

The Role of Fiscal Intermediary Service Organizations (ISOs) in Facilitating Individuals' Use of Consumer-Directed Support Services Programs

Disability Advocacy in a Post-Olmstead Environment

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I. OVERVIEW

* Historically, professional authority has played a dominant role in the social organization of medical care and related human services.

* Over the past decade, the countervailing philosophies, of consumer-direction and self-determination have begun to assert themselves in the health and human services domain.

* The philosophy of consumer-direction has developed, in part, from the independent living and disability rights movements. From this philosophy has developed consumer-directed personal assistance service programs.

* The philosophy of self-determination has developed from the developmental disability arena. Self-Determination modes of financing and of delivering services emphasize a participant-driven approach and individualized budgeting.

I. OVERVIEW (continued)

* Consumer-directed modes of financing and delivering of support services permit the individual -- as opposed to medical or social work professionals -- comparatively greater choice and control over all aspects of service provision: hiring/selecting and training workers, defining their duties and work schedule, deciding when and how specific tasks or services are to be performed and discharging workers when appropriate.

* Recently, an increasing number of states have begun to apply the principles of consumer-direction to their support service delivery systems for persons with disabilities and chronic conditions of all ages.

* Although there is no single service delivery model that encompasses the entire range of consumer-directed support service programs, in general, a service can be considered consumer-directed if the person receiving the service is responsible for: (1) hiring/selecting their worker(s), (2) setting the terms and conditions of work, (3) managing or purchasing services to manage the administrative responsibilities of an employer, in particular employment taxes and payroll, and (4) supervising, disciplining, and terminating their worker(s) as necessary.

I. OVERVIEW (continued)

* With increased individual choice and control come responsibilities, many of which are imposed by federal, state and county statutes and regulations.

* A challenge for states and local governments implementing consumer-directed support service programs is balancing individuals' desire for enhanced choice and control over their services and workers with regulatory compliance, program accountability, liability and program participants' health and safety.

* One concept that has emerged from states' experience with consumer-directed support service programs is the intermediary service organization (ISO).

* ISOs can provide an array of fiscal and supportive services to public payers, program participants and their representatives and to a limited extent, workers, in order to facilitate the delivery of consumer-directed support services.

* The type of ISO services appropriate for an individual depends on his or her ability and desire to perform the required employer tasks for his or her worker(s).

I. OVERVIEW (continued)

* Six ISO models have been identified in the literature (Flanagan and Green, 1997). They vary in their corporate organizational structure, the types of services provided, administrative costs and the nature of the employer/employee relationship.

* This presentation will: (1) provide an overview of the types of ISO models currently being used in conjunction with consumer-directed support service programs with a focus on Fiscal ISOs, Agencies with Choice and Spectrum ISOs, (2) present the advantages and disadvantages to state/county program agencies, consumers and their authorized representatives in using the various ISO models, and (3) review issues states and vendor entities have encountered in designing, implementing and operating these types of ISOs to date.

II. Types of Intermediary Service Organizations (ISOs) that Facilitate Individuals' Use of Consumer-Directed Support Service Programs

III. Use of ISO Models by the Level of Individual Ability and Desire to Manage the Employer-Related Tasks

IV. What are Fiscal ISOs?

* There are three models of Fiscal ISOs: (1) Fiscal Conduit, (2) Government (IRS Employer Agent) Fiscal ISO, and (3) Vendor (IRS Employer Agent) Fiscal ISO. In all three models, the individual is the employer of record of his or her worker(s).

* Fiscal Conduit ISO. This model is often used by state and local governments to administer consumer-directed support service programs that allow individuals to receive public funds via cash grants or vouchers and pay their support service workers directly. Either a government entity or a private vendor entity under contract with a government entity can serve as the Fiscal Conduit ISO. The Fiscal Conduit ISO may also: (1) invoice a government entity to obtain individuals public benefits for disbursement, (2) collect and verify workers' time sheets, and (3) generate standardized reports for the government entity with which it has a contract and program participants and their representatives when appropriate.

* Under this ISO model, individuals or their representatives are the employer of record of the support service workers they hire directly (not from or referred to an agency).

* Fiscal Conduit activities may be performed by a government or vendor Fiscal ISO.

