

**THE NEW MEXICO *MI VIA* PROGRAM**  
**(An Interagency Medicaid Self-Directed Waiver Program)**

**CONCEPT PAPER**  
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This paper is presented by the New Mexico Aging and Long Term Services Department, New Mexico Department of Health, and New Mexico Human Services Department for discussion and feedback. Questions and comments may be sent to Mary Kay Pera, at the Human Services Department, via e-mail at [marykay.pera@state.nm.us](mailto:marykay.pera@state.nm.us), or in writing to Mary Kay Pera, NM Human Services Department, Medical Assistance Division, Self-Directed Waiver Program, P.O. Box 2348, Santa Fe, NM 87504-2348.

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## **DEFINITIONS AND ACRONYMS**

### **AGING AND LONG TERM SERVICES DEPARTMENT (ALTSO)**

**AIDS WAIVER** – A Medicaid Home and Community-Based Services Waiver (HCBSW) program for recipients who are diagnosed as having Acquired Immunodeficiency Syndrome or AIDs-Related Conditions.<sup>1</sup>

**CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)** – Federal agency within the U.S. Department of Health and Human Services that works in partnership with the states to administer Medicaid. CMS must approve all HCBSW programs.

**CONSULTANTS** – Support service to assist Self-Directed Waiver (SDW) participants with understanding the SDW requirements, developing the service and support plan, and identifying where or how the developed service and support plan can be implemented.

**CONSUMER DIRECTION** – Philosophical orientation that emphasizes the ability of older persons, persons with disabilities, and, where appropriate, their families, to assess their own needs and make choices about what services would best meet those needs.<sup>2</sup> Consumer direction and self-direction are sometimes used interchangeably.

### **DEPARTMENT OF HEALTH (DOH)**

**DEVELOPMENTAL DISABILITIES WAIVER (DD Waiver)** – Medicaid HCBSW program for individuals who meet the definition of developmental disability and mental retardation or a specific related condition as determined by DOH in accordance with approved DD Waiver criteria.<sup>3</sup>

**DISABLED AND ELDERLY WAIVER (D and E Waiver)** – HCBSW program for the elderly (age 65 or older) or persons with a disability (blind or disabled) as determined by the Disability Determination Unit utilizing Social Security Disability guidelines and who meet the required level of care provided in a nursing facility.<sup>4</sup>

**HOME AND COMMUNITY-BASED SERVICES WAIVER (HCBSW)** – Program alternatives to providing long term care in institutional settings. The federal government “waives” certain statutory requirements of the Social Security Act to allow states to provide an array of community-based options through HCBSW programs.

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<sup>1</sup> New Mexico Acquired Immunodeficiency Syndrome (AIDS) or AIDS-Related Conditions Home and Community-Based Services Waiver Policies. MAD Section 735. 1995.

<sup>2</sup> National Council on Disability. *Consumer Directed Care: How Well Does It Work?* 2004.

<sup>3</sup> New Mexico Developmental Disabilities Home and Community-Based Services Waiver Policies. MAD Section 8.314.5. 2002.

<sup>4</sup> New Mexico Disabled and Elderly Home and Community-Based Services Waiver Policies. MAD Section 733. 1995.

## **HUMAN SERVICES DEPARTMENT (HSD)**

**INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (ICF-MR)** – Facilities that are licensed and certified by DOH to provide room and board, continuous active treatment and other services for eligible Medicaid recipients with a primary diagnosis of mental retardation.<sup>5</sup>

**MEDICALLY FRAGILE WAIVER (MF Waiver)** – HCBSW program for recipients diagnosed with a medically fragile condition before reaching age twenty-two (22) and who require an ICF/MR level of care and meet other defined criteria.<sup>6</sup>

**MI VIA**, “my path”, “my way”, or “my road” in Spanish, is the Interagency Medicaid SDW program through which eligible participants will have the option to control and direct services, supports, and Medicaid funds, using the essential elements of person-centered planning, individual budgeting, participant protections, and quality assurance and quality improvement.

