Public Comments: 2016 Mi Via Waiver Standards

The Department of Health (DOH) obtained public input for consideration regarding the proposed 2016 Mi Via Waiver Standards. DOH solicited input via multiple forums including: emails, web postings, and the Mi Via Waiver Monthly Newsletter.

Date, Submission Mode	Public Comments	State Response
November 11, 2015 Submitted via email	**Comment:** **Standards H. Coordination with MCO Services** Comment: First paragraph is confusing and not clear. Who does CC help? Since whole paragraph seems to define CC in general, can we omit? Paragraph. Second paragraph seems adequate to use in Standards without first paragraph also. Simpler to understand. "The process to ensure coordination of care for MCO members includes". Comment: add….including Mi Via participants	***State Response: Thank you for your comment. The language stands as proposed.***
	Comment: **Standards H. Coordination with MCO Services (c)** "With the member's consent to share information, the care plan should be shared and utilized by those involved in providing care to the member." Comment: Are Mi Via participants required to give this consent? Clarify Please	***State Response: As the language states "the member's consent" is needed to share information. Consent may also be provided by the member's legal guardian, or authorized representative. Thank you for your comment. The language stands as proposed.***
	Comment: **Standards H. Coordination with MCO Services (d)** "Verification of all decisions made regarding the member's needs and services, and ensures all information is documented in a written, comprehensive plan". Comment: What does verification mean and how does it relate to Mi Via? Clarify	***State Response: Verification ensures that all services are medically necessary and not duplicative of waiver services. Thank you for your comment. The language stands as proposed.***

	Comment: **Standards H. Coordination with MCO Services 5th paragraph (b)** "The MCO will utilize the LOC and CIA information to complete certain portions of the CNA". Comment: This sentence is classic alphabet soup. Ugh. Suggest spelling out CNA again here, since it is an unfamiliar term to Mi Via and has been awhile since spelled out in document. Sentence i	***State Response: Level of Care (LOC) was previously defined in Section 1. Subsection E. Managed Care Organization (MCO) and comprehensive needs assessments (CNA) were previously defined in Section 1. Subsection H. Comprehensive Individual Assessment (CIA) is clarified in Section 1. Subsection H. (a).***
	Comment: **Standards H. Coordination with MCO Services 5th paragraph (c)** "While the MCO is responsible for the annual CNA visits and the Consultant assists the participant with the MI Via LOC assessment process and SSP development, the MCO and Consultant are encouraged to coordinate the CNA visits and TPA LOC in-home assessment at the same time in order to reduce the burden to the participant/member and the participants family". Comment: Good idea! But is this happening yet? Do consultants and CNA know this yet? Training needed.	***State Response: Thank you for your comment. This comment has been noted by the state.***
	Comment: **Standards 3. Definitions and Acronyms**: Employer of Record: A participant may be his or her own EOR unless the participant is a minor or has an authorized representative over financial matters in place. Comment: Or has a guardian.	***State Response: Thank you for your comment. The term "Authorized Representative" was made to align the terms with other Medical Assistance Division (MAD) New Mexico Administrative Code (NMAC). The Standards define this term which includes guardian.***
	Employee: Comment: Not in alphabetical order	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Standards 4. Mi Via Contractors and Supports FOCoS*online*: The Mi Via Plan of**	***State Response: Thank you for your comment. The state will make the edit.***

	Care on-line system "In addition to the above functions, the FMA operates the FOCoS*online* system through which the Mi Via program is operated through. Comment: Need second through?	
	Comment: **Standards 5. Determining Level of Care** A. **First Paragraph Last Sentence** "These forms and instructions are enclosed in the allocation packet sent to the participant by the Department of Health and are submitted upon completion to the TPA by the Participant." Comment: or by the Participant's physician, if he/she agrees to do so.	***State Response: It is the responsibility of the participant to ensure that the Long Term Care Assessment Abstract is completed and submitted to the TPA. The state will make the edit to indicate this.***
	Comment: **Standards 6. Planning and Budgeting for Services and Goods D Budget Spending Authority (1) Budget-Spending Authority** Comment: Be consistent with both titles and call both budget making or budget spending-also decision making or budget making. Keep in same order	***State Response: Thank you for your comment. All three types of specific participant authority outlined in this section are considered to be an authority "related" to their Mi Via Budget.***
	Comment: **Standards 6. Planning and Budgeting for Services and Goods D Budget Spending Authority (2) Employer Authority** "The Employer of Record (EOR) is the common law employer of service providers." Comment: What does common law mean? Is it like common law marriage, not legally valid? Needs Clarification	***State Response: Thank you for your comment. The state will edit the language to be consistent with the definition of the Employer of Record (EOR) as the "employer".***
	Comment: **Standards 8. Service and Support Plan and Budget Approval Process SSP Review Criteria Arrow 3** "the services or goods must accommodate the participant in managing his/her household; or". Comment: "or" or "and"?	***State Response: Thank you for your comment. This is written to be consistent with 8.314.17 Section C of the NMAC. The language stands as proposed.***
	Comment: **Standards 8. Service and Support Plan and Budget Approval Process SSP Review**	***State Response: State Response: Thank you for your comment. This is written to be consistent with***

	Criteria Arrow 4 "the services or goods must facilitate activities of daily living; or Comment: "or" or "and"?	***8.314.17 Section C of the NMAC. The language stands as proposed.***
	Comment: **Standards 8. Service and Support Plan and Budget Approval Process C. Requests for Additional Funding over the IBA 1. Chronic physical condition second paragraph** "The participant must submit a written, dated, and signed evaluation or letter from a medical specialist either a medical doctor (MD)…… Comment: add comma after medical specialist	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Standards 10. Implementation of the Service and Support Plan and Budget A. Other Required documents 4th paragraph** "Vendors who are providing goods only (such as a large retailer) do not need to provide such documentation, however, the participant or vendor must submit the Vendor Information Form to the FMA before is issued" Comment: to the FMA before they are what?	***State Response: Thank you for your comment. The state will edit the language to reflect "before payment is issued".***
	Comment: **Standards 10. Implementation of the Service and Support Plan and Budget B. Timesheets 1st paragraph last sentence** "Timesheets may also be mailed, faxed or delivered directly to the FMA" Comment: "Instead of using FOCoSonline, timesheets may also be mailed, faxed or delivered directly to the FMA"	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***
	Comment: **Standards 10. Implementation of the Service and Support Plan and Budget B. Vendor Invoice 1st paragraph 8th sentence** "Vendor Checks can be mailed directly to the participant, authorized representative or the EOR" Comment: Add period at the end of the sentence.	***State Response: Thank you for your comment. The state will make the edit.***

	Comment: **Standards 13. Termination from the Mi Via Program A. Voluntary Termination first sentence** "Current waiver participants are given a choice of receiving services through an existing waiver or Mi Via." Comment: specify…"an existing"	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***
	Comment: **Appendix A Qualifications that apply to all Mi Via Individual Employees, Independent Providers, Provider Agencies, and Vendors I General qualifications for individual employees and employees of vendors (provider agencies) who are employed by a Mi Via participant to provide direct services (d)** Individual Employees: pass a nationwide caregiver criminal history screening pursuant to NMSA 1978, Section 29-17-2 et seq. and 7.1.9 NMAC and an abuse registry screen pursuant to NMSA 1978, Section 27-7a-1 et seq. and 8.11.6 NMAC prior to initial hire and every three years after initial hire. Comment: Please define NMSA and NMAC	***State Response: Thank you for your comment. The state will make the edit to define the acronyms..***
	Comment: **Appendix A: Ongoing Consultant Services II Scope of Services A. 6. "**Reviews the Mi Via Service Standards with the participant and either provide a copy of the Standards or assist the participant to access the Mi Via Service Standards online**."** Comment: "Review….	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Appendix A: Ongoing Consultant Services II Scope of Services A. 10 1st sentence** "Revisions, requests for additional funding and justification for payment above the range of rates should be completed and submitted as needed, in a format as prescribed by the state, which includes the use of FOCoS*online.* Comment: "~~Revisions, requests for additional funding and justification for payment above the range of rates should be completed and~~	***State Response: Thank you for your comment. The state will make the edit to indicate the consultant shall: "Complete and submit revisions, requests for additional funding and justification for payment above the range of rates as needed, in a format as prescribed by the state, which includes the use of FOCoSonline".***

	~~submitted~~ Complete and submit revisions as needed…."	
	Comment: **Appendix A: Ongoing Consultant Services II Scope of Services A. 25 a.** "Provide education related to how to use the Mi Via program and provide information on program changes or updates as part of the overall information sharing." Comment: providing education…..Be consistent on each entry to be correct grammatically after lead sentence of Support guide services include……	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Appendix A: Ongoing Consultant Services III Contact Requirements 3** "Review whether service are meeting the participant's needs" Comment: "services"	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Appendix A: Home Health Aide II Scope of Services (a)** "Provide personal hygiene (e.g. sponge bathing, showering, shaving, oral hygiene dressing) and associated supports (e.g. linen change, laundry, bed shampooing, cleaning); Comment: add comma after oral hygiene	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Appendix A: Homemaker/Direct Support I Homemaker/Direct Support 1st paragraph 2nd sentence** "Homemaker/Direct Support services are provided in the participant's ow private home and in the community, depending on the participant's needs and choice" Comment: "own"	***State Response: Thank you for your comment. The state will make the edit.***
	Comment: **Appendix A: Related Goods II Scope of Service (b)** "Explicitly address a clinical, functional, medical or habilitative needs; and" Comment: omit "a"	***State Response: Thank you for your comment. The state will make the edit.***

