

## Supports Waiver Employer of Record Questionnaire

**Employer of Record (EOR)** is the individual responsible for directing the work of Supports Waiver Participant Directed employees, including recruiting, hiring, managing and terminating all employees. The EOR is responsible for directing the work of any vendors contracted to perform services. The EOR tracks expenditures for employee payroll, goods and services. EOR's authorize the payment of timesheets and vendor payment requests by submitting the information to the financial management agency (FMA).

In order to be an Employer of Record (EOR) in the Supports Waiver, the following qualifications must be met:

- (a) A participant may **be** his/her own EOR unless the eligible recipient is a minor or has plenary or limited guardianship or conservatorship over financial matters in place.
- (b) An Employer of Record who is not the participant must be a legal representative of the recipient.
- (c) A power of attorney (POA) or other legal instrument may not be used to assign the EOR responsibilities, in part or in full, to another individual and may not be used to circumvent the requirements of the EOR.
- (d) A person under the age of 18 years may not be an EOR.
- (e) An EOR who lives outside New Mexico shall reside within 100 miles of the New Mexico state border within the United States.
- (f) The participant's paid provider may not also be his or her EOR.
- (g) An EOR whose performance compromises the health, safety or welfare of the participant, may have his or her status as an EOR terminated.
- (h) An EOR may not be paid for any other services utilized by the participant for whom he or she is the EOR, whether as an employee of the participant, a vendor, or an employee, contractor or subcontractor of an agency. An EOR makes important determinations about what is in the best interest of the participant and should not have any conflict of interest. An EOR assists in the management of the participant's budget and should have no personal benefit connected to the services requested or approved on the budget.

Employer of Record (EOR) responsibilities include:

1. Arranging for the delivery of services, supports and goods as approved in the Individual Service Plan (ISP);
2. Orienting, training, ensuring employees complete all DOH required training courses, and directing employees in providing the services that are described and authorized in the participant's ISP;
3. Establishing a mutually agreeable schedule for employees' services in writing and providing fair notice of changes in the employee's work schedule in the event of unforeseen circumstances or emergencies;

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4. Submitting all required documents to the Fiscal Management Agent (FMA). Documents must be completed and provided to the FMA according to the timelines and rules established by the State. Documents include, but are not limited to, vendor and employee agreements, vendor information forms, criminal background check for timesheets via the Supports Waiver online system, complying with all Electronic Visit Verification requirements, payment request forms (PRFs) and invoices, updated employee information, and other documentation needed by the FMA to process payment to employees and vendors;
5. Agreeing that employees may not begin work until all materials necessary for a criminal background check have been received by FMA and the employee has successfully passed the Consolidated Online Registry (COR) Background Check.
6. Agreeing to select or employ the employee on an interim (temporary) basis until a final criminal history record check has been completed, for those crimes determined to be disqualifying convictions as stated in NMSA 1978, Section 29-17-3. The employer discusses this with the employee and reserves the right to dismiss the employee based on the results of the criminal history record check.
7. Authorizing completed employee timesheets in order to pay employees according to the predetermined payroll schedule. Net wages will include gross earnings calculated according to the employee's pay rate, minus payroll deductions for the employee's share of applicable state, federal, and local payroll withholdings;
8. Reporting any incidents of abuse, neglect or exploitation by any employee or other service provider according to Department of Health Improvement reporting guidelines.
9. Maintaining employee and service records and documentation in accordance with Supports Waiver rules and Federal and State employment rules;
10. Fully cooperating with the NM Department of Workforce Solutions (DWS) in any investigations or other matters related to his/her employees;
11. Fully cooperating with the State's worker's compensation carrier. Responsibilities include reporting claims and providing information to the State's worker's compensation carrier;
12. Meeting Federal employer requirements, such as completing and maintaining a Federal I-9 form for each employee as required by law; and
13. Being aware of and refer to the Supports Waiver Standards.
14. Comply with all Supports Waiver Program requirements.
15. When necessary, requesting assistance from the Community Support Coordinator with any of these responsibilities.

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This form is to be completed by the **Supports Waiver eligible** participant and Community Support Coordinator upon the Supports Waiver Service Model selection and prior to initial and annual development of the Individual Support Plan (ISP).

Participant Name \_\_\_\_\_

Participant Date of Birth \_\_\_\_\_ Participant SS# \_\_\_\_\_

Community Support Coordinator Provider Agency \_\_\_\_\_

Name of Community Support Coordinator \_\_\_\_\_

Date Section I completed \_\_\_\_\_

**I. To assist the participant with determining if they can be the EOR:**

Does the participant want to be his/her own EOR?

YES NO

*If no, the participant must select an EOR that is a legal representative.*

Is the participant a minor?

YES NO

*If yes, the participant cannot be his/her own EOR. The EOR must be a legal representative.*

Does the participant have a plenary or limited guardianship or conservatorship over financial matters in place?

YES NO

*If yes, the participant cannot be his/her own EOR and the EOR must be a legal representative.*

*If yes, the consultant must obtain a copy of the  
Guardianship/Conservatorship Order.*

Does the participant have a power of attorney (POA) over financial matters in place?

YES NO

*If yes, the participant cannot be his/her own EOR and the EOR must be a legal representative.*

*If yes, the community support coordinator provider must obtain a copy of the  
POA and verify that the participant has designated another individual to make  
financial decisions on their behalf.*

Participant Signature (if applicable)

Date

\_\_\_\_\_  
Legal Representative Signature (if applicable)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Community Support Coordinator Signature

\_\_\_\_\_  
Date

**Once an EOR is identified, the Community Support Coordinator must complete Section II (below).**

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### II. Additional questions:

Who is the EOR?

*(CSC must confirm with the participant the EOR is not a paid provider of Supports Waiver services)*

Has the EOR received the required training about using the FMA On-line Portal?

YES NO

Does the EOR currently approve and submit timesheets and mileage electronically through the FMA On-line Portal?

YES NO

If no, please explain why and confirm an exception has been granted to this EOR by the State to submit timesheets electronically:

Has the EOR received guidance on how to complete the PRF and submit the PRF and invoice to the FMA for vendor payments?

YES NO

Did the CSC review the responsibilities of the EOR with the participant?

YES NO If yes, please note the date: \_\_\_\_\_

Based on the review of the EOR responsibilities, does the EOR need assistance with any of the EOR responsibilities listed on page 1 of this form?

YES NO N/A

If yes, which ones?

If yes, who will provide assistance?

As Employer of Record I verify that I have reviewed the requirements and responsibilities of the Employer of Record role for the Supports Waiver.

Employer of Record

Date

\_\_\_\_\_  
Community Support Coordinator Signature

\_\_\_\_\_  
Date

***This form must be completed prior to completing and submitting the Employer/Member enrollment form to the FMA and to submitting the Service Model Selection Form to DDSD.***