IV. What are Fiscal ISOs? (continued)

* Government (IRS Employer Agent) Fiscal ISO. Under this Fiscal ISO model, a state or local government entity may apply for and receive approval from the IRS (under IRS Revenue Procedure 80-4) to be an employer agent on behalf of individuals for the limited purpose of withholding, filing and depositing workers' federal employment taxes (e.g., FICA and FUTA). These entities may also manage support workers' state and federal income taxes if required/requested, state unemployment and disability insurance taxes, and federal advanced earned income credits, if applicable, and prepare and distribute their payroll checks. A Government Fiscal ISO may also broker worker's compensation premiums, collect and verify worker timesheets, process and pay non-labor related invoices, conduct criminal background checks on prospective workers, assist individuals with verifying workers' citizenship/legal alien status and generate standardized reports for the state/county program agencies, program participants and their representatives, when appropriate.

* Under this Fiscal ISO model, a government entity can perform these employer functions and ensure program accountability and tax and labor law compliance without being considered the employer of record of an individual's support service workers.

* The individuals/representatives are the employer of record of their support service workers who they hire directly (not those referred to or purchased from agencies).

IV. What are Fiscal ISOs? (continued)

* Vendor (IRS Employer Agent) Fiscal ISO. Under this Fiscal ISO model, a private or public vendor entity or authority may apply for and be approved by the IRS (under IRS Revenue Procedure 70-6) to act as an employer agent for individuals for the limited purpose of withholding, filing and depositing workers' federal employment taxes (e.g., FICA, FUTA). These entities may also manage support service workers' state and federal income taxes if required/requested, state unemployment and disability insurance taxes, and federal advanced earned income credits, if applicable and prepare and disburse their payroll checks. A Vendor Fiscal ISO may also broker worker's compensation premiums, collect and verify worker timesheets, process and pay non-labor related invoices, conduct criminal background checks on prospective workers, assist individuals with verifying workers' citizenship/legal alien status and generate standardized reports for state/county agencies, program participants and their representatives, where appropriate.

* Under this Fiscal ISO model, a vendor entity can perform these employer functions and ensure program accountability and tax and labor law compliance without being considered the employer of record of an individual's support service workers.

* The individuals/representatives are the employer of record of their support service workers who they hire directly (not those referred to or purchased from an agency).

V. What is a Supportive ISO?

* Supportive ISO. Under this model, a private or public vendor or authority or an individual (e.g. an independent case manager, support broker) may provide a variety of support services to individuals and their authorized representative, when applicable, and on a limited basis, to workers. Supportive services can include: conducting individuals' assessments and re-assessments; providing them with employer skills and self-advocacy training; assisting individuals/representatives with the recruitment, screening and hiring of workers including conducting criminal background checks on potential workers, assisting individuals in developing emergency/back-up service plans and accessing workers, developing and maintaining worker registries; arranging training opportunities for workers (on a limited basis); providing case management/counseling services; and monitoring service quality and individuals/representative satisfaction.

* Program participants may or may not be the employer of record when accessing services from this type of ISO model.

* This ISO model usually operates in conjunction with one of the other ISO models (Fiscal ISO) or as services incorporated into another model (e.g., Agency with Choice ISO or a combination Counseling/Fiscal ISO).

VI. What is an Agency with Choice ISO?

* Agency with Choice ISO. This ISO model may include a variety of different types of agencies (e.g., Centers for Independent Living, social service agencies such as United Cerebral Palsy and Easter Seals, traditional home health agencies, Area Agencies on Aging, and organizations that are developed specifically to fulfill the role, such as Concepts of Independence in NY or Granite State Independent Living Foundation (GSILF) in NH) that provide support services to individuals in a consumer-directed manner. The agency is the employer of record of the worker while the individual and/or his or her representative is considered the managing employer of the worker. Duties of an Agency with Choice may include: invoicing the state/county for public funds, processing employment documents, conducting criminal background and reference checks, managing all aspects of payroll, providing a variety of support services as described in the Supportive ISO description earlier, providing training for workers and monitoring workers' performance in conjunction with the individual and his or her representative. Individuals and their representatives are often permitted to recruit their support service workers and refer them to the ISO for processing and discharge them when necessary. Some Agency with Choice ISOs (e.g., Concepts for Independence in NYC and GSILF in NH) allow individuals to train their support service workers and supervise and evaluate all aspects of their activities and terminate when necessary.