**PARTICIPANTS** in *Mi Via* – Older persons and individuals with disabilities, including children, who meet the eligibility criteria and who have been allocated to receive services and support through the program. Where participants are minor children or have cognitive impairments, the term “participants” also includes families, e.g., any relative, significant other or recognized surrogate decision-maker.

**QUALITY ASSURANCE AND QUALITY IMPROVEMENT (QA and QI)** – Processes required by the state and federal governments whereby the State must provide appropriate oversight and monitoring of its HCBSW program(s) so that waiver assurances, such as the necessary safeguards to protect the health and welfare of participants receiving services, are met and the operation of the program is improved on a continual basis.<sup>7</sup>

**SELF-DETERMINATION** – Broad concept related to participants’ overall control of their lives and ability to take part in society. Self-determination rests on five basic principles: 1) freedom to lead a meaningful life in the community; 2) authority over dollars needed for support; 3) support to organize resources in ways that are life enhancing and meaningful; 4) responsibility for the wise use of public dollars; and 5) confirmation of the important leadership that self-advocates must hold in a newly designed system.<sup>8</sup>

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<sup>5</sup> New Mexico Medicaid Long Term Care Services Intermediate Care Facilities Policies. MAD Section 8.313.2. 2000.

<sup>6</sup> New Mexico Medically Fragile Home and Community-Based Services Waiver Policies. MAD Section 8.314.3. 2002.

<sup>7</sup> *Independence Plus: A Demonstration Program for Family or Individual Directed Services*. Centers for Medicare and Medicaid Services. 2004.

<sup>8</sup> Center for Self-Determination. [www.self-determination.com/publications/principles](http://www.self-determination.com/publications/principles). 2005.

**SELF-DIRECTED WAIVER (SDW) PROGRAM, *Mi Via*** – Interagency Medicaid HCBSW program that presents eligible participants the option to control and direct services, supports, and Medicaid funds, using the essential elements of person-centered planning, individual budgeting, participant protections, and quality assurance and quality improvement.<sup>9</sup>

**SELF-DIRECTION** – Process applied to the service delivery system whereby older persons, individuals with disabilities, and, where appropriate, families have high levels of direct involvement, control and choice in identifying, accessing and managing the services they obtain to meet their personal assistance and other health-related needs.<sup>10</sup> Self-direction and consumer direction are sometimes used interchangeably.

**TRAUMATIC BRAIN INJURY (TBI)** – Insult to the brain, not of degenerative or congenital nature, caused by an external physical force that may produce a diminished or altered state of consciousness, which results in an impairment of cognitive abilities or physical functioning and/or a disturbance of behavior or emotional functioning.<sup>11</sup>

**WAIVER** – Federal government has “waived” certain statutory requirements of the Social Security Act to allow states to provide an array of home and community-based services options through Medicaid as an alternative to providing long term care in institutional settings.

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<sup>9</sup> *Independence Plus: A Demonstration Program for Family or Individual Directed Services*. Centers for Medicare and Medicaid Services. 2004.

<sup>10</sup> *Independence Plus: A Demonstration Program for Family or Individual Directed Services*. Centers for Medicare and Medicaid Services. 2004.

<sup>11</sup> New Mexico Brain Injury Advisory Council. 2004.

## **I. PURPOSE**

This paper describes in broad conceptual terms a process for developing and implementing the new Interagency Medicaid SDW program, hereafter called *Mi Via*. The process is based on extensive work that was done, starting in 2000, by numerous stakeholders, including older persons, individuals with disabilities, their families, advocates, service providers, and others who shared their expertise and offered advice; legislators who passed legislation and Governor Richardson who signed it into law; and by staff from ALTSD, DOH, and HSD.

## **II. MISSION AND GOALS OF *Mi Via*: THE INTERAGENCY MEDICAID SELF-DIRECTED WAIVER PROGRAM**

### **A. Vision for *Mi Via***

The mission statements of ALTSD, DOH, and HSD, respectively, reflect a common commitment to and movement toward self-determination for older adults and individuals with disabilities, including children; and, where appropriate, families<sup>12</sup>. ALTSD is committed to achieving the highest quality of life for older persons and people with disabilities; DOH is committed to increasing independence of individuals with disabilities; and HSD is committed to assuring disabled individuals equal participation in the community.