	Comment: **PHONE CALL:** Comment: Reporting for Abuse, Neglect and/or exploitation should be included somewhere in the Standards.	***State Response: Thank you for your comment. The Mi Via Standards Appendix A (Mi Via Service Descriptions) do indicate that Consultants, employees and employees of vendors must complete training on critical incident, abuse, neglect and exploitation reporting. Reporting for abuse, neglect, and/or exploitation is mandated in 8.314.6 NMAC.***
December 7, 2015 Submitted via Email	**Comment:** **Appendix A, Ongoing Consultant Services, VII Conflict of Interest, Section B** Alianza Family Services strongly opposes the proposed rule for the following reasons: !) there is no conflict of interest between traditional direct support agencies and Mi Via *unless they also elect to provide Mi Via vendor services*. Current standards already address the clear conflict between vendors and consultants; 2) the proposed rule exempts case management agencies since they do not provide "direct support services." By permitting case management agencies to also act as consultants, the rule ignores the potential for consumers to be influenced into one waiver or another by an interested party; (3) it arbitrarily prevents qualified direct support agencies from transferring their expertise to Mi Via consultancy; 4) it restricts consumer choice; 5) six consultant agencies are not meeting the current statewide needs of Mi Via participants. Suggestion: We request this rule not be enacted. If the intent is to strengthen conflict of interest between vendors and consultants, then we recommend extending the language on affiliation from Section B to Section A. If the intent is to separate consultant services from the traditional DD waiver, then the rule should apply to all DD agencies including case management.	***State Response: Thank you for your comment. Independent Mi Via Consultants are awarded a contract through the Department of Health to provide services and a participant is required to choose one of those contracted agencies. Mi Via Consultant agencies do not provide direct services through any other 1915 (c) Waiver Program in order to avoid conflict of interest. This requirement is in accordance with the requirements of 42 CFR 431.301(c) (1) (vi) and 42 CFR 441.730 (b). The language stands as proposed.***
December 7, 2015 Submitted via email	**Comment:** **Service Standards On-going Consultant Functions** - there is no timeline for assisting	***State Response: Thank you for your comment. Mi Via is a self-directed waiver supporting each participant***

	with "virtually every aspect of the Mi Via program." It is not clear whether these items should be completed according to a timeline, and what the consultant responsibility is vs. the participant. Suggestion: Place a timeline for the participant to complete this function on their own.	***to gain familiarity with the Mi Via program at their own pace and to determine the level of support they require from their Consultant in order to be successful.***
	Comment: **Service Standards On-going Consultant Functions** Support Guide Functions – as of now the Consultant is the Support Guide, which means the consultant will have to assist the participant with all the functions required by the FMA and make sure the participant effectively self-directs their services. If the consultant is doing all the FMA functions for the participant, isn't the program losing self-direction? Again there is no time line for assisting with this function. According to the Service Standards this could be a forever function of the consultant/support guide.	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***
	Comment: **Service Standards Planning & Budgeting for services and goods** the wording of meaningful life in the community is traditional DD Waiver language, and should not be used with the Mi Via Self-Directed Waiver. Suggestion: Leave out the traditional DD Waiver language.	***State Response: Thank you for your comment. This is part of a descriptive section that further emphasizes person-centered planning that revolves around the participant and reflects his or her chosen lifestyle, cultural, functional, and social needs for successful community living. The participant defines those things that makes their life meaningful, not a specific waiver. The language stands as proposed.***
	Comment: **Service Standards Continuation of Benefits** the notice will include information on the right to continued benefits and on the participant's responsibility for repayment if the hearing decision is not in the participant's favor. This suggests that what	***State Response: Thank you for your comment. This language aligns with 8.314.3.21 NMAC. Repayment is not required if it is determined that the denied services under appeal are approved as a result of the fair hearing. Continuation of benefits is***

	the participant has requested did not have information why they needed it. And it does not give a clear indication on the repayment. Do they have to come up with a payment plan or do they just have to acknowledge that they know about it? Suggestion: Leave this part out.	***at the participant's request. This allows the participant the option to request to continue receiving services during the appeal process, with the knowledge that if the finding is not in the participant's favor, repayment of services received during the appeal period is required. The language stand as proposed.***
	<u>Comment:</u> **Appendix B Details of Living Supports** there is no reference to goods as part of living supports. Participants are not going to associate living supports with goods unless it is made more clear. Suggestion: Include the word goods in the column heading with living supports.	***State Response: Thank you for your comment. Goods related to Living Supports fall under the category of Related Goods as per 8.314.6 NMAC for which the SSP must comply. Related Goods are to be captured under Other Supports in the SSP. Other Supports per the Mi Via Standards are available to enhance other services on the participant's plan and are captured in this specific section of the SSP regardless of the service they are enhancing.***
	<u>Comment:</u> **Appendix B Details of Community Membership Supports** : same as above - there is no mention of goods. Suggestion: Include the word goods in the column heading with living supports.	***State Response: Thank you for your comment. Goods related to Community Membership Supports fall under the category of Related Goods as per 8.314.6 NMAC for which the SSP must comply. Related Goods are to be captured under Other Supports in the SSP. Other Supports per the Mi Via Standards are available to enhance other services on the participant's plan and are captured in this specific section of the SSP regardless of the service they are enhancing.***
December 9, 2015 Submitted via email.	**<u>Comment:</u>** **Supported Employment Whole Section** Concerned that individuals who currently have jobs they like and that help them be contributing member of their community will be unemployed if they can no longer utilize Mi Via funding to pay for services.	***State Response: Thank you for your comment. The Mi Via Standards outline those services that are covered by the Mi Via Waiver as approved by the Centers for Medicare and Medicaid (CMS)***

	Suggestion: If this is a truly self-directed waiver, then the individual should be abel to choose where they want to work without conditions	***effective October 1, 2015 and supported by 8.314.6 NMAC.***
	Comment: **All Standards All Sections** It appears these standards are written with a more technical tone than the previous standards. Suggestion: With this being a self-directed waiver, some individuals who will be their own EORs etc., may not understand the way they are written and may not follow them as they need to due to not understanding them.	***State Response: Thank you for your comment. As noted in this document, there will be edits made throughout the Standards as a result of public comment.***
	Comment: **Customized Community Group Supports** This service is to be provided in an integrated community-based setting. Suggestion: Define integrated…..all of our day programs are in the community and they have disabled and non-disabled people in these settings, but where can we find a non-disabled participant to go to day program and have fun with the associates….?	***State Response: Thank you for your comment. On January 16, 2014 the Centers for Medicare and Medicaid Services (CMS) published a Final Rule which addresses and makes changes to the 1915(c) Home and Community-Based Services (HCBS) Waiver Program and includes information addressing integration.***
	Comment: Throughout the documents it talks about complying with Waiver Regulations: however, there are Mi Via Regulations. Why would compliance not fall under the Mi Via Regulations?	***State Response: Thank you for your comment. The "Waiver Regulations" reference 8.314.6 NMAC Mi Via Home and Community Based Services Waiver.***
	Comment: Are there General Qualifications for vendors (Individual Provider) as there are for vendors (Provider Agencies)? A number of the requirements for us could be challenging for the Individual Provider to follow (II.).	***State Response: Thank you for your comment. Appendix A of the Mi Via Service Standards contain a section called "Qualifications that apply to all Mi Via Individual Employees, Independent Providers, Provider Agencies and Vendors."***
	Comment: **Mi Via Service Standards-Planning and Budget for Services and Goods Section D Participants' Budget-Related Authority Section 3** Under the Participant's Budget-	***State Response: Thank you for your comment. Please refer to the Mi Via Standards 10. Implementation of the Service and Support Plan and Budget B. Vendor Invoices and Timely Filing***

	Related Authority is a sub section called Decision-Making Authority with bullet points underneath-Failure to submit timesheets with required timeframes could results in employees not being paid. Suggestion: What are those timeframes? It states nothing about requirements to pay a vendor? Or a vendor recourse when they are not getting paid.	***Requirements. This section outlines timeframes for vendor invoices and payment.***
	Comment: **VII** Conflict of interest needs to be followed	***State Response: Thank you for your comment. The comment has been noted by the state.***
	Comment: **Community Direct Support 31 h.** Last line of sentence is completely discriminatory towards and individual's peer group. "The individual will be supported to create such connections individually, not as a part of a group of people with disabilities" This cuts out all day hab environments. Suggestion: Remove the entire last sentence in section (h.)	***State Response: Thank you for your comment. Mi Via Customized Community Group Supports address congregate environments with peer groups.***
	Comment: **CCGS d.** Adhere to training requirements. Suggestion: What does this mean and what does it encompass specific to Mi Via funded individuals?	***State Response: Thank you for your comment. Vendors are required to adhere to training requirements they establish and maintain that will support the services they are providing through Mi Via. Vendors are also required to complete participant specific training as determined by the participant.***
	Comment: **CCGS e.** Develop and adhere to records management policy and maintain individual records for each participant. The Agency will maintain a confidential case file for each individual. That includes but is not limited to documentation of activities, progress and scope of work outlined in the Service Support Plan. Suggestion: Is there a State of NM File Matrix for Mi Via Participants? This would help create a	***State Response: Thank you for your comment. There is not a file matrix for Mi Via services. Vendors are responsible for managing their documentation as required for Medicaid providers and to obtain information as outlined in the Vendor Agreement.***

	uniformity with record and not leave it up to the provider to guess what is needed. Vendors are not provided or do not get a copy of the SSP from the Consultant. The Consultant and participant need to be required to give copy of the SSP and budget applicable to the vendor's service to the vendor.	
	Comment: **CCGS g.** Ensure all assigned staff meet the following qualifications; ii Have at least one (1) year of experience working with people with disabilities Suggestion: It is up to the agency to determine employment criteria for its staff. Some of the best staff come to an agency without prior experience and do well working with individuals with DD.	***State Response: Thank you for your comment. This requirement aligns with approved CMS Waiver NM.0448 appendix C. A public hearing was held for CMS Waiver NM.0448 appendix C on July 14, 2-14.***
	Comment: **CCGS vii.** Complete participant specific training; the evaluation of training needs is determined by the participant or his/her legal representative; participant is also responsible for providing and arranging for provider training and supervising provider performance. Suggestion: What does this mean? In order to be in compliance, there needs to be specific training requirements reviewed by the participant or legal rep with the vendor (provider). In order schedule training of services, the vendor and participant must coordinate scheduling of required training (whatever that may include).	***State Response: Thank you for your comment. Vendors are required to adhere to training requirements they establish and maintain that will support the services they are providing through Mi Via. Vendors are also required to complete participant specific training as determined by the participant.***
	Comment: **CCGS** Meet any other service qualifications as specified in the Mi Via Regulations. Suggestion: This opened ended statement is not in keeping with the specific agreement that the vendor (provider) enters into with the participant. The agreement/contract is what drives the services that the vendor has responsibility to provide to the participant.	***State Response: Thank you for your comment. Please review the "Mutual responsibilities" of the Vendor Agreement.***