* The services provided and level of participant-direction afforded to individuals and representatives under the Agency with Choice ISO model can vary significantly depending on the needs of individuals and their representatives, program design, the type of agency

involved, and its geographic location (rural vs urban).

VII. What is Spectrum ISO?

* Spectrum ISO. This is an operational model where a variety of fiscal and supportive intermediary services are made available to individuals and their representatives under one umbrella ISO. The ISO may choose to provide all of the fiscal and supportive services itself or it may subcontract with other entities to provide some of the services. The individual or representative can choose whether or not to be the employer of record of his or her support service worker depending on the type of intermediary services they select. This ISO model provides a seamless way for a state/county to provide services that best meet an individual's needs throughout his or her life while enhancing the individual's choice and control.

VII. ISO Models Operationalized as a Spectrum ISO

* State/County Program Agency

IX. Advantages and Disadvantages of Using the Fiscal Conduit ISO Model

* Advantages for Individuals/Representatives

-- Provides individuals and their representatives with the highest level of autonomy and control because the primary roles of the Fiscal Conduit ISO is just to distribute the grant funds to individuals /representatives and then they manage all the activities related to their grant funds, support services and workers.

* Advantages for Local or State Government Agencies

-- Significantly reduces a government agency's responsibility for administering a community-based support services program;
-- Can achieve cost efficiencies by reducing administrative costs associated with the program;
-- Allows a government agency to focus more on other programmatic issue (e.g., monitoring access to and quality of support services and program participant satisfaction); and
-- Enables a government to agency implement a HCB support service program that reflects individuals' desire for more autonomy and control over their services and workers and allows public funds to follow individuals rather than service providers.

IX. Advantages and Disadvantages of Using the Fiscal Conduit ISO Model (continued)

* Disadvantages for Individuals/Representatives

-- Individuals/representatives must have the ability and desire to perform all of the employer-related tasks; and
-- Individuals/representatives receive little or no assistance with employer-related tasks, in particular, employment taxes and payroll, which represent a significant burden for individuals and their representatives.

* Disadvantages for Local or State Government Agencies

-- Provides government agencies with a minimum level of program oversight and control;
-- Can put a government agency at risk of liability related to program accountability and compliance with federal and state tax and labor laws if individuals/representatives do not properly fulfill their employer responsibilities.

X. Advantages and Disadvantages of Using the Government (IRS Employer Agent) Fiscal ISO Model

* Advantages for Individuals/Representatives

-- Provides individuals/representatives with a high level of autonomy and control while reducing individuals/representatives' employer-related burden.

-- Ensures individuals/representative that IRS and DoL regulatory compliance has been achieved.

* Advantages for Local or State Government Agencies

--Ensures a government agency that IRS and DoL regulatory compliance has been achieved;
--Government agencies retain sole control over the administration of the program and Fiscal ISO functions and maintain a high level of program accountability without the support service workers becoming de facto employees of the government agency;
--Government agencies do not have to prepare and administer a Request for Proposal (RFP), select a Vendor Fiscal ISO, and negotiate a contract;

X. Advantages and Disadvantages of Using the Government (IRS Employer Agent) Fiscal ISO Model (continued)

* Advantages for Local or State Government Agencies (continued)

-- Provides a government agency with continuity related to the Fiscal ISO function (e.g., no change in the Fiscal ISO entity due to contract re-bid, terminating a contract due to poor performance or having a Vendor Fiscal ISO pull-out); and
-- Enables a government agency to implement community-based support service programs that reflect individuals' desires for more autonomy and control over their support services and workers and allows public funds to follow program participants rather than service providers.

X. Advantages and Disadvantages of Using the Government (IRS Employer Agent) Fiscal ISO Model (continued)

* Disadvantages for Individual/Representatives

-- Support service workers often erroneously think that the government agency (rather than the individual or his or her representative) is their employer. Consumer-employed support service workers need to be educated regarding who their employer is.