Each state agency has incorporated some facets of self-determination in their programs; however, *Mi Via* represents the first opportunity for the three state agencies<sup>13</sup> to collaborate closely and facilitate even greater self-determination for individuals and families served. This is consistent with a growing national self-determination movement, the promise of which is rooted in increased quality, increased power for older adults and individuals with disabilities, increased status within the community for these same individuals and, at the policy and organizational level, a fairer, more equitable distribution of public funds.<sup>14</sup> It is also consistent with President Bush's *The New Freedom Initiative* to remove barriers to community living for people with disabilities and encourage states to provide assistance in the home and community-based setting,<sup>15</sup> and with Governor Richardson's signing of the ADAPT<sup>16</sup> Resolution to End Institutional Bias and Support Community Services in 2004.

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<sup>12</sup> Families are defined throughout this paper as any relative, significant other or recognized surrogate decision-maker.

<sup>13</sup> The three state agencies referenced throughout this paper include the New Mexico Aging and Long Term Services Department, Department of Health, and Human Services Department.

<sup>14</sup> Nerney, T. *Lost Lives: Why We Need a New Approach to Quality*. Center for Self-Determination, June 2004.

<sup>15</sup> President Bush announced The New Freedom Initiative on February 1, 2001. [www.hhs.gov/newfreedom/init.html](http://www.hhs.gov/newfreedom/init.html).

<sup>16</sup> ADAPT is the American Disabled for Attendant Programs Today.

As a New Mexico advocate recently stated, "... [self-determination] is about having a dream of independence and being a part of the community in a meaningful way... Self-direction is a tool to self-determination, which is freedom and includes control of one's life." This statement is at the heart of a vision for participants who will utilize the *Mi Via* program, as follows:

- All participants have value and potential.
- Participants shall:
  - Be viewed in terms of their abilities;
  - Have the right to participate and be fully included in their communities; and
  - Have the right to live, work, learn, and receive all services in the most integrated and least restrictive settings within their communities.

**B. Goals of *Mi Via***

The goals of *Mi Via* are:

- To facilitate greater participant choice and control over the types of services and supports that are purchased within an agreed upon budgetary amount; and
- To serve the most people possible within available resources.

**III. CURRENT SERVICE SYSTEMS**

**A. Home and Community-Based Services Waiver Programs**

There are four HCBSW programs in New Mexico: Disabled and Elderly (D and E), Developmental Disabilities (DD), Medically Fragile (MF), and AIDS. (See Appendix A for a list of waiver services) In collaboration with HSD, ALTSD administers the D and E waiver, and DOH administers the DD, MF and AIDS waivers. In addition to waiver services, recipients of waiver programs also utilize primary, behavioral health, and prescription services as well as any other Medicaid-covered services, such as hospitalization, transportation and vision care.

**B. Traumatic Brain Injury Services**

The Traumatic Brain Injury (TBI) program, which is funded with State general funds and the TBI Trust Fund and administered by the ALTSD, provides crisis and interim services to persons with brain injury. The TBI program is intended to provide services and supports to persons on an interim basis until long term services can be obtained. (See Appendix A for a list of TBI services)

**C. Self-Directed Programs**

Self-directed programs include the Medicaid Personal Care Option (PCO) and the State-funded Self-Directed Family Support Program (SDFSP). The PCO program is

administered by ALTSD, and the SDFSP is administered by DOH in conjunction with University of New Mexico.

#### **IV. PREVIOUS EFFORTS TOWARD SELF-DIRECTION**

As previously indicated, the State has laid the groundwork for developing and implementing a SDW program during the last few years through the extensive contribution of many people, whose work is embodied in the processes described herein. Highlights of some of the previous efforts include:

##### **A. Senate Joint Memorial 50 of 2003**

This legislation declared support for programs that serve persons with disabilities in their own communities and permit self-directed services.

##### **B. Senate Bill 332 – Medicaid Reform of 2003**

This legislation called for work toward self-directed care options in the Medicaid DD and D and E Waiver programs.