	Comment: **Customized Community Supports Group** li-states staff need to have at least one year of experience working with individuals with disabilities to work with someone on Mi Via. Suggestion: Finding a direct care staff with one year experience is not always feasible. As long as staff goes through training with the agency it should not matter if they have experience. **Pg 34, g, ii.** Due to the high level of turnover in the field overall, it is impossible for all direct service staff to have one year of experience working with people with disabilities.	***State Response: Thank you for your comment. This requirement aligns with approved CMS Waiver NM.0448 appendix C. A public hearing was held for CMS Waiver NM.0448 appendix C on July 14, 2-14.***
	Comment: **Employment Supports** Clearly states job of their choice in first sentence. . Yet second paragraph states individuals can not be in settings where they are supervised in producing goods or performing services under contract to third parties????? Suggetsion: XXX fits all of these requirements. Increase economic independence, self-reliance" social connections and the ability to grow within a career. Where is any of our individuals going to find a job where they are not supervised to produce a product or fulfill a contract to a third party. This section eliminates, XXX, XXX and any other type of work that we provide full time job coaching for. Behavioral issues are unpredictable for many of our Associates and this language will cause many of our lower functioning associate to fail in many other job settings. How do they expect someone like XXX XXXX to function without full time supports in a job.	***State Response: Thank you for your comment. The Mi Via Standards outline those services that are covered by the Mi Via Waiver as approved by the Centers for Medicare and Medicaid (CMS) effective October 1, 2015. The Standards are written to be in alignment with the CMS Technical Guideline as cited in the Standard and supported by 8.314.6 NMAC.***
	Comment: **Employment Supports b.** Job coaching services are available all the time. Job coaches will adhere to the specific supports and expectations negotiated with the participant and employer prior to service	***State Response. Thank you for your comment. The comment has been noted by the state.***

	delivery Suggestion: Participants/EOR's Guardians and Consultants are often not giving the employer the opportunity to negotiate anything. Negotiations are stressed though out this draft,yet Mi Via forces employers to use the boiler plate Xerox contract that does not allow for any other form of service changes or individual specific needs to be added.	
	Comment: **Employment Supports h.** Conduct market analysis and establish the infrastructure to support a business? Suggestion: What does this mean?	***State Response: Thank you for your comment. This is an activity that would be done to support a participant in starting their own business.***
	Comment: **Employment Supports (ES)** When employment services are provided at a work site where persons w/o disabilities are employed, payment is made only for the adaptations; supervision and training required by participants receiving waiver services as a result of their disabilities but does not include payment for the supervisory activities rendered as a normal part of the business setting. **1-** it states this service is self-directed and individuals can choose where they want to work, but individuals are told what they can and cannot chose. Suggestion: What is considered or does it mean by "supervisory activities rendered as normal part of the business setting?" There are many jobs in the community that produce products and fulfill contracts for third parties. How are those places different than what we do at our work sites? Individuals who work in our XXX and XXX sites increase economic independence, self-reliance and social connections.	***State Response: Thank you for your comment. Employment Services are to be provided as approved in the Mi Via Waiver approved by CMS as effective October 1, 2015. Supervisory activities rendered as a normal part of the business setting would include those activities provided to any employee working in that employment environment.***
	Comment: **ES I** If the service is Self-Directed why are the Standards written as such that they tell the individual what they can/cannot do and	***State Response: Thank you for your comment. Group Employment is not a service approved by the Centers for Medicare and Medicaid (CMS).***

	group employment is not an option for them to choose. **Comment:** **ES I.2** Is this statement referring to paying an individual's wages?	***State Response: Thank you for your comment. The Mi Via Waiver does not pay for wages earned by participants utilizing Mi Via Employment Supports.***
	Comment: **ES a.** Job Development: Job Dev services are provided to individuals when services are not otherwise available for the individuals under a program funded under the Rehab Act of 1973,DVR or through the NM Dept of Education. Suggestion: This should be a responsibility of the individuals and their legal rep to provide proof of seeking DVR or other funding for job development before seeking Employment Services from a vendor/provider.	***State Response: Thank you for your comment. This statement does not indicate it is the responsibility of the provider.***
	Comment: **ES III. Scope of Job Development Services: a Conducts Situational and Vocational Assessment.** **III.a** We pay an individual for their assessment and funds can come through General Operation $; however, if serving a person through Mi Via we would want to review this to determine if wages can/should be paid. Suggestion: Once a vendor completes the assessment, who reviews and decides to move forward or not with employment services depending on outcome of assessment? Also, there should be an option for the vendor/provider to indicate that they would conduct the assessment only and have a separate meeting to review whether they would enter into further job developments services & complete an agreement for it.	***State Response: Thank you for your comment. Approved Employment Services are to be provided as outlined in the Mi Via Standards and Regulations. This type of discussion would be held between the vendor and the participant.***

	Comment: **ES III. Scope of Job Development Services: e. Arranging for or providing benefits counseling** We can receive payment for Benefits Counseling and should build this into the budget when figuring it. Suggestion: The individual has yet to get a job and is in job development via a Job Developer, so why is the job developer required to provide benefits counseling prior to obtaining a job? This should not be a responsibility of the job developer.	***State Response: Thank you for your comment. Job Developers should know the benefits associated with potential jobs.***
	Comment: **ES II.b Job Coaching;Services are driven by the participant's service and support plan and job.** Suggestion: Through our experience as a vendor/provider, the SSP is not provided along with the approved budget. It should be a requirement of the Consultant and Participant or Legal Rep to provide a copy of both documents to the vendor (section that is applicable to the service rendered).	***State Response: Thank you for your comment. Please see the Vendor Agreement which indicates the participant/EOR/Vendor responsibilities.***
	Comment: **IV. Scope of Job Coach Services:** **d. co-worker training** Suggestion: Job Coach should not be required to train staff at a business. It would be up to the Employer to determine if he/she wants their staff trained on the participant.	***State Response: Thank you for your comment. If the employer determined this would be appropriate, the job coach can provide this under the Scope of Service.***
	Comment: **ES IV. Scope of Job Coach Services: h. Conduct market analysis and establish the infrastructure to support a business.** What rights and responsibilities are we to educate the participant on? Suggestion: This should not be a job coach responsibility.	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***

	Comment: **ES V.e** This may cause issues for the client hiring an Individual Provider but is good because it protects them from just paying anyone for this service.	***State Response: Thank you for your comment. The comment has been noted by the state.***
	Comment: **V.e** This statement is throughout, who pays for this for Individual Providers.	***State Response: Thank you for your comment. Individual providers are responsible for expenses related to fingerprinting and Vendors are responsible for expenses related to the fingerprinting of their employees.***
	V.h Again, who pays for the training expenses for an Individual Provider?	***The participant is responsible for providing and arranging for employee training and/or working with their vendor to assure vendor employees are trained.***
	Comment: **ES VII. Job Coach and/or Job Developer Qualifications- Provider Agency d. Adhere to training requirements; VII. Job Coach and/or Job Developer Qualifications- e. Provider Agency Develop and adhere to records management policy and maintain individual records for each participant. The Agency will maintain a confidential case file for each individual. That includes but is not limited to documentation of activities, progress & scope of work out lined in the Service Support Plan. Suggestion:** Is there a State of NM File Matrix for Mi Via participants? This would help create uniformity with records and not leave it up to the provider to decide what is needed. Vendors are not provided or do not get a copy of the SSP from the Consultant. The Consultant & participant need to be required to give copy of the SSP and budget applicable to the vendor's service to the vendor.	***State Response: Thank you for your comment. There is not a file matrix for Mi Via services. Vendors are responsible for managing their documentation as required for Medicaid providers and to obtain information as outlined in the Vendor Agreement.***

	Comment: **ES h. Ensure job coaches have the following qualifications: ii. experience with providing employment supports and training methods"** Suggestion: It is up to the agency to determine employment criteria for its staff. Some of the best staff come to an agency without prior experience and do well working with individuals with DD	***State Response: Thank you for your comment. This requirement aligns with approved CMS Waiver NM.0448 appendix C. A public hearing was held for CMS Waiver NM.0448 appendix C on July 14, 2-14.***
	Comment: **ES h. Ensure job coaches have the following qualifications;viii. Complete participant specific training; the evaluation of training needs is determined by the participant or his/her legal representative; participant is also responsible for providing and arranging for provider training and supervising provider performance;"** Suggestion: What does this mean? In order to be in compliance, there needs to be specific training requirements reviewed by the participant or legal rep with the vendor (provider). In order to schedule training of services, the vendor and participant must coordinate scheduling of required training (whatever that may include).	***State Response: Thank you for your comment. Vendors are required to adhere to training requirements they establish and maintain that will support the services they are providing through Mi Via. Vendors are also required to complete participant specific training as determined by the participant.***
	Comment: **ES ix. Meet any other service qualifications, as specified in the Mi Via Regulations. i. Meet any other service qualifications, as specified in the Mi Via Regulations** Suggestion: This opened ended statement is not in keeping with the specific agreement that the vendor (provider) enters into with the participant. The agreement/contract is what drives the services that the vendor has responsibility to provide to the participant	***State Response: Thank you for your comment. Please review the "Mutual Responsibilities" of the Vendor Agreement..***
	Comment: **Mi Via Service Standards- Wavier Change** States nothing about being held up because participant hasn't gone through DVR	***State Response: Thank you for your comment. Individuals do not have to go through DVR to begin or complete a waiver transfer.***