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Disadvantages for Local or State Government Agencies

-- Government agencies must establish the policies, procedures and systems to perform the Fiscal ISO function (it is best that these activities be separate from but parallel to the program agency's employee payroll activities);
-- Government agencies must identify and dedicate the staff and other resources necessary to perform the Fiscal ISO function and obtain the necessary funding (e.g., at what agency/division will the Fiscal ISO staff be located, are the employee positions available, how long will it take to have the government release and fill the positions, will the government approve additional funding and positions for the Fiscal ISO function and in the optimum time period, what will be the source of funds that will finance this function?);

X. Advantages and Disadvantages of Using the Government (IRS Employer Agent) Fiscal ISO Model (continued)

* Disadvantages for Local or State Government Agencies (continued)

-- A government agency may achieve few if any administrative cost efficiencies by conducting the Fiscal ISO function in-house; and
-- A government agency will need to establish a process for identifying and tracking the activities and costs related to performing the Fiscal ISO functions in anticipation of requests for information from federal, state, county and legislative representatives.

XI. Advantages and Disadvantages of Using the Vendor (IRS Employer Agent) Fiscal ISO Model

* Advantages for Individuals/Representatives

- Provides individuals/representatives with a high level of autonomy and control while reducing their employer-related burden;
- Ensures individuals/representatives that IRS and DoL compliance has been achieved.

* Advantages for Local or State Government Agencies

- Ensures a government agency that IRS and DoL compliance has been achieved;
- A government agency can distance itself two levels (e.g., individual as the employer of record and the Fiscal ISO as the payroll agent) from being considered the workers' de facto employer;
- Allows a government agency to achieve cost efficiencies by achieving economies of scale (e.g., contracting with an entity that performs the Fiscal ISO function on a routine basis) and by contracting with a vendor entity at negotiated rates;

XI. Advantages and Disadvantages of Using the Vendor (IRS Employer Agent) Fiscal ISO Model (continued)

* Advantages for Local or State Government Agencies (continued)

- A government agency can limit its activities related to administering the consumer-directed support service program and focus on program oversight, service quality, program participants' satisfaction with their services, and workers and oversight and management of the Vendor Fiscal ISO contract; and
- Enables a government agency to implement community-based support service programs that reflect individuals' desires for more autonomy and control over their support services and workers and allows public funds to follow program participants rather than service providers.

XI. Advantages and Disadvantages of Using the Vendor (IRS Employer Agent) Fiscal ISO Model (continued)

* Disadvantages for Individuals/Representatives

- Individuals/representatives are the employer of record of their support service workers and some may not wish to be.

* Disadvantages for Local or State Government Agencies

- A government agency has to prepare and issue a Request for Proposals (RFP) and conduct the vendor selection process to engage a Vendor Fiscal ISO;
- Since the Fiscal ISO market is very diverse, vendors who bid to be the Fiscal ISO function can vary significantly (e.g., payroll agency to social service agency). Government agency staff need to be knowledgeable about Fiscal ISO functions and tasks in order to judge and rate bidders' knowledge, experience effectively;
- A government agency must have the funds in its budget to pay the Vendor Fiscal ISO for services rendered or request them from the state legislature or other sources;
- A government agency must develop and implement a performance-based contract and a process for rebidding Fiscal ISO contract(s) on a periodic basis;

XI. Advantages and Disadvantages of Using the Vendor (IRS Employer Agent) Fiscal ISO Model (continued)

* Disadvantages for Local or State Government Agencies (continued)

- A government program agency must develop effective policies and procedures to monitor Vendor Fiscal ISOs' performance to assure program accountability and integrity and compliance with state and federal tax and labor laws; and
- It may be more difficult to incorporate new programs under the Vendor Fiscal ISO function during the contract period and reimburse the Fiscal ISO for any additional related expenses due to provisions in existing contract(s).

XII. Advantages and Disadvantages of Using an Agency with Choice ISO

* Advantages for Individuals/Representatives

- Provides individuals/representatives with a moderate to high level of autonomy and control over their services and workers (depending on program design and the ISO's commitment to the philosophy of consumer-direction);
- Can provide the maximum level of supports to the individual/representative related to completing the required employer-related tasks depending on the individual/representative's desires and needs;
- Allows the individual/representative to be the managing employer rather than the employer of record; this is particularly advantageous for individuals when an individual's cognition and/or competency is an issue;
- Can provide a range of training opportunities and other benefits (e.g., health insurance) to support service workers depending on the design of the ISO model; and
- Can provide the emergency back-up staff individuals need.