##### **C. Consumer Direction Act of 2003**

Governor Richardson and the New Mexico legislature formally demonstrated their commitment to consumer choice through this legislation. (See Appendix B) The purpose of the Act is to ensure that consumers have the right to direct their personal assistance services. The Act authorizes consumer direction programs and instructs by rule each department or agency offering personal assistance service to individuals to provide a program permitting a consumer or surrogate to direct personal assistance services. This includes the hiring, supervision and training of an attendant or attendants paid through a fiscal intermediary under contract with the department. *Mi Via* is fully responsive to the mandates of the Act.

##### **D. House Bill 318 of 2005**

Enactment of House Bill 318 is the most recent effort to date toward self-direction. On April 6, 2005, Governor Richardson signed into law House Bill 318, which appropriates \$2,000,000 for Medicaid home and community-based services for persons with a brain injury. Services for this program will become available through *Mi Via*. The bill was passed unanimously in both the House and Senate in the 2005 legislative session.

##### **E. Statewide Adult Services Task Force (SASTF) Self-Directed Subcommittee**

In 2003, in collaboration with DOH's Long Term Services Division, the SASTF Self-Directed Subcommittee held several forums in the state through which individuals with developmental disabilities and their families, along with many other interested stakeholders, shared their dreams for a self-directed waiver program and offered their views, concerns and recommendations.

**F. Self-Directed Waiver (SDW) Committee**

The SDW Committee, which included representatives from the three state agencies and some of the same individuals who worked with the Self-Directed Subcommittee, focused and made recommendations on programmatic issues.

**G. Robert Wood Johnson Grant and CMS Real Choice Systems Change Grant**

On October 7, 2004, the Robert Wood Johnson (RWJ) Foundation awarded New Mexico's ALTSD a three-year Cash and Counseling grant of \$349,153, to plan a New Mexico self-directed program called *Mi Via*. The State is one of 11 new states to participate in the expansion of RWJ's successful Cash and Counseling programs that gave participating Medicaid recipients in New Jersey, Arkansas, and Florida choice and control over certain services. New Mexico will use this grant and the wealth of technical assistance available through it to continue the SDW planning, implementation and early evaluation. The grant project and the planned SDW program have been merged into one and the same program called *Mi Via*, as described in this paper.

New Mexico is also a recipient of a CMS Real Choice Systems Change grant, which will be used to support training, education and outreach.

**V. GUIDING PRINCIPLES FOR SELF-DIRECTION**

The Guiding Principles represent *Mi Via's* core values pertaining to: 1) participants; 2) self-direction; 3) providers of self-directed services; and 4) development and administration of *Mi Via*. (See Appendix C) The principles will guide policy development related to participants, service providers and the State administration of the program.

**VI. SELF-DIRECTED WAIVER PROCESS AND TIMELINE**

There will be one process for the Interagency SDW *Mi Via* program as it relates to: 1) eligibility; 2) role of participants in planning and purchasing of services and supports; 3) scope of covered services and supports; 4) individualized budget; 5) payment for services and supports, including a suggested range of rates for services; 6) quality assurance and quality improvement; 7) outreach; and 8) education. During development of *Mi Via*, all current HCBSW processes and service definitions will also be standardized, where appropriate and desirable, to facilitate greater efficiency in administration of the overall waiver programs and allow the State to make limited dollars go as far as possible.

HSD will develop and submit the appropriate waiver application for the Interagency SDW *Mi Via* to CMS in State Fiscal Year 2005, with implementation planned as early as possible in Fiscal Year 2006.

## **VII. SERVICE PARTICIPANTS AND PROGRAM SERVICES**

### **A. Eligibility**

*Mi Via* will cover the following Medicaid recipients of long term services and supports:

- Individuals eligible for the:
  - Disabled and Elderly Waiver
  - Developmentally Disabled Waiver
  - Medically Fragile Waiver
  - AIDS Waiver
- Nursing home residents receiving Medicaid
- ICF/MR residents receiving Medicaid
- Individuals with traumatic brain injuries
- Individuals with mental illness

Eligible participants will be invited to participate in *Mi Via* and choose self-direction, or receive services through one of the four current HCBWS programs. Procedural details are in development regarding how *Mi Via* participants will be transitioned to the new waiver program, how and where future participants will apply and enter the program, and how money will follow the person.

