eligible participant's home that might contribute to accidents and injuries.

- This also includes providing employees with the tools needed to perform tasks in a safely manner.
- If the eligible participant uses any durable medical equipment, make sure that employees are trained in the proper use of them, as well as maintaining and properly cleaning the equipment.
- During transfers, ensure the proper number of employees are involved to complete safe transfers.
- Remove any barriers that would contribute to falls (such as small rugs, extension cords, slippery floors, etc.)
- Ensure employees wear proper clothing to complete the assigned tasks, this might include wearing non-slip shoes.
- Provide training materials in proper lifting and moving techniques.

### **Workers Compensation Claims**

Workers Compensation is available for injured employees through coverage provided by the FMA. Seek assistance and guidance from the FMA as needed.

If an employee needs to file a Workers Compensation Claim:

1. The EOR or employee will first contact Cress Agency at 505-938-2424.
2. Cress Agency will send the EOR a First Report of Entry form.
3. This form will need to be filled out completely by the EOR and employee.
4. Once the First Entry form is filled out, it must be sent to New Mexico Mutual. New Mexico Mutual is the insurance company that the workers compensation claim is filed through.
5. New Mexico Mutual will assign an individual adjuster to the claim.
6. The adjuster will contact the employee and the EOR to confirm the incident.
7. If the employee has been off work for more than 2 weeks, workers compensation payments will begin.
8. Any medical bills will need to be sent to the adjuster.

### **Who can be an EOR?**

- A Mi Via participant may be his or her own EOR unless the eligible participant is a minor or has an authorized representative (i.e., guardian) over financial matters in place.
- Agencies interested in becoming the EOR must complete the Employer of Record packet to establish themselves as the EOR and to use the FMA for payroll and other employment related functions.
  - Agencies who provide Employer of Record services are not prohibited to provide any other waiver service.

### **Qualifications to be an Employer of Record Agency:**

- Be at least 21 years of age;
- Possess a minimum of a bachelor's degree in social work, psychology, human services, counseling, nursing, special education or a closely related field; Mi Via Waiver Service Descriptions and Provider Qualification page 23 of 75 July 1, 2022
- Have one (1) year of supervised experience working with people living with disabilities
- Complete all required Mi Via orientation and training courses
- Pass a nationwide Caregiver criminal history screening pursuant to NMSA 1978, Section 29-17-2 et seq. and 7.1.9 NMAC and an abuse registry screen pursuant to NMSA 1973, Section 27-71-1 et seq. and 8.11.6 NMAC.

Or Employer of Record providers shall:

- Be at least 21 years of age
- Have a high school diploma or GED and a minimum of six (6) years of direct experience related to the delivery of social services to people living with disabilities;
- Complete all required Mi Via orientation training courses; and
- Pass a nationwide Caregiver criminal history screening pursuant to NMSA 1978, Section 29-17-2 et seq. and 7.1.9 NMAC and an abuse registry screen pursuant to NMSA 1973, Section 27-71-1 et seq. and 8.11.6 NMAC.
- In extraordinary circumstances, an EOR agency may need to request an exception to the standards. An exception may be based on individual circumstances or extenuating circumstances at the agency. Any exception to the standards needs prior approval from DDS.

### **Conflict of Interest**

Mi Via Employer of Record agencies shall not engage in any activities in their capacity as a provider of services to an eligible participant that may be a conflict of interest.