XII. Advantages and Disadvantages of Using an Agency with Choice ISO (continued)

* Advantages for Local or State Government Agencies

- Ensures a government program agency that IRS and DoL regulatory compliance has been achieved;
- Ensures a government program agency that individuals/representatives can obtain the support service workers they need regardless of the day of the week or time of the year (e.g., holidays, weekends);
- Ensures a government program agency that there is a valid employer-employee relationship when individual's cognition and/or competence is compromised;
- Ensures a government program agency that workers are receiving at least a basic level of orientation and/or training (depending on program design) and basic benefits (e.g., worker's compensation, and possibly health and life insurance); and
- Enables a government program agency to implement community-based support service programs that reflect individuals' desires for increased autonomy and control over their support services and workers and allows public funds to follow program participants rather than service providers.

XII. Advantages and Disadvantages of Using an Agency with Choice ISO (continued)

* Disadvantages for Individuals/Representatives

- If the design of the ISO model or the ISO's leadership does not adequately reflect/support the philosophy of consumer-direction, the ISO model could provide individuals/representatives with a minimal level of autonomy and control over their services and workers (e.g., traditional agency providers).

* Disadvantages for Local or State Government Agencies

- If the design of the ISO or the philosophy of the ISO leadership does not adequately reflect/support the philosophy of consumer-direction, then a government program agency will be unsuccessful in providing support services to the service population in a consumer-directed manner.

XIII. Advantages and Disadvantages to Using a Spectrum ISO

* Advantages for Individuals/Representatives

- The individual and his or her representative, when appropriate, can access the full range of intermediary services to assist them in using consumer-directed support services through a seamless ISO service delivery system rather than having to enroll in, and disenroll from, a variety of programs in order to get the intermediary services he or she needs throughout his or her life.

* Advantages for Local or State Government Agencies

-- Provides a seamless ISO service delivery system that meets individuals' and their representatives' needs throughout their lives in an efficient, effective and consumer-directed manner by: reducing duplication of programs; and eliminating program inequities.

XIII. Advantages and Disadvantages to Using a Spectrum ISO (continued)

* Disadvantages for Individuals/Representatives:

-- None to speak of.

* Disadvantages for Local or State Government Agencies

-- The design of this ISO is more complex from an organizational perspective because it includes a range of intermediary services where the individual or his or her representative may or may not be the employer of record of his or her worker and may include the Spectrum ISO or a subcontractor to the Spectrum ISO being a direct service provider;

-- Government agencies must watch for any conflicts of interest that may exist for the Spectrum ISO and/or its subcontractors; and

-- If the ISO chooses to subcontract with one or more entities to perform the various intermediary services, a government provider agency must be able to monitor both the prime contractor and the subcontractor's performance and commitment to the philosophy of consumer-direction.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs?

* States have had to address a number of issues in implementing consumer-directed support service programs using Intermediary Service Organizations (ISOs). These include:

* Selecting the appropriate ISO model(s) for the targeted service population: individuals have varying levels of ability (e.g., cognition) and desire to perform the required employer tasks.

* Determining individuals' and representatives' ability and desire to manage employer-related tasks:

* Some consumer-directed support service programs provide skills training to individuals/representatives to assist them in participating in the program, and

* Some consumer-directed support service programs assess individuals' competency in performing the required tasks in order to certify them to participate under certain ISOs (e.g., Fiscal Conduit).

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

* Defining the role and responsibilities of individuals' representatives in consumer-directed support service programs that use ISOs:

-- a relative versus non-related representative,

-- a representative who is a primary member of the individual's Network of Support versus someone who interacts with the individual on an infrequent basis (e.g., lawyer, legal guardian or person with durable power of attorney), and

-- the role the representative is willing to play (e.g., be the employer of record of the individual's worker(s)).