	process which contradicts being able to move between the DO Waiver and Mi Via Waiver	
	Comment: **Page 48 II.a** Need definition or examples	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***
	Comment: **Page 49 IV.a** XXX is not a Home Health Agency and licensed for this.	***State Response: Thank you for your comment. Agencies who are providing this service are required to meet the Qualifications as outlined in the Mi Via Regulations and Standards.***
	Comment: **Page 51** I – If In Home Living Supports is a Daily Service then why is there a discussion about minimum hourly needs (4 per day at least one time per week) in this area? Also, this service is not allowed to be provided by an hourly employee....big issue.	***State Response: Thank you for your comment. The service is a daily rate with a minimum set of hours required.***
	Comment: If an individual is their own guardian, they need to be able to read & understand these standards. They are not written very clearly.	***State Response: Thank you for your comment. The comment has been noted by the state. Edits will be made by the state as outlined throughout this document.***
	Comment: Transition meeting are not occurring prior to the switch. This is difficult as agencies at times have already billed DOW for services and then we find out that the person has switched to Mi Via and you have to back and pay the DOW funds back. This is time consuming and expensive for a finance department to do when in reality...the agency should have been included in the process. This can also delay services for the participant because	***State Response: Thank you for your comment. There is a transition process required to include the participant, consultant and case manager. The participant can invite other parties to these meetings if they choose.***

	there is no agreement in place between the agency and participant. **<u>Comment:</u>** Mi Via needs to have training. Currently we are getting bombarded by providers and therapists needing something. They are calling us as a resource when is should be Mi Via. **<u>Comment:</u>** Getting paid in a timely manner is a challenge. Many times we have one person dedicating a minimum of 4 hours per week following up and making sure we get paid. Agencies provide the service to participants; it should not be such a hard ship to be paid for the service we have provided.	***State Response: Thank you for your comment. The comment has been noted by the state.*** ***State Response: Thank you for your comment. The comment has been noted by the state.***
December 10, 2015 Submitted via Email	**<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS;** **1. INTRODUCTION TO MI VIA ;** **H. Coordination with MCO Services:** Quote Standard: "Both a Comprehensive Needs Assessment (CNA) and a Comprehensive Care Plan are required to be completed by the MCO for all members" My understanding is that members only get a CNA if it is indicated by the Health Risk Assessment. If so, this statement would be incorrect. My understanding is that all members with a developmental disability will be assigned a care coordinator and have a CNA and a care plan. Suggestion: Both a Comprehensive Needs Assessment and a Comprehensive Care Plan are required to be completed by the MCO for all members who have a developmental disability. **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS;** **1. INTRODUCTION TO MI VIA;** **E. Participant Responsibilities** **And 3. DEFINITIONS AND ACRONYMS;**	***State Response***: ***Thank you for your comment. The state will edit this section.*** ***State Response: Thank you for your comment. Authorized Representative includes those authorized by a court or the participant to make decisions on their behalf. If the participant has***

	Employer of Record (EOR) Quote Standard pg 5: "An eligible recipient may be his or her own EOR unless the eligible recipient is a minor, or has a plenary or limited guardianship or conservatorship over financial matters in place." Seems to conflict with: Quote pg 11: "A participant may be his or her own EOR unless the participant is a minor or has an authorized representative over financial matters in place." An "authorized representative" wouldn't necessarily be a plenary or limited guardian or conservator. For example, a rep payee could be considered an "authorized representative over financial matters" and yet would not disallow the participant from being the EOR. Suggestion: Change the definition of EOR to match the language in the participant responsibilities so the definition on page 11 would read: "A participant may be his or her own EOR unless the participant is a minor, or has a plenary or limited guardianship or conservatorship over financial matters in place."	***an individual designated over financial matters in place this could affect their ability to serve as the EOR. Representative payees are designated to support participants with personal finances separate from the Mi Via Waiver program.***
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **3. DEFINITIONS AND ACRONYMS;** **Financial Management Agency (FMA)** This definition of the FMA is too narrow. The FMA is part of the system of support for self-direction. The FMA, for example, has responsibility to assist participants/EORs to understand their responsibilities and to manage the FMA processes. The FMA provides participants/EORs with forms and instructions for authorizing payment. Suggestion: State Contractor that helps implement the approved budget by paying the participant's employees and vendors and tracking expenditures. The FMA helps participants/EORs to understand their responsibilities and	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***

	learn how to complete and process FMA forms and tools. The FMA provides the forms and tools to manage the FMA processes for authorizing payment. **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS;** **3. DEFINITIONS AND ACRONYMS;** **Legally Responsible Individual (LRI)** Quote Standard: "Payment may not be made to a legally responsible individual for the provision of personal care or similar services that the legally responsible individual would ordinarily perform or be responsible to perform on behalf of a waiver participant." Question: what are LRIs legally responsible for? Do their legal responsibilities include exceptional care related to the disability of a child or spouse? Such care cannot be assumed to be ordinarily performed. The payment of LRI should not be limited to personal care or similar services, but to any of the Mi Via services. There is no "personal care" service in Mi Via and it is unclear what "similar services" are. Suggestion: …Payment may not be made to a legally responsible individual for the provision of Mi Via services except under extraordinary circumstances approved by the State, utilizing documentation specified by the State and only after approval by the appropriate operating agency. **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS;** **3. DEFINITIONS AND ACRONYMS;** **Mi Via** This definition leaves out the notion of self-directing. As written, it also imposes constraints on self-direction. The idea of "participant protections" is contrary to the authority of self-direction. Suggestion: …through which eligible participants have the option to access Medicaid funds, using the essential elements of person-centered	***State Response: Thank you for your comment. The state will make the edit.*** ***State response: Thank you for your comment. The state will make the edit.***

	planning, individualized budgeting, accessing approved services/supports/goods, managing personal risk, and self-directing quality assurance and improvement which allows him or her to remain in his or her community.	
	Comment: **MI VIA WAIVER SERVICE STANDARDS;** **3. DEFINITIONS AND ACRONYMS;** **Support Guide** Support Guides should be able to be contractors. Suggestion: An employee or independent contractor of the consultant provider that directly assists the participant in implementing the SSP/budget…	***State Response: Thank you for your comment. The state will edit consistent with language used in the Mi Via Waiver as approved by CMS effective October 1, 2015 and the MI Via Regulations.***
	Comment: **Appendix B:** Service and Support Plan (SSP) The Chart is to detail the Living Supports, which are these: Homemaker/Direct Support Services Home Health Aide In-Home Living Supports Where are related goods and services to be entered? The Living Supports Section doesn't seem to allow for related goods and services. Suggestion: Title the chart: Related Goods, including Fees & Members for Living Support	***State Response: Thank you for your comment. Related Goods are to be captured under Other Supports in the SSP. Other Supports per the Mi Via Standards are available to enhance other services on the participant's plan and are captured in this specific section of the SSP regardless of the service they are enhancing.***
	Comment: **Appendix B:** **2. Community Membership Supports;** Community Membership Supports Definition. Need to make clear that community support is for inclusion and for individualized pursuit of interests. Would also like to address the recreation issue here by making it clear that community support is to address medical, functional and habilitation and is not recreation or division. Suggestion: Community Membership Supports Definition: These	***State Response: Thank you for your comment. The short definition provided is considered sufficient to describe the purpose of these supports. The participant is not prohibited from engaging in recreational and diversional activities and can use these supports to do so. 8.314.6 NMAC and the Service Standards provide the definition and greater detail of the purpose of these supports. All related goods are to be entered into***

	supports help you participate in community life in order to enhance relationships with others, work or participate in activities that are meaningful to you. The intention of the Mi Via program is to find individualized ways for participants to be included in community life. Community Membership Supports are designed to meet the clinical, medical, functional and/or habilitation needs of participants and are not recreation or diversion. Community Membership Supports included related goods and fees and memberships that help participants gain access to community resources that relate to their individualized community membership goals.	***the Other Supports section of the SSP.***
	<u>Comment:</u> **Appendix B:** **2. Community Membership Supports;** **Q12. Are you currently employed? If you are currently employed, please answer the following questions** The questions about current employment do not encourage critical thinking about inclusion in the workplace or ideas about improving employment outcomes. Suggestion: Add the following questions: Does your work environment help you be included in your community? What would make your job better? Do you have other jobs or careers you would like to pursue?	***State Response: Thank you for your comment. The state will make edits to this section to determine if the participant feels included in their work environment, what is needed to make their job better and if there are other jobs/careers they would like to pursue.***
	<u>Comment:</u> **Appendix B:** **2. Community Membership Supports;** Leisure/Recreational *Does not include Related Goods. What support does this activity/service include? If not related goods, that leaves Community Navigator and job supports. Isn't a community navigator who is supporting a participant to engage in recreation providing recreation? Isn't recreation a non-covered service? I suggest not using "Leisure/Recreation" at all. It has always been a bad fit.	***State Response: Thank you for your comment. The participant is not prohibited from engaging in recreational and diversional activities. Community Membership Supports can be used to assist the participant in engaging in these and other activities of his/her choice. All related goods are to be entered into the Other Supports section of the SSP.***

