



Independent Contractors

ISSUE: Independent Contractors

In April 2016, TRE announced its intent to discontinue engaging Independent Contractors (IC) for the delivery of its services to people with intellectual and developmental disabilities (IDD). This decision was informed and influenced by two factors.

Conflict Free Case Management. For years in the Colorado system of services for people with IDD, there has been debate around organizations like TRE known as Community Centered Boards (CCB) in Colorado Revised Statutes (CRS) providing both case management supports as well as direct services. Colorado CCBs provide case management through contracts with the Colorado Department of Health Care Policy and Financing (HCPF). These services include intake, eligibility determination, referral and ongoing service coordination. CCBs are also, by CRS, able to provide services to the same people to whom they provide case management. However, the Centers for Medicare and Medicaid Services (CMS), or federal Medicaid, has directed Colorado to address the potential conflict that is manifest when the same organization that determines eligibility, makes referrals for services, and provides ongoing service coordination (including working with the person with an IDD and their family to assess the quality of the service they are receiving) is also providing direct service (e.g., residential, vocational, employment and more) to the same person.

In 2015, Governor Hickenlooper signed House Bill 15-1318 into law, which requires HCPF, not later than July 1, 2016, to “develop a plan for the delivery of conflict free case management services that complies with the federal regulations relating to person-centered planning. During the budget process for the 2016-2017 legislative session, [HCPF] shall report to the Joint Budget Committee [of the legislature] on the development of the plan and any statutory changes required to implement the plan.”

The Board and leadership of The Resource Exchange believes that the plan will require CCBs to provide either case management or services, but not both; and, we also believe this to be a good policy decision that will result in better outcomes for people with IDD in Colorado.

Since approximately 2008, TRE has used ICs for the delivery of a small but important set of the very services that are at the heart of the Conflict Free Case Management issue. To comply with federal requirements from CMS for Conflict Free Case Management, and to respond to Colorado’s imminent plan to the legislature that will recommend separating case management from services in this specific context, TRE has decided to be proactive and made the decision to discontinue the use of ICs for the delivery of services, other than as required by law. Its plan will be to allow the existing contracts to run their course, but not to renew contracts and not to enter into new IC agreements going forward.

US Department of Labor. In July 2015, the US Department of Labor, Wage and Hour Division, issued Administrator’s Interpretation No. 2015-1, entitled *The Application of the Fair Labor Standards Act’s “Suffer or Permit” Standard in the Identification of Employees Who are Misclassified as Independent Contractors*. This 15-page interpretation provided additional insights to TRE’s Board of Directors and Leadership regarding continued use of independent contractors. While TRE has long enjoyed excellent partnerships with its ICs, changes in the ways in which Independent Contractors are defined supports the Board’s conclusion that the use of ICs for service delivery no longer aligns with its strategic direction and business model.