* Defining the role and responsibilities of the ISO(s) and the type of services it will provide:

-- Clearly defining the roles and responsibilities of each type of ISO used, the program agency, the individual and his or her representative, support service workers agency providers and vendors and identifying the services to be provided by each ISO type is key

for effective program design and implementation.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

- * Identifying federal requirements (e.g., labor, tax, insurance) for Fiscal ISOs:
 - Requesting approval to be an IRS Employer Agent (IRS Form 2678) (Government vs Vendor Fiscal ISO) on behalf of individuals/representatives,
 - Obtaining a federal employer identification number (EINs) for the entity to be the Fiscal ISO and for each individual it represents (IRS Form SS-4),
 - Minimum wage and overtime rules per the federal Fair-Labor Standards Act for Domestic Employees
 - Domestic service worker
 - Companionship exemption
 - Live-in help exemption
 - Night help provision
 - Federal income tax withholding (optional for domestic employees),
 - Social Security and Medicare withholding (FICA),
 - Federal Unemployment Tax withholding (FUTA),

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

- * Identifying federal requirements (labor, tax, insurance) for Fiscal ISOs (continued):
 - Tax depositing rules,
 - Preparation of the IRS Forms W-2 and W-3,
 - Refunding the employer and employee for withheld employment taxes (e.g., FICA) when the worker does not earn the minimum gross wage amount to pay federal employment taxes in a calendar year (I.e., \$1,300 in CY 2001 for FICA),
 - Social Security Domestic Reform Amendments (SSDERA) of 1994
 - Filing IRS Forms 940/941 quarterly vs Schedule H annually,
 - Federal Advanced Earned Income Credit, and
 - INS Verification of Citizenship and Legal Alien Status.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

- * Identifying local and state-specific requirements (e.g., labor, tax, insurance, worker training and nurse practice act):
 - Some states' Departments of Labor do not recognize the companionship and live-in help exemptions,
 - State income tax withholding, filing and depositing may be required even though federal income tax is not required,
 - State unemployment tax (SUTA) laws related to withholding, filing and depositing vary by state,
 - Worker's compensation law varies by state,
 - Five states have disability insurance laws (CA, HI, NJ, NY and RI),
 - Some states require that criminal background checks be performed for all persons providing supportive services in the home,
 - Some states have a basic training requirement for all non-licensed personal care workers and may require their activities to be overseen by a health care professional,
 - State nurse practice acts vary by state and can have a significant effect on what a worker may or may not do for an individual in the home, and
 - Some states and counties have specific contracting requirements for service providers.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

- * Recruiting entities to bid to be an ISO(s):
 - Currently, ISOs are a new and broadly defined niche market; with a small vendor pool; vendors vary significantly in their knowledge of and experience with the required tasks,

- State and county RFP processes represent a significant amount of time and effort, and
- Some states have required ISOs to provide a broad range of services and, at times, these requirements can deter vendors from bidding, limiting the vendor selection pool.

* Selecting an ISO(s) vendor and monitoring its performance:

- An ideal ISO provider is one that has the required skills and experience and is committed to the philosophy of consumer-direction,
- States continue to analyze the benefits of having one statewide ISO or a number of regional ISOs; decisions reflect a number of trade-offs, and
- Development of clear and concise contracts with measurable performance standards and an effective monitoring system is key to successfully purchasing services from an ISO. States/counties must be able to terminate an ISO contract without undue service interruption for individuals when poor performance occurs.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

* States vary in how they pay ISOs (e.g., total budget amount versus price per transaction performed).

* States vary on how they operationalize a Fiscal ISO (e.g., issue state contract as adjunct to State's fiscal agent vs Medicaid provider).

* States vary in whether and how they apply cost-sharing provisions to program participants to cover some/all of the cost of ISO services rendered.

* States that choose to be the Government (IRS Employer Agent) Fiscal ISO:

- Find that incorporating the payroll function for workers into the state payroll function extremely problematic; running separate but parallel systems has been found to be more successful,
- Find that identifying and tracking expenses related to performing the Fiscal ISO function is a challenge, and
- Find it a challenge to achieve significant cost efficiencies.

* Claiming federal matching funds for the ISO function:

- DHHS/HCFR has yet to decide how states should claim the costs associated with ISOs for the purpose of claiming FFP.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

* HCFA's Medicaid provider agreement requirement:

- HCFA requires that Medicaid agencies execute a Medicaid provider agreement with every provider and vendor that receives Medicaid funds,
- A provider agreement can be brief (1-2 pps). To date, HCFA has yet to define what the key components should be; however, it should include an assurance/statement that the worker is capable of performing the required tasks.