	This seems to be denying any use of related goods, including fees and memberships. This seems to reflect the recent TPA decisions that tickets in particular are all recreation. Participants can clearly establish when related goods, fees & membership relate to their habilitation and functional needs, and are not for recreation or diversion. This is a red flag. Suggestion: Replace this with: Habilitation/Functional	
	<u>Comment:</u> **Appendix B:** **2. Community Membership Supports; Details of Community Membership Supports:** Again, as with Living Supports, related goods has been dropped. There is nothing in this section that speaks in any way to related goods, including fees & Membership. Changes to: Related Goods, including Fees & Memberships for Community Membership Support.	**State Response: Thank you for your comment. Related Goods are to be captured under Other Supports in the SSP. Other Supports per the Mi Via Standards are available to enhance other services on the participant's plan and are captured in this specific section of the SSP regardless of the service they are enhancing.**
	<u>Comment:</u> **Appendix B:** In the living support, community membership support and health & wellness support, the charts that were used for Related Goods has now become a chart for detailing all the services/supports identified in each of these sections. It isn't clear if this chart now should reflect related goods at all. This becomes a duplicative of the Plan where the budget goals define the service, how it meets qualifying condition and medical, functional and habilitation needs, cost, frequency and duration. All of the services and supports, other than the related goods, are already detailed in other parts of each of these SSP sections. The SSP is to figure out what services, supports, goods the participant wants included in their budget. It is not the budget. Suggestion: Detail the living supports/services, community membership supports/services and health & wellness supports/services in the Plan, not the SSP. Use the charts in these sections for	***State Response: Thank you for your comment. All related goods are to be entered into the Other Supports section of the SSP. Please refer to 8.314.6.17 A. (3) SSP Components.***

	identifying the related goods, including fees and memberships that the participant is planning to purchase. Eliminate the "Projected Amount."	
	<u>Comment:</u> **Appendix B:, continued** During the development of the SSP, the focus is on what the participant wants in their life and what kind of support/services and goods could work for them. This is the person-centered planning part. The conversation is about the participant's life and what would make it possible for them to live in their home and be included in community. Participant is learning about the different options available through Mi Via. They discuss creative ideas for how to be supported in different aspects of their lives. It is not about budgeting. After the SSP choices have been made, the work shifts to what things cost, how much to pay, which models, and how often to plan for services. The new chart detailing all of these budget issues in the SSP will detract from the discussion of choices, options and creativity. Suggestion: Detail the living supports/services, community membership supports/services and health & wellness supports/services in the Plan, not the SSP. Use the charts in the SSP sections for identifying the related goods, including fees and memberships that the participant is planning to purchase. Eliminate the "Projected Amount." Leave figuring out how much the related goods, fees and memberships will cost for the budgeting process.	***State Response: Thank you for your comment. Along with person-centered planning, SSP/Budget development should also empower the participant to exercise their right to Budget Authority during all phases of planning.***
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS; Pre-Eligibility and Enrollment Services** Quote Standard: "Verify that the county ISD office of the HSD has completed a determination that the individual meets financial and medical eligibility to participate in the Mi Via Waiver program;"	***State Response: The IC Unit is an extension of the local ISD offices where recipients submit all paperwork. Thank you for your comment. The language stands as proposed.***

	Isn't the ISD IC/Waiver Office where the participants apply and submit paperwork, not the local ISD Office? Suggestion: Verify that it is the local ISD office or the IC/ W office. **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS; On-going Consultant Functions** Quote Standard: "Assist the participant with quality assurance activities to ensure implementation and monitoring of the participant's SSP/budget, and utilization of the authorized budget" These are system required quality assurance and monitoring activities. Participants need to self-direct quality processes to assure they are achieving the outcomes they want**.** Suggestion: Change to: "Assist the participant with required quality assurance activities to ensure implementation and monitoring of the participant's SSP/budget, and utilization of the authorized budget" Add: "Assist participants to identify measures to help them assess the quality of their services/supports/goods and self-direct a quality improvement process." **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS; 6. PLANNING AND BUDGETING FOR SERVICES AND GOODS;** **B. Service and Support Plan (SSP) Components Living Supports** In the description of the Living Support Section of the SSP, it says: "Supports can be provided using three (3) different models: Homemaker/Direct Support Services; Home Health Aide; and In-Home Living Supports." Related Goods are also part of living supports. Suggestion: Add: …In addition to these living support models, related goods or fees & memberships can be purchased as living supports	***State Response: Thank you for your comment. The state will make the edit.*** ***State Response: Thank you for your comment. As mentioned, there are three (3) models of living supports provided through Mi Via. Related Goods are considered to be "Other Supports" as they are available to enhance other services in a participant's plan.***

	Comment: **MI VIA WAIVER SERVICE STANDARDS;** **6. PLANNING AND BUDGETING FOR SERVICES AND GOODS;** **B. Service and Support Plan (SSP) Components;** **Community Membership Supports** In the description of the Community Membership Support Section of the SSP, it says: "These supports include: Community Direct Support, Employment Supports and Customized Community Group Supports." Related Goods are also part of living supports. Suggestion: Add: …In addition to these community membership support services, related goods or fees & memberships can be purchased as community membership supports	***State Response: Thank you for your comment. As mentioned, there are three (3) models of community membership supports provided through Mi Via. Related Goods are considered "Other Supports" as they are available to enhance other services in a participant's plan.***
	Comment: **MI VIA WAIVER SERVICE STANDARDS;** **6. PLANNING AND BUDGETING FOR SERVICES AND GOODS;** **B. Service and Support Plan (SSP) Components B. Service and Support Plan (SSP) Components; Health and Wellness Supports** In the description of the Health & Wellness Support Section of the SSP, it says: "These supports include… Skilled Therapy for Adults, Occupational, Physical and Speech Therapy; Behavior Support Consultation; Nutritional Counseling; Private Duty Nursing for Adults; and the specific list of Specialized Therapies that are covered by Mi Via." Related Goods are also part of living supports. Suggestion: Add: … In addition to these health & wellness support services, related goods or fees & memberships can be purchased as health and Wellness supports.	***State Response: Thank you for your comment. As mentioned, there are multiple health models related to Health and Wellness Supports provided through Mi Via. Related Goods are considered "Other Supports" as they are available to enhance other services in a participant's plan.***
	Comment: **MI VIA WAIVER SERVICE STANDARDS;** **6. PLANNING AND BUDGETING FOR SERVICES AND GOODS;**	***State Response: Thank you for your comment. Along with person-centered planning, SSP/Budget development should also empower the participant to exercise their right***

	C. Budget Development Process Quote Standard: "Once the SSP has been completed and the participant has identified the supports he/she would like to obtain through the Mi Via program, the consultant and participant work together to develop the SSP/budget request. The participant and consultant may need to research the estimated cost of services and goods,…The budget is developed one (1) goal at a time. Each goal includes a clear and complete explanation of the requested service(s) or good(s), how they are related to the participant's condition and why they are appropriate for the participant." In addition, each goal includes full details about each of the requested service(s) or good(s), including: amount, frequency and duration, type of provider, cost or estimated cost, rate of pay, etc. Suggestion: This description of the process for developing the budget makes it clear that the work of figuring out what things will cost, how the service/support/good relates to disability, frequency and duration comes **<u>after</u>** the SSP is completed. This information is not detailed in the SSP. The Standards and the SSP should be changed as already suggested so they match.	***to Budget Authority during all phases of planning.***
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES c.** Quote Standard: "c. Any goods or services that are considered primarily recreational or diversional in nature (such as movies, theatrical productions, opera, sporting events)" Caught you. This list of examples is prejudicial to requests based on habilitation and functional needs that are not primarily recreation. This list of examples needs to be eliminated. We have to deal with this problem. Community Membership outcomes cannot be achieved without access to community resources, including movies, theatrical, productions, opera, sporting events. These are fees and it is the intention of Mi Via to support	***State Response: Thank you for your comment. CMS disallows the use of waiver funds for services that are diversional and recreational in nature as these fall outside the scope of §1915 (c) of the Act. The language in this section has been revised to remove examples of activities that are considered recreational or diversional.***

	participants community membership outcomes by paying for fees related to habilitation and functional needs. Suggestion: Change to: Any goods or services that are solely recreational or diversional in nature. By assuring that fees & memberships are related to the habilitation and functional needs that create challenges to participants' inclusion in the community, we have met the CMS prohibition of paying for services that are solely recreational and diversional in nature. I don't believe that CMS meant to create barriers to the support people need to achieve community membership outcomes. This prejudicial "such as" list was added in these standards and are not in the current standards. Thus, the state is adding restrictions in the Mi Via program. **Please provide to me in writing where the approved waiver includes this list.** The more we move away from the space where participants can make the decisions about what will best meet their needs, the more we are moving away from self-direction. **Comment:** **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES c., continued** Mi Via is individualized and there cannot be any across-the-board limitations or requirements applied to all participants for any service/support/good. What is recreation cannot be based on subjective value judgments on the part of the state. Each participant's request for fees and membership of ANY KIND must be objectively reviewed in relationship to that participant's needs. The state has not defined recreation and diversion or provided any criteria for an objective assessment of recreation or diversion. Nor has the state defined habilitation or	***State Response: Thank you for your comment. Mi Via services must specifically address a therapeutic, rehabilitative, habilitative, health or safety need that results from the participant's qualifying condition.***

	functional. This means that every decision made by the TPA is based on that reviewers subjective values**.** Suggestion: And how do you determine "primarily"? Is there a formula, i.e. that request is 70% recreational in nature and 30% habilitation? And who is "considering" that something is "primarily" recreation? There is no consensus on this so the Mi Via program cannot identify things that "are considered primarily" recreation. "Solely" is much less subjective. It is or it isn't. And do we have any data that would demonstrate the efficiency of using such fees for habilitation or functional needs? I don't think so which means the only bases for this restriction can only be the subjective judgment of state personnel. Though I have been focusing on habilitation and functional needs, there are certainly many medical and clinical needs that can be helped through membership and fees for community membership outcomes	
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES z.** This is a new restriction on the cell phones for minors. Parents/guardians may purchase cell phones/services precisely because their son/daughter has a disability for safety and essential communication. If a child has a community navigator and will be out in the community and needs to learn the functional skills for using the phone, it is not something the parent is routinely buying. A child may be able to go independently in the community only by virtue of having and knowing how to use a cell phone. Otherwise, they may need someone to be with them. This just isn't a black and white situation. Suggestion: Eliminate Z: Instead, use the SSP criteria to decide if cell phone/service can be approved.	***State Response: Thank you for your comment. The proposed language has been struck that excluded cell phone services for minors. Data will be included under cell phone service with a limitation to the cost of one hundred dollars per month. The language on the limitation on the number of cell phone lines per eligible recipients shall remain as wavier services that are intended for only the eligible recipient.***