Employer of Record Agencies are required to mitigate real or perceived conflict of interest issues. Employer of Record are agents responsible for the administrative duties and as such must also adhere to the following:

Employer of Record Agency owners and their employed or contracted EOR's may not:

- Have material financial interest in any entity that is paid to provide DD Waiver or Mi Via services. A material financial interest is defined as anyone who has, directly or indirectly, any actual or potential ownership, investment, or compensation arrangement.
- Be empowered to make financial or health related decisions for people on their caseload.
- Be related by blood or affinity to any Mi Via Waiver providers, vendors or employees for individuals on their caseload. Provider Agencies are identified as Mi Via vendors, Mi Via Consultants, BSC's and therapists.
- Employer of Record Agency may not be an employee for any other Mi Via Waiver service.
- Employer of Record Agency must disclose to, both DDS and to people supported by their agency, any familial relationships between the agencies employees/subcontracting EOR's and employees or subcontractors of Provider Agencies, vendors, or employees of other Mi Via Waiver services.
- Employer of Record or Director of an Employer of Record Agency may not serve on the Board of Directors of any Mi Via Waiver Provider Agency or vendor agency.
- Employer of Record Agency staff and subcontractors must maintain independence and avoid all activity which could be perceived as a potential conflict of interest. Mi Via Waiver Service Descriptions and Provider Qualifications Page 25 of 75 July 1, 2022
- Employer of Record Agency may not provide guardianship services to an individual receiving Mi Via Waiver Services.

Employer of Record Agencies must mitigate any conflict-of-interest issues by adhering to at least the following:

- Any individual who is an employee or subcontractor of an entity that is compensated for providing Mi Via Waiver services to an individual must not serve as guardian or Power of Attorney for that individual, except when related by affinity or consanguinity [§ 45-5-31(1) A NMSA (1978)]. Affinity who stems solely from the caregiver relationship is not sufficient to satisfy this requirement.

### **Medicaid Fraud, Waste and Abuse**

Records, timesheets and PRFs can be reviewed and audited at any time. EORs and the employees must adhere to the program rules and requirements to avoid suspicion of fraudulent activity.

Examples of what can be considered Medicaid Fraud, Waste and Abuse:

- Approving timesheets or PRFs for time or services not rendered.
- Utilizing FMA checks to purchase goods that are not approved in the budget.
- Altering employee/vendor payment checks.
- Paying for services or goods that violate Federal or State statues, rules or guidance.
- Paying for services or goods for someone else other than the eligible

- participant.
- Forging signatures in timesheets or PRFs.
  - Claiming services while the eligible participant is in the hospital, nursing home, rehabilitation facility, etc.

HSD will refer cases related to Medicaid fraud to the OIG for investigation. False claims have federal and civil penalties and fines.

### **Properly Storing Service Records**

As an EOR it is important to keep records that show that services have been provided as outlined in the SSP and Budget. These documents are needed to complete EOR responsibilities and may also be requested by the Human Services Department (HSD) or Department of Health (DOH) during program audits. The Mi Via program rules require that every EOR maintains records for a minimum of 6 years from the first date of service.

Important documents to keep include but are not limited to:

- Approved SSP and Budget;
- Copies of signed Employee and Vendor Agreements;
- Copies of invoices, PRFs, mileage sheets, or timesheets;
- Receipts for goods purchased;
- Daily progress notes; and
- Attendance logs.

The EOR must protect employee's privacy and confidentiality. The EOR must have a secure place to store paper and electronic files and keep them accessible in case they are needed.

### **HIPAA and Protected Health Information**

HIPAA stands for Health Insurance Portability and Accountability Act. HIPAA was passed in 1996. The purpose of HIPAA was to:

- Set national standards for the protection of health information and improve healthcare delivery
- Sets basic privacy protections for individuals.

There are two parts to HIPAA:

#### **1. The Privacy Rule**

The Privacy Rule created protections for protected health information (PHI) held by covered entities. Examples of covered entities are health care providers such as NMDOH, or healthcare plans, etc.

The Privacy Rule ensures that an individual's PHI is only shared on a

need-to-know basis.

The Privacy Rule protects health information in all forms:

- Electronic
- Verbal
- Written

## 2. The Security Rule

The Security Rule is a set of guidelines protecting PHI that is created, received, maintained or transmitted electronically by covered entities.

The Security Rule includes:

- Administrative safeguards
- Physical safeguards
- Technical safeguards

These covered entities should be used to ensure the confidentiality, integrity, an availability of electronic protected health information.