### **B. Planning for and Purchasing of Services and Support**

*Mi Via* will recognize the essential role of participants in planning and purchasing of services and supports. Participants will have the flexibility to develop their individualized service and support plans, within their established individual budgets, and direct the services and supports identified in their plans.

### **C. Services and Supports**

Covered services through *Mi Via* that participants can purchase with their allotted budgetary amounts will include current HCBSW services and other supports and services necessary for participating individuals to live at home, go to school, work and integrate into the community as independently as possible.

The breadth of services and supports available through *Mi Via* must reflect all aspects of a participant's life, including but not limited to home, love, friendship, community, work and productive activity. Supports may include goods such as, home appliances; computers and other assistive technology, devices or services; durable medical equipment not covered by Medicaid; cost of social activities and community participation in social and recreational organizations; as well as non-covered medical and dental expenses, non-medical transportation, and alternative health care services.

### **D. Participant Service and Support Plan**

*Mi Via* recognizes participants as the leaders in planning and purchasing of services and supports. Using the person-centered approach, the service and support plan revolves around the individual participant and reflects his or her chosen lifestyle and culture. Planning should occur where, when and with whom the participant chooses. The

participant will direct development of the plan, which will serve as the foundation for participation in *Mi Via*. Assistance with the planning process will be available to all participants.

The plan will include, but not be limited to:

- Identification of participant needs to be addressed by *Mi Via*
- Coordination and selection of goods, services, and supports
- Methods for quality assurance and quality improvement
- Information, resources or training needed by the participant and service providers
- Individual budget
- Methods to address the participant's health and safety, such as 24-hour emergency back-up services

#### **E. Consultants**

Consultants will help participants to understand the program and develop and implement the service and support plan. Consultants must be familiar with the planning process, have knowledge about community resources and how to seek out resources, and understand *Mi Via* requirements related to planning, budgets and service and support utilization. In order to avoid conflicts of interest, consultants will be independent of the entities or persons delivering services or supports, as included in the participant's plan and individualized budget.

#### **F. Individual Budget**

The State will determine the individual participants' allocated budgetary amount, the formula for which will be established as part of an actuarial analysis associated with the Waiver application to CMS. (The current cost per participant under the HCBSW programs will be reduced in *Mi Via* as part of the State Medicaid program's recognition that it must manage within available resources and serve the most people possible within available resources.)

Participants will have their individual allotted budgetary amounts and the authority to decide which services, goods or supports to purchase and how much money to pay for each item. A suggested range of rates for services will be available as a point of reference. Money will follow individual participants, based on their need, from institutional care settings to home and the community, as part of the State's Money Follows the Person Initiative.

Participants will work with a fiscal intermediary (FI), who will be independent of the entities/persons delivering services or supports to avoid conflicts of interest. Based on the individual budget, the FI will set up an individual account, make expenditures that follow the authorized budget, handle all payroll functions on behalf of participants who hire service providers and other support personnel, provide the participants with a monthly report of expenditures and budget status, and provide the State with quarterly documentation of expenditures.

### **G. Authorization of Plan and Budget**

Individual plans and budgets, designed to meet functional, medical and social needs and enhance participants' integration into the community to the greatest degree possible, will be submitted to the State for authorization. Plans and budgets will be authorized unless what is proposed is illegal, prohibited by federal and state Medicaid statutes and regulations, or the State has determined through an investigation that the participant is being exploited. All due process and fair hearing rights will be preserved for the participant as provided by Medicaid statutes and regulations.

## **VIII. OUTREACH AND EDUCATION**

In order to be successful in self-direction and self-determination, participants must have the requisite on-going education, information, and tools and support related to all aspects of *Mi Via*. This includes information about accessing services; person-centered planning; rights, risks, and responsibilities; range of services and supports; finding and managing providers; budgeting and paying for services and supports; and working with the consultant and fiscal intermediary.

An ongoing, multifaceted approach will be utilized to communicate *Mi Via* information, such as easy-to-understand written materials that address the cultural diversity of the population, video presentations, website information, alternative formats, family and advocate trainers, and community education forums about *Mi Via*. These materials and activities will be developed in collaboration with and through contributions from participants, so that information is responsive and as clear as possible. The initial community education forums will also be utilized to understand participants' perspective and seek their input during implementation of *Mi Via*.