XIV. What Issues Have States Had to Address In Implementing Consumer-directed Support Service Programs Using ISOs? (continued)

* Addressing individual/representative noncompliance:

- The majority of support service workers are employees of someone. Rarely are they independent contractors. The employment status of a worker can be verified by filing an IRS Form SS-8 to request a ruling from the IRS. The ruling will be specific to the particular worker.
- The liability for individual/representative non-compliance with filing and paying federal and state employment taxes and insurances rests with the individual/representative. However, taxing authorities (particularly state unemployment) may look to a state when an individual can not pay the back taxes due, since the state is the original source of the public funds. As a result, compliance is important to reduce state and individual liability.
- In the case of the RWJ Cash and Counseling Demonstration Projects, an individual/representative who is unsuccessful at managing his or her grant funds directly

(using the Fiscal Conduit option) may use the Vendor Fiscal ISO option rather than leave the consumer-directed support service program completely.

XV. What Are ISOs' Experiences and Issues?(continued)

* Supportive ISOs reported:

-- Staff have reported that the learning curve for individuals and their representatives to understand the consumer-directed support service model can be steep in the beginning. It takes time (12 - 18 months) for individuals and their representatives to effectively use the options available to them and to understand that they are the "manager" of their services and supports.

-- Some case management staff find it challenging to take on a "consultant" role, allowing the individual to make less than optimum decisions and then learn from them. Effective staff training and support is key to successfully implementing the "consultant" role.

-- Supportive ISOs that establish and maintain worker registries find it a challenge to keep them current and to screen for any abuse and neglect violations.

-- Supportive ISO functions should not duplicate services and supports already being provided by state/local government case management staff. Government program agencies must make sure that support positions, roles and responsibilities are unique and make sense.

XV. What Are ISOs' Experiences and Issues?

* Fiscal ISOs reported:

-- IRS regional service center staff contacted often did not know what an IRS Employer Agent was, the process to be authorized as an Employer Agent, and the process an Employer Agent should use to file employment taxes on behalf of individuals/representatives.

-- Communications with IRS regional center staff have been inconsistent. "Talk to three people and you'll get three different answers."

-- Obtaining FEINs for individuals/representatives in a timely manner has been a challenge. The level of difficulty varied by region and Fiscal ISO reporting.

-- Some Fiscal ISOs found it a challenge to use the IRS Schedule H process when an individual was not capable of self-directing his or her own services.

-- DHHS/ASPE has developed a workgroup with the IRS to clarify the roles, responsibilities and processes to be used by Government and Vendor (IRS Employer Agent) Fiscal ISOs.

XV. What Are ISOs' Experiences and Issues?(continued)

* Some Fiscal ISOs reported communication problems similar to the IRS with their state income and employment tax agencies. These were resolved with effective communication and education.

* Some Fiscal ISOs reported that although there was a vehicle for individuals to purchase affordable workers compensation (WC) insurance coverage for their workers, in some cases, the carriers were not willing to sell it due to small profit margins. However, in some states, (e.g., NJ) individuals can purchase WC insurance through the state's risk pool at affordable rates. In addition, in other states (e.g., MA and NJ) Fiscal ISOs were successful in brokering WC insurance policies with particular carriers (volume purchasing) to make it more financially desirable to the carrier.

* Fiscal ISOs reported spending more time communicating with/orienting individuals to the program and services than expected (raising a labor and cost issue). However, once individuals were educated, they reported the level of effort in this area decreased.

* Some Fiscal ISOs reported a significant time lag between when they executed their contract with the State and when they started serving individuals (raising cash flow issues).

* Fiscal ISOs continue to try to develop effective ways to test consumers' abilities to manage the payroll tasks effectively.

XV. What Are ISOs' Experiences and Issues?(continued)

* Agency with Choice ISOs reported:

-- That if the Agency with Choice is highly consumer-directed it can appear to function as a Vendor Fiscal ISO (however, they are the employer of record of the workers). Examples of this are Concepts for Independence in NYC and Granite State Independent Living in NH.

-- Some stressed the importance of using the same hiring policies and procedures for workers referred by individuals for hire as for those recruited by the agency under their traditional service.

-- Some stressed the importance of all workers receiving training regardless of whether they are referred by an individual or are recruited by the agency under their traditional service. More consumer-directed programs often do not agree with this approach.

-- Some expressed a concern about the potential of being "joint employers." "Where does the liability fall (e.g., when discharging a worker)."