	It may be a cost savings for a minor to use a cell phone because they could be in the community without having to have someone be with them. The problem with "ordinarily" is that some parents/guardians may purchase cell phones for their children and others may not, as a general rule of thumb.	
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES h.** Quote Standard: "h. Any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household or personal expense" This has been and will continue to be problematic. Participants use goods and services for legitimate reasons based on their disability. We need to look at the reason/purpose that the participant is using the good/service. For example, just anyone may use noise blocking headphones to listen privately to music or to a TV program without bothering others. A Mi Via participant may use the same headphones as a behavior support mechanism. Suggestion: Change to: Non-specialized goods or services that a household that does not include a person with a disability would otherwise pay for as a household or personal expense. The best thing to do, really, would be to eliminate this non-covered service and use the SSP criteria to decide if the good/service should be approved.	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES h., continued** At the heart of Mi Via and self-direction is that participants can use non-specialized goods/services for needs related to his/her disability, thus increasing flexibility and	***State Response: Thank you for your insight and comment. The comment has been noted by the state.***

	choice. The question becomes, if participants can purchase non-specialized goods/services, do they achieve better outcomes? Is it cost-effective? Does it decrease or reduce what specialized services would cost? Unfortunately, the state has not done any evaluations of these questions. So, in my example, if a participant purchases noise blocking headphones as a behavioral support strategy and it works and the participant doesn't need to purchase BSC, wouldn't this be cheaper and more effective? If that is the case, why wouldn't we want to support this? That's the kind of thing we need to look to accomplish. **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES h., continued** There is no definition of routine. There is no way to know what is or isn't routine so it is left up to the value judgments of the TPA reviewer. Routine has a personal dimension as well. A participant/family may request a good/service that they would not otherwise use or purchase except to benefit their disabled family member. For them, the good or service would not be routine, while for another participant/family it may be something they would otherwise purchase routinely. **<u>Comment:</u>** **MI VIA WAIVER SERVICE STANDARDS;** **7. NON-COVERED SERVICES,** Quote Standard: "When a participant requests a service or good the consultant, the TPA and the State can work with the participant to find other (including less costly) alternatives." The issue here is how it is being implemented. When the TPA only says it costs too much or find a lower cost model, it isn't helpful. What needs to be assured is that the participant has identified a good that will meet their needs and that contains the specifications they need and is a good value. Suggestion:	***State Response: Thank you for your comment. Per the Mi Via Standards, requested services and goods are subject to review by the TPA and may be considered for approval if program requirements are met.*** ***State Response: Thank you for your comment. As the suggestion indicates the participant and consultant are to work with the TPA and State to find other (including less costly) alternatives. The consultant is to work with the participant initially to establish how services and supports meet the needs of the participant in accordance with program requirements.***

	Change to: When a participant requests a service or good, the consultant will help the participant ensure that the requested good o/r service is of good value. The TPA and the state can further assist the participant and consultant find other (including less costly) alternatives, if necessary.	
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **8. SERVICE AND SUPPORT PLAN AND BUDGET APPROVAL PROCESSES** **SSP Review Criteria** The SSP criteria are generally clearly stated. They are an understandable way to measure the SSP and Plan; by the participant & consultant when putting it together and by the TPA when reviewing the SSP/Plan. The SSP criteria are not based on anyone's personal value's judgment. I would like to see the SSP criteria be the sole determinate of approval or denial and eliminate the problematic non-covered services criteria that is oppositional to the SSP criteria, specifically items b., c., h., i., r., s., and z. Items b. and i. are a negative iteration of the SSP criteria and aren't necessary. The remaining items are clearly intended to add restrictions on the SSP criteria and are not non-covered services per se.	***State Response: Thank you for your comment. The Mi Via Standards outline those services that are covered by the Mi Via Waiver as approved by CMS effective October 1, 2015. Non-covered services include those services that are not outlined as covered in the approved waiver. Mi Via Waiver services must specifically address a therapeutic, rehabilitative, habilitative, health or safety need that results from the participant's qualifying condition.***
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **8. SERVICE AND SUPPORT PLAN AND BUDGET APPROVAL PROCESSES** **Budget Review Criteria** Quote Standard: "the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good;" The lowest available cost does not equate to the best value. Suggestion: Change to: …and reflects good value for the cost for that chosen good"	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***

	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **8. SERVICE AND SUPPORT PLAN AND BUDGET APPROVAL PROCESSES** **Budget Review Criteria** Quote Standard: "the estimated cost of the service or good is specifically documented in the participant's SSP/budget;" The SSP documents the types of supports, services and goods the participant wants to purchase to meet their needs. The Plan builds a budget on the things in the SSP. Suggestion: Change to: The estimated costs of the services or goods identified in the SSP are specifically documented in the Plan/budget.	***State Response: Thank you for your comments. With the proposed changes in the SSP this would address the suggestion.***
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **A. Amending the SSP/Budget; Modification of the SSP** Quote standard: "The SSP may be modified based upon a change in the participant's needs or** **B.** circumstances, such as a change in the participant's health status or condition or a change in the participant's support system, such as the death or disabling condition of a family member or other individual who was providing services." This standard does not reflect actual practice. Participants have been able to request revisions to their SSP/Plan based on many reasons, i.e., no longer wanting a particular service; wanting more of a service; deciding later to purchase something; replacing one service with a different service. This practice supports the important opportunity for participants to have flexibility. Suggestion: Add: …Revisions to the SSP/Plan can be submitted whenever the participant wants to change, replace or add a support, service or good that is within their IBA without documenting a change in condition or in the participant's support system. These	***State Response: Thank you for your comment. This section indicates the SSP/Budget as well as the AAB can be modified for a variety reasons which includes changes in participant needs, conditions, provision of new or additional services or changes to the AAB which could include the examples cited. The Standards include the elements of the suggestion and it is the responsibility of the participant to notify the consultant of the need for SSP/Budget revisions. Standards language in this section refers to SSP/budget.***

	revisions will be reviewed based on the SSP and Budget criteria like a new service, support or good. Generally, this section, and the next, **Modifications to the Authorized Annual Budget,** are confusing and conflicting. Is it SSP/budget or is it SSP/Plan or is it SSP and Plan/Budget? Do you mean to have one set of standards for modification of the SSP/budget and a different set of standards for revisions to the AAB? Are revisions to the AAB the same as revisions to the SSP/budget and if so, how is this different from modifications to the SSP/Plan? The bottom line should be that participants can make revisions within their IBA during the budget year. Only additional funding should require a change in condition or circumstances. Please clarify this.	
	<u>Comment:</u> **MI VIA WAIVER SERVICE STANDARDS;** **10. IMPLEMENTATION OF THE SERVICE AND SUPPORT PLAN AND BUDGET;** **Vendor Invoices** Quote Standard: "The Form must be signed by the participant (unless there is an authorized representative over financial matters), their authorized representative or an EOR." Just need clarification: if the participant is not the EOR, can he/she sign the PRF? What is an authorized representative over financial matters?	***State Response: Thank you for your comment. If the participant is not the EOR and they have designated an EOR, the EOR should sign the PRF. The Mi Via Standards provide a definition of those who are considered Authorized Representative and have authorized representation over financial matters.***
	<u>Comment:</u> **Service Descriptions and Provider Qualifications;** **III. General qualifications for Legally Responsible Individuals (LRIs) who provide services:** As regards the exclusion of transportation for a minor under the LRI descriptions: There are legitimate exceptions to the idea that parents generally are required to transport their children. Minors with challenging behavior in transportation situations may need a person who can manage their behavior	***State Response: Thank you for your comment. This is a support that a legally responsible individual (parent, guardian) would ordinarily provide for household members of the same age who do not have a chronic disability or chronic illness.***

	safely and it is oftentimes the parent. It would be unsafe to hire a person without the skill to provide transportation in these situations.	
	<u>Comment:</u> **Service Descriptions and Provider Qualifications;** **III. General qualifications for Legally Responsible Individuals (LRIs) who provide services:** Quote Standard: "Services provided by LRIs must… ii. be provided by a parent, guardian or spouse who meets the provider qualifications and training standards specified in the Mi Via regulations and these service descriptions and qualifications for that service" This could be problematic when it comes to nursing rules. LRIs can and do learn to do nursing procedures to care for their child/spouse and as a family member are not prohibited to do so. When it is requested that the LRI be hired to perform these nursing functions that they are trained and able to do, they may not meet the "provider qualifications & training standards.,," Suggestion: Change to: "Services provided by LRIs, except Home Health Aide and Private Duty Nursing Services, must: ii. Be provided… Services that would otherwise be provided by a certified nurse or nurses aid can be provided by a parent, guardian or spouse who can demonstrate they are trained to perform nursing services for their child or spouse."	***State Response: Thank you for your comment. Home Health Aide services can only be provided through a licensed/certified vendor. The qualifications for those rendering Private Duty Nursing for Adults are aligned with approved CMS Waiver NM.0448 appendix C. A public hearing was held for CMS Waiver NM.0448 appendix C on July 14, 2014.***
	<u>Comment:</u> **CONSULTANT/SUPPORT GUIDE** **PRE-ELIGIBILITY/ENROLLMENT SERVICES** **II. Scope of Service** Learning everything needed to successfully participate in Mi Via should allow for training/enrollment when the information is needed and not just all at once. Instead of an "enrollment meeting", change to an "enrollment process." The first year of Mi Via involves	***State Response: Thank you for your comment. The state will make minor edits for further clarification.***

	enrolling in different parts of the process as they unfold. Make "Pre-Eligibility" one section. Add a second section for "Enrollment Process". Suggestion: The enrollment process begins with the initial enrollment meeting that must occur within 30 days. At this meeting, the following is reviewed: General Overview: Components of and roles in Mi Via Specific Topics: Eligibility processes EOR Participant responsibilities SSP Etc. The second stage of enrollment occurs when the participant is developing their SSP and will involve one or more SSP development meetings and other communication with their consultant. The following training is provided at this stage: General Overview: SSP process and timelines Specific Topics: Service descriptions Non-covered services, etc. The third stage of enrollment occurs when the budget is being finalized and entered into FOCOSonline. The consultant and participant may have meet to work on this or communicate via phone or email. The following information is provided at this stage: General Overview: Building the budget & justification Specific Topics: Range of rates	

