



**Mi Via Self-Directed Waiver**  
**Employer of Record (EOR) Questionnaire Effective 12-15-18**

In order to be an employer of record (EOR) in the Mi Via Self-Directed Waiver, the following qualifications must be met:

- (a) A participant that has a plenary or limited guardianship or conservatorship over financial matters may not be his or her own EOR.
- (b) 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.
- (c) A person under the age of 18 years may not be an EOR.
- (d) An EOR who lives outside New Mexico shall reside within 100 miles of the New Mexico state border. Any out of state EOR residing beyond this radius who was approved as an EOR prior to March 1, 2016, may continue to serve as the EOR.
- (e) The participant's paid provider may not also be his or her EOR.
- (f) An EOR whose performance compromises the health, safety or welfare of the participant, may have his or her status as an EOR terminated.
- (g) 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 Service and Support Plan (SSP);
2. Orienting, training, and directing employees in providing the services that are described and authorized in the participant's SSP;
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;
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 forms,

time-sheets via the Mi Via online system, 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 to the Department of Health, Division of Health Improvement;
9. Maintaining employee and service records and documentation in accordance with Mi Via Self-Directed 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. When necessary, requesting assistance from the Consultant with any of these responsibilities.



**Mi Via Self-Directed Waiver**

**Employer of Record (EOR) Questionnaire 12-15-18**

This form is to be completed by the **Mi Via Waiver eligible** participant and consultant upon the initial and annual development of the Service and Support Plan (SSP). If participant is utilizing vendors only and they, or their Authorized Representative, is authorized to sign Payment Request Forms (PRF) for vendors, this document may not be required.

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

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

Consultant Provider Agency \_\_\_\_\_

Name of Consultant \_\_\_\_\_

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.*

Is the participant a minor?  YES  NO

- *If yes, the participant cannot be his/her own EOR and must select an EOR.*

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 must select an EOR.*
- *If yes, the consultant must obtain a copy of the Guardianship/Conservatorship Order or Authorized Representative Appointment Form.*

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

YES  NO

- *If yes, the participant may be his/her own EOR however the POA 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.*
- *If yes, the consultant 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 \_\_\_\_\_

Authorized Representative Signature (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

Consultant Signature \_\_\_\_\_ Date \_\_\_\_\_

Once an EOR is identified, the Consultant must complete Section II (below). If necessary, this section can be completed during the next scheduled monthly contact.

**II. Additional questions:**

Who is the EOR? \_\_\_\_\_  
(Consultant must confirm with the participant the EOR is not a paid provider of Mi Via services)

Has the EOR received training on how to approve and submit timesheets and mileage through FOCoSonline?  YES  NO

Does the EOR currently approve and submit timesheets and mileage electronically through FOCoSonline?  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 Consultant 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 participant, if they are 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?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Consultant Signature \_\_\_\_\_ Date \_\_\_\_\_

***Upon completion, this form must be maintained in the participant's file.***