## **IX. QUALITY ASSURANCE AND QUALITY IMPROVEMENT**

Quality assurance and quality improvement mechanisms will be developed and implemented that reflect the shared roles of the participant, State, consultant, and fiscal intermediary, in assuring that participant needs are satisfied, funds provided to participants are used appropriately, and the quality of *Mi Via* is continually improving.

Participants' will play a central role in quality assurance. In order to ensure meaningful, effective and culturally appropriate processes, participants will provide input on the design of the quality assurance and improvement plan, including how the quality of services and supports and quality of life will be measured and reported. Participants will also include methods for measuring quality in their individual service and support plan.

State QA and QI monitoring mechanisms include but are not limited to: utilization review; site visits; a system for tracking and responding to critical events or incidents; a crisis response system; procedures for assuring participant safety, including 24-hour

emergency back-up; claims monitoring; and procedures to use the results of quality assurance monitoring to make adjustments, as needed, to improve *Mi Via*.

In regard to participant protections, concern has been expressed by some New Mexico stakeholders about loss in *Mi Via* of protections afforded to current HCBSW participants; the potential for increased risk for exploitation, abuse, and neglect; and about participants' potential misuse of the budget. In the aforementioned RWJ Cash and Counseling Demonstration, consumer exploitation was extremely rare, and there were no major instances of fraud or abuse associated with budgets.<sup>17</sup> The *Mi Via* process supports the right of participants to make choices about their services and supports. While these choices sometimes may be perceived as a lower standard of services and supports according to professional or "objective" standards of quality, participants may be pleased with their choices.<sup>18</sup> However, a balance must be struck between supporting the right of participants to self-direct their services and supports and make their own choices, and ensuring that proper safeguards are in place for adequate protection.

## **X. CONCLUSION**

This paper sets forth in broad conceptual terms a framework for *Mi Via*. A SDW Subcommittee, which is an ad hoc subcommittee of the Interagency Long Term Services Committee and includes older persons, individuals with disabilities, and their families, is providing guidance throughout the process and will continue to do so during implementation. Participants' satisfaction with services and supports received, the State's effective management of available resources, and the ability to serve as many people as possible will determine the success of *Mi Via*. A successful program will also be enhanced if all stakeholders remain committed to the guiding principles, thoughtful in planning for implementation, and focused on realizing the potential through *Mi Via* for a better life for participating individuals and families served.

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<sup>17</sup> Phillips, B. et al. *op.cit.*

<sup>18</sup> Geron, S.M. *The Quality of Consumer-Directed Long Term Care*. Generations, Vol. XXIV, No. 3. Fall 2000.

## **APPENDIX A**

## NEW MEXICO MEDICAID WAIVER AND TBI SERVICES

Program	D & E		AIDS		MF		DD		TBI	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Adult Day Health	x			X		x		x		x
Adult Day Health LOC II	x			X		x		x		x
Assisted Living	x			X		x	x			x
Assisted Living Intensive		x		X		x	x			x
Behavior Therapy		x		X		x	x			x
Bowel/Bladder Service	x			X		x		x		x
CA – Coach		x		X		x	x			x
CA-Peer Mentorship		x		X		x	x			x
CA-Information/Training		x		X		x	x			x
CA-Stipend		x		X		x	x			x
CA-Family Counseling		x		X		x	x			x
Case Management (CM)	x		x		x		x		x	
CM Assessment	x		x		x		x		x	
Community Membership		x		X		x	x			x
Crisis Interim Svc.		x		X		x		x	x	
Day Habilitation		x		X		x	x			x
Habilitation Day Care		x		X		x	x			x
Emergency Response	x			X		x		x		x
Home Health Aide		x		X	x			x		x
Home Modification	x			X		x	x			x
Home-Based Living		x		X		x	x			x
Homemaker/Companion	x		x			x		x		x
Life Skills Training		x		X		x		x	x	
Non-Med. Transportation		x		X		x	x			x
Nursing (LPN)	x		x		x		x			x
Nursing (RN)	x		x		x		x			x
Nutritional Counseling		x		X	x		x			x
Occupational Therapy	x			X	x		x			x
OT-Certified OT Asst.		x		X		x	x			x
Personal Care/Services	x			X		x	x			x
Psychosocial Counseling		x		X	x			x		x
Physical Therapy (PT)	x			X	x		x			x
PT Assistant		x		X		x	x			x
Respite	x			X	x		x			x
Speech/Lang. Therapy	x			X	x		x			x
Supervised Living		x		X		x	x			x
Supported Employment		x		X		x	x			x
S.E. Group		x		X		x	x			x
S.E. Intensive		x		X		x	x			x
Supported Living		x		X		x	x			x