	Staying within budget or additional funding, etc. The fourth stage of enrollment occurs when the participant is arranging for services, supports and goods and will involve meeting with their consultant and other communication via phone or email. The following training is provided at this time: General Overview: FMA functions & roles Specific Topics: Enrollment packets Pre-Hire, etc. The fifth stage of enrollment occurs when the participant begins implementing their SSP/Plan and will involve meetings with their consultant and other communication via phone or email. The following training is provided at this time: General Overview: Specific Topics The fifth stage of enrollment occurs when the participant begins implementing their SSP/budget and will involve meeting with their consultant and other communication via phone or email. The following training is provided at this time: General Overview: EOR responsibilities Specific Topics: Timesheets Payment request forms, etc. **<u>Comment:</u>** **COMMUNITY DIRECT SUPPORT** **I. Community Direct Support Services** Recreation is a non-covered service so it should be removed from CDS description. CDS is a valuable way for participant's to meet habilitation and functional goals.	***State Response: Thank you for your comment. Community Direct Support personnel can assist a participant to engage in community activities that are recreational. This definition supports the scope of work as it is to be performed by***

	Suggestion: "Community Direct Support Services deliver supports that assist the participant to identify, develop, nurture and maintain community connections. Community Direct Support also assists the participant to maintain community connections and access social, educational, recreational and leisure activities in the community. Community places, associations and people offer participants opportunities to address their needs for habilitation and development of functional skills.	***employees and/or employees of vendors.***
	<u>Comment:</u> **COMMUNITY DIRECT SUPPORT** **II Scope of Services Community Direct Support Services include, but are not limited to the following:** The value of meeting habilitation needs and developing functional skills needs to be stated. Suggestion: Community Direct Support Services that meet participants' habilitation and functional needs include, but are not limited to the following:	***State Response: Thank you for your comment. The Mi Via Regulations and Standards indicate this as a criteria for all services.***
	<u>Comments:</u> **COMMUNITY DIRECT SUPPORT** **II. Scope of Services i.** CDS providers need to learn the skills, tools and strategies for helping participants make connections based on his/her identified interests; helping participants find the people, places, associations where they can become established and belong. Going places, "outings" is not enough. Suggestion: Add to the list: Provider will learn the skills, tools and strategies for helping the participant access the community people, places and associations where they can become established and belong;	***State Response: Thank you for your comment. The qualifications for those rendering this service are aligned with approved CMS Waiver NM.0448 appendix C. A public hearing was held for CMS Waiver NM.0448 appendix C on July 14, 2014.***
	<u>Comment:</u> **ENVIRONMENTAL MODIFICATION SERVICES** I. Environmental Modification Services When discussing what isn't	***State Response: Thank you for your comment. This language aligns with the approved CMS Waiver NM.0448 appendix C. A public hearing was***

	covered under EMODS, do not use a "such as" list because this eliminates the possibility of accessing anything on the "such as" list. Reality is that things that wouldn't usually be considered as covered could be in some exceptional cases. Suggestion: Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the participant, ~~such as fences, storage sheds or other outbuildings.~~	***held for CMS Waiver NM.0448 appendix C on July 14, 2014.***
	Comment: **ENVIRONMENTAL MODIFICATION SERVICES** **II. Scope of Services: Environmental Adaptations include the following** This list is not exclusive. Suggestion: II. Scope of Services: Environmental Adaptations include, but are not limited to the following	***State Response: Thank you for your comment. This language is included in the Standards to be aligned with approved CMS Waiver NM.0448 appendix C. A public hearing was held for CMS Waiver NM.0448 appendix C on July 14, 2014.***
	Comment: **IN-HOME LIVING SUPPORTS** **I. In-Home Living Support Services** The number of people who live in the same apt or home needs to be limited or it will become a group service and acquire the characteristics of a facility. Suggestion: More than one (1) participant but not more than three (3) participants may reside in the home or apartment	***State Response: Thank you for your comment. Waiver participants in all living arrangements are assessed individually and service plan development is individualized. Mi Via living supports are to be provided in privately owned /rented residences.***
	Comment: **IN-HOME LIVING SUPPORTS** If the participant receives IHLS via an agency, the agency may provide hourly staff to work with participant. Suggestion: In-home Living Support can be provided through an Individual Contractor or through an agency. If being provided by an Individual Contractor, because In-home Living Support Services are paid at a daily rate, they may not be provided by an hourly employee. If the participant wishes to hire an hourly employee to perform this type of	***State Response: Thank you for your comment. This comment has been noted by the state. The language stands as proposed.***

	service, he/she would utilize Homemaker/Direct Support Services instead. If provided by an agency, the agency will pay a daily rate to the person providing the IHLS services. If the participant wishes, the agency can provide agency hourly staff to provide limited services.	
December 11, 2015 Submitted via Email	**Comment:** **Standards E. Participant Responsibilities** Communicate with the consultant at least once a month, either in person or by phone, and meet with the consultant in person at least once every three months. Suggestion: Communicate with the consultant at least once a month, either in person or by phone, and meet with the consultant in person at least once a quarter. **Comment:** **Standards 7. Non Covered Services** Cell phone services that include fees for data (to include GPS) or more than one (1) cell phone line per participant Suggestion: Add: Mi Via may cover the cost of text messaging if it is documented and determined that the need for texting is related to the participant's disability. **Comment:** **Standards 7. Non Covered Services** Cell phones and cell phone services for participants who are minors as these are items that legally responsible individuals (parents/guardians of minors) would ordinarily purchase for household members of the same age who do not have a disability or chronic illness. Suggestion: Delete : Cell phones for minors with a disability would promote independence and increase health and safety	***State Response: Thank you for your comment. The state will make the edit.*** ***State Response: Thank you for your comment. Data will be included under cell phone service with a limitation to the cost of one hundred dollars per month. The language on the limitation on the number of cell phone lines per eligible recipients shall remain as wavier services that are intended for only the eligible recipient.*** ***State Response: Thank you for your comment. The proposed language has been struck that excluded cell phone services for minor. The language on the limitation on the number of cell phone lines per eligible recipients shall remain as wavier services that are intended for only the eligible recipient.***

	Comment: **Standards 7. Non Covered Services** Dental services utilizing the Mi Via IBA Suggestion: Delete: Should be determined on a case by case basis. As an example, someone who has dentures (which are covered by Medicaid every certain amount of years) may need a replacement prior to that time period	***State Response: Thank you for your comment. Mi Via participants receiving Waiver services access acute ancillary specialty and behavioral health benefit services through a Centennial Care Managed Care Organization (MCO) and this includes dental services.***
	Comment: **Standards B. Purchasing Goods and Services Return to Participant Process** Return-to-Participant (RTP) phone calls and emails are an effective means used by the FMA to assist in communicating with the participant, authorized representative or EOR when there are problems in processing payment. For example, if a timesheet or invoice is submitted to the FMA and it does not contain the appropriate signatures, The FMA uses the RTP process as a means to inform the participant, authorized representative or EOR that payment could not be made. The FMA attempts contact with the participant, authorized representative or EOR by phone. If one (1) unsuccessful phone call attempt to the participant, authorized representative or EOR has been made, the FMA will send an e-mail to the participant, authorized representative or EOR (provided the participant, authorized representative or EOR has an e-mail address in FOCoS*online*) with a copy to the consultant. If the participant, authorized representative or EOR does not have an e-mail address in FOCoS*online,* the FMA will send an e-mail to the consultant regarding the details. Since contact is attempted by the FMA to the participant, authorized representative or EOR, it is extremely important that FOCoS*online* contain the correct contact information for the participant, authorized party or EOR. If the participant, authorized representative or EOR contact information	***State Response: Thank you for your comment. This comment has been noted by the State. The language stands as proposed.***

	needs to be updated, please contact the FMA for assistance. Updates to phone or e-mail contact information may also be sent to the FMA. Suggestion: **Return to Participant Process** Return-to-Participant (RTP) letters are an effective means used by Xerox to assist in communicating with the EOR when there are problems in processing payment. For example, if a timesheet or invoice is submitted to Xerox and it does not contain the appropriate signatures, Xerox uses the RTP process as a means to inform the EOR that payment could not be made. In addition to the RTP letter which is mailed, Xerox attempts contact with the EOR by phone. If three (3) unsuccessful phone call attempts to the EOR have been made and the corrected document still has not been received, Xerox will send an e-mail to the EOR (provided the EOR has an e-mail address in FOCoS) with a copy to the consultant. If the EOR does not have an e-mail address in FOCoS, Xerox will send an e-mail to the consultant and attach a copy of the RTP letter. Since frequent contact is attempted by Xerox to the EOR, it is extremely important that FOCoS contain the EOR's correct contact information. If the EOR contact information needs to be updated, please contact the Xerox Help Desk (1-866-916-0310) for assistance. Updates to phone or e-mail contact information may also be sent to ACS via e-mail (mi.via@acs-inc.com). **Comment:** **III General Qualifications for Legally Responsible Individuals (LRIs) who provide services** a. LRIs, e.g., the parent (biological, legal or adoptive) of a minor child (under age 18) or the guardian of a minor child, who must provide care to the child, or a spouse of a Mi Via participant, may be hired and paid for provision of	***State Response: Thank you for your comment. Comment has been noted by the state. The language stands as proposed.***

	waiver services (except consultant/support guide, customized community group supports, transportation services when requested for a minor, and related goods) under extraordinary circumstances in order to assure the health and welfare of the participant, to avoid institutionalization and provided that the state is eligible to receive federal financial participation (FFP). Suggestion: a. LRIs, e.g., the parent (biological, legal or adoptive) of a minor child (under age 18) or the guardian of a minor child, who must provide care to the child, or a spouse of a Mi Via participant, may be hired and paid for provision of waiver services Delete: (except consultant/support guide, customized community group supports, transportation services when requested for a minor, and related goods) under extraordinary circumstances in order to assure the health and welfare of the participant, to avoid institutionalization and provided that the state is eligible to receive federal financial participation (FFP). **Comment:** **VII. Staff Ratio Requirements A.** The consultant provider must assure that the number of participants assigned to consultants do not exceed fifty (50) participants Suggestion: The consultant provider must assure that the number of participants assigned to consultants do not exceed an average (a mean) of fifty (50 participants. **Comment:** **Transportation Services 2nd Paragraph:** Suggestion: Delete last sentence: Transportation services for minors is not a covered service as these are services that an LRI would ordinarily provide for household members of the same age who do not have a disability or chronic illness.	***State Response: Thank you for your comment. The State will make the edit.*** ***State Response: Thank you for your comment. This is a support that a legally responsible individual (parent, guardian) would ordinarily provide for household members of the same age who do not have a chronic disability or chronic illness. The language stands as proposed.***