## **APPENDIX B**

AN ACT

RELATING TO DISABILITIES; PROVIDING FOR CONSUMER DIRECTION OF  
PERSONAL ASSISTANCE SERVICES IN CERTAIN PUBLICLY FUNDED  
PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW  
MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Consumer  
Direction Act".

Section 2. PURPOSE.--The purpose of the Consumer Direction Act is  
to ensure a consumer the right to direct his personal assistance services if he  
so chooses by selecting an attendant appropriate to his needs and to  
maximize personal assistance service availability and satisfaction.

Section 3. DEFINITIONS.--As used in the Consumer Direction Act:

A. "attendant" means a person, including an allowable family member,  
who provides personal assistance services;

B. "consumer" means a person receiving personal assistance services  
through any personal assistance programs offered by the state of New  
Mexico;

C. "department" means any department or agency of the state offering  
personal assistance service to individuals;

D. "fiscal intermediary" means a person or entity selected by  
agreement between the consumer and the department under contract to the  
department to assist the consumer to perform certain employment functions,  
including payroll responsibilities for the attendant and filing necessary  
eligibility information with the department;

E. "personal assistance services" means a prescribed course of regular  
personal care, including hygiene, mobility and daily living assistance that  
permits a person to live in his home rather than an institution, including  
bathing, dressing, grooming, eating, toileting, shopping, transporting, cueing  
medication administration and communicating;

F. "plan" means a written and signed agreement between a consumer  
or surrogate and the department for the provision of personal assistance  
services; and

G. "surrogate" means a family member, legal guardian or other person approved by the consumer and identified in the personal assistance services plan to assist in direction of personal assistance services and choice of attendant.

Section 4. CONSUMER DIRECTION PROGRAMS AUTHORIZED.-- Consistent with the federal Social Security Act and subject to the appropriation and availability of federal and state funds, each administering department or agency shall by rule provide a program permitting a consumer or surrogate to direct personal assistance services through the hiring, supervision and training of an attendant or attendants paid through a fiscal intermediary under contract with the department.

Section 5. DEPARTMENT DUTIES.--A department shall:

A. establish by rule the criteria and procedures for developing and amending a personal assistance services plan with a consumer;

B. develop criteria and procedures for selection of a fiscal intermediary to contract with the department to provide fiscal intermediary services to a consumer; and

C. establish rates for reimbursement of an attendant providing personal assistance services to a consumer and for the compensation of a fiscal intermediary.

Section 6. REPORT.--Annually by October 1, each department shall deliver a report to the legislative finance committee and the legislative health and human services committee on services provided pursuant to the Consumer Direction Act and a comparison of those services and services provided by the department through other means and an evaluation of the effectiveness and consumer satisfaction with the respective means of service delivery.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

## **APPENDIX C**

## **THE NEW MEXICO SDW *MI VIA* PROGRAM GUIDING PRINCIPLES FOR SELF-DIRECTION**

### **Principles Pertaining to *Mi Via* Participants**

1. All participants have value and potential.
2. Participants shall:
  - a. Be viewed in terms of their abilities;
  - b. Have the right to participate in and be fully included in their communities;  
and
  - c. Have the right to live, work, learn, and receive all services in the most integrated and least restrictive settings within their communities.

### **Principles Pertaining to Self-Direction**

1. Participants shall:
  - a. Have the freedom to decide where and with whom to live, choose their own work or productive activity, choose how to create income, and establish community and personal relationships;
  - b. Receive access to public funding for disability services and supports while maintaining their right to acquire income and personal assets;
  - c. Be trusted to make good decisions regarding their own support, based upon informed choice;
  - d. Have the right to make their own informed decisions;
  - e. Be respected and supported by family members, guardians, providers, state personnel, and other entities during the decision-making process and in the decisions made;
  - f. Have the opportunity to design and direct their own plans;
  - g. Design their own plans, where, when, and with whom they choose;
  - h. Expect that the State will place no restraints on what is included in the plan and minimal restraints on what can be funded by the Waiver program, other than any restraints required by state or federal law and regulations or budgetary appropriations;
  - i. Be encouraged to use funds in creative and flexible ways to meet their needs and to obtain the best value for every dollar spent;
  - j. Access natural support as needed;
  - k. Purchase services, goods and supports from community-based resources that are qualified and can best meet their needs;
  - l. Hire, fire, train, schedule, and supervise service providers; and
  - m. Receive training, resources and information to prepare them to direct their own services and supports.

**Principles Pertaining to Providers of Self-Directed Services**

1. Individuals who provide services to participants shall:
  - a. Be trained specific to the needs of the participant being served and trained by the participant; and
  - b. Be paid a wage, as negotiated with the participant.

**Principles Pertaining to Development and Administration of *Mi Via***

1. The State Human Services Department, as the Medicaid authority, shall be responsible for drafting the SDW application, in partnership with sister agencies and with input from stakeholders, and seeking federal approval from the Centers for Medicare and Medicaid Services for the SDW program, incorporating the principles outlined herein.
2. Participants will be involved in the development of any program that pertains to SDW-related services.
3. The State will develop the infrastructure necessary, within available resources, to ensure that the new waiver program will be effective.
4. The State will provide effective, quality services and support, to the extent that resources are available, to meet the needs of participants living in poverty who have psychiatric, physical, cognitive, and/or developmental disabilities.
5. Medicaid SDW policies will be designed and implemented to prevent the exclusion or disenfranchisement of any group of participants based on ethnicity or culture.
6. Medicaid SDW eligibility will be based on the person's functional needs.
7. The current cost per participant under the Home and Community-Based Waiver programs will be reduced in the SDW program as part of the State Medicaid program's recognition that it must manage within available resources.
8. Participants will receive funding, to the extent that resources are available, for services and supports based on their individual needs.
9. Medicaid SDW funds will be used in a manner that is efficient, based on available resources.
10. Participants' individual plans and budgets shall be simple to create and modify, requiring minimal time and paperwork.

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11. Participants' individual plans cannot be approved or authorized by any person or agency that might benefit from the approval of such plan.
12. Participants' individual plans will be periodically evaluated to determine the extent to which the plan is successful or needs to be changed to meet their needs.
13. Participants have the authority to decide which services, goods and/or supports to purchase and how much money to allocate to each item in their allotted budget.
14. The individual budget will not be created until the person-centered plan is completed.
15. Fiscal intermediaries will be in place to support and monitor the expenditures of participants receiving services, goods and/or supports funded by the Waiver program.
16. Consultants will be available to enhance participants' capacity to direct their own services and supports.
17. Consultants and fiscal intermediaries will be independent of the entities/persons delivering services or supports to the participants, to avoid conflicts of interest.
18. Participants should receive appropriate services in a timely manner.
19. The State will reduce the time that participants spend on the Waiver registry list, within available resources.
20. The State will ensure, within available resources, participants' timely allocation for and implementation of Medicaid SDW services.
21. The State will develop and implement ongoing quality of life and quality of service and support monitoring activities to ensure that participants receiving services and supports are attaining the quality of life that they desire. Quality monitoring activities will be shared by the State, participant, consultant, and fiscal intermediary.
22. The State will implement a SDW critical incident reporting system.
23. The State will implement a SDW crisis-response system.
24. The State will implement a well-defined appeals process that participants can easily access if they disagree with a decision made by a State entity concerning their SDW services.

25. The State will provide opportunities for training and technical assistance for participants and suppliers of SDW services and supports. Training will be widely available and affordable so that participants, neighbors, co-workers, and other acquaintances can be viable sources of support.