	Comment: **Details of Living Supports** Suggestion: Delete Grid: Details outlined in Budget goals, duplicitous.	***State Response: Thank you for your comment. Along with person-centered planning, SSP/Budget development should also empower the participant to exercise their right to Budget Authority during all phases of planning. Please also refer to 8.314.6.17 A. (3) SSP Components***
	Comment: **Details of Community Membership Supports** Suggestion: Delete Grid: Details outlined in Budget goals, duplicitous	***State Response: Thank you for your comment. Along with person-centered planning, SSP/Budget development should also empower the participant to exercise their right to Budget Authority during all phases of planning. Please also refer to 8.314.6.17 A. (3) SSP Components***
	Comment: **Details of Health and Wellness Supports** Suggestion: Delete Grid: Details outlined in Budget goals, duplicitous	***State Response: Thank you for your comment. Along with person-centered planning, SSP/Budget development should also empower the participant to exercise their right to Budget Authority during all phases of planning. Please also refer to 8.314.6.17 A. (3) SSP Components***
	Comment: **Details of Other Supports** Suggestion: Delete Grid: Details outlined in Budget goals, duplicitous	***State Response: Thank you for your comment. Along with person-centered planning, SSP/Budget development should also empower the participant to exercise their right to Budget Authority during all phases of planning. Please also refer to 8.314.6.17 A. (3) SSP Components***
	Comment: **SSP** Suggestion: Add space for Participant's name on each page of the SSP.	***State Response: Thank you for your comment. The state will make the edit on the SSP hardcopy that can be accessed through the Mi Via website.***
December 11, 2015 Submitted via email	**Comment:** On page 17 of the proposed standards, consultant functions are covered. The extent of consultant assistance is to be	***State Response: Thank you for your comment. Participants identify the extent of assistance they need from their consultant which would direct***

	based on participant "need." HSD and DOH should also add "and wishes," to reflect the fact that the desires of the self-directing participant will also direct the relationship with the consultant. **Comment:** Also on page 17, the proposed standards state that the consultant will meet with the participant monthly. In the 2012 standards, the consultant was to meet with the participant "at least" monthly. The previously used language should be reinstated. The participant and consultant may choose to meet more often, and the participant should have that option expressly written into the new service standards. **Comment:** Page 19 of the proposed standards covers the initial and ongoing eligibility process for Mi Via services. Under the 2012 Mi Via Service Standards, eligibility evaluations would take place in the home or a location agreed upon by the state and the participant. The proposed standards alter this: evaluations will now occur either in the home or *in a location approved by the state*. Suggestion: HSD and DOH should return to the language put forward by the previous service standards. That language envisions that the state and the participant will work together to find a place for evaluation, a process which is compatible with a self-directed waiver. In contrast, the proposed language actively removes the participant from that portion of the evaluation planning process. The proposed language doesn't even expand the state's authority, since the state's *agreement* includes state *approval*; the proposed change only serves to offend the spirit of self-direction. **Comment:** Page 19 of the proposed standards also addresses expedited eligibility determinations for medical reasons. The	***what they want to receive from the participant-consultant relationship.*** ***State Response: Thank you for your comment. The State will make the edit.*** ***State Response: Thank you for your comment, The State will edit this section to read: "The LOC assessment is done in person with the eligible recipient in his or her home, or a location agreed upon by the participant and the TPA, and approved by HSD, or in an inpatient setting"*** ***State Response: The consultant serves assist the participant in arranging, directing and managing***

	proposed language states that a participant's Mi Via consultant can ask for an expedited level of care determination. It is critical that a participant is also able to request a level of care determination independently of the consultant. This ensures that the participant has the primary role in directing services. This primary role must include the ability to ask for an expedited eligibility process, even if the consultant declines to make the request, or does not make the request in a timely fashion. **Comment:** Since the 2012 standards went into effect, DRNM has received numerous inquiries concerning Employers of Record (EOR). As was true under the old standards, the new standards dictate that a person whom a participant selects as an EOR cannot be paid for EOR functions, or for any other Mi Via services provided to the participant. (Proposed Service Standards page 5.) Callers to DRNM express that these payment restrictions prevent them from designating someone of their choosing to serve as the EOR. Many individuals whom they would choose to serve in that role will not do so without some form of payment. DRNM is aware that this issue is complicated because of potential conflicts of interest between an EOR and the participant. However, this must be balanced with the freedom of a participant to be able to designate a person to direct their Mi Via employees. DRNM urges DOH and HSD to continue to examine the issue for a solution that enhances participant freedom of choice. **Comment:** Starting on page 9 of the proposed standards and continuing throughout the document, HSD and DOH have added language that explicitly prohibits the use of restraint, seclusion, or restrictive intervention in the implementation of Mi	***Mi Via services and supports, not limited to assisting with eligibility including the request for expedited LOC determination. The language stands as proposed.*** ***State Response: Thank you for your comment. The comment has been noted by the state.*** ***State Response: Thank you for your comment. The comment has been noted by the state.***

	Via Waiver services. DRNM strongly supports the inclusion of this language, and commends the state for adding it to these proposed service standards. **Comment:** On pages 12 and 17 of the proposed standards, HSD and DOH state that no payment will be provided for natural support functions, and that the consultant will identify natural support resources. DRNM believes that sections such as these continue a trend of undue focus on natural supports by HSD and DOH. We have repeatedly seen that the impact of this frankly unnatural focus on "natural" supports has been the denial of a medically necessary service because the participant at some point in the past, often in a period of great desperation, was able to get something done for free by a friend or family member; the denial based on "natural" supports often does not consider whether the person is willing to continue to perform this service for free into the indefinite future. The emphasis in any waiver budget process must be the needs and desires of the participant, with a secondary look at whatever natural supports might be available to aid the participant. Many Mi Via participants have extensive needs that cannot be met by a family member or a friend. The consultant and budget process should be focused on waiver- supported ways to meet those needs **Comments:** Involuntary termination from the Mi Via program is outlined on pg. 44 of the proposed standards. One of the grounds for termination is outlined in section 2a.: "The participant refuses to include and maintain services in his/her SSP and AAB that would address health and safety issues…or challenges the assessment after repeated and focused technical assistance…"	***State Response: Thank you for your comment. The use of natural supports are encouraged under self-direction. Mi Via participants have the option to utilize both natural and/or specialized services through Mi Via to meet their needs.*** ***State Response: Thank you for your comment. This requirement aligns with the approved CMS Waiver NM.0448 appendix E. A Public Hearing for CMS Waiver NM.0048 appendix E was held on July 14, 2014.***

	DRNM acknowledges that there are rare instances when a participant must be removed from the Mi Via program because of immediate risk to health and safety. But the quoted language is disturbing, especially in reference to a waiver that is meant to further participant choice. To a certain degree, a Mi Via participant should be able to reject health and safety recommendations that are not compatible with her choices. This is true of any member of the community, and should also be true for waiver participants. Similarly, participants should not be afraid to challenge their evaluations or service recommendations for fear of involuntary termination from the Mi Via Waiver. The language of section 2a. must be either eliminated or drastically revised, as it directly contravenes the philosophy of participant choice and self directed care. **Comment:** Under the proposed standards, a request for the reconsideration of a Mi Via budget denial must be made by the consultant in writing. It is crucial that the participant is also able to make a request for reconsideration independent of the consultant. The consultant should assist the individual participant with a reconsideration request, but cannot be allowed to determine whether or not that participant asks for reconsideration. As the standards are currently structured, the consultant and not the participant would ultimately decide whether a request for reconsideration is made. That is unacceptable and illegal. **Comment:** Page 34 includes a list of times when a participant may request a fair hearing. The following language must be added to that list: "The beneficiary believes that any action has been taken erroneously." This is consistent with and required by federal regulations; please see 42 CFR § 431.220(a)(2).	***State Response: The Consultant assists the participant to explore his/her options, including the right to request a reconsideration of a decision. The language stands as proposed.*** ***State Response: Thank you for your comment. The state will make the edit to add information consistent with the approved CMS Waiver .0048 and 8.314.6 NMAC Section 20. Subsection A.***

	Comment: On page 34 the Third Party Assessor is to send denial decisions to the participant in writing. The new Mi Via Service Standards must add that this written denial will include the legal justification and the reasons for the denial, and that those reasons must go beyond a simple citation of the regulations utilized. The notice requirements for due process are listed in federal regulations at 42 CFR § 431.210. In order to comply with federal law and due process requirements, the denial notice must include the reasons for the proposed action, the specific regulations that support the proposed action, or the change in Federal or State law that requires the action. **Comment:** On page 35, the proposed standards note that any notice of fair hearing rights will include information on continuation of benefits and the participant's responsibility for the repayment of those benefits in the case of an adverse decision. DRNM urges the state to include language in both the notices and the new service standards making clear that a participant "may" be responsible for reimbursing the state for services provided under continuation of benefits, rather than couching it as a certainty. HSD and DOH know that it is false to assert that repayment is an inevitable conclusion. In many cases, a participant is only able to access their right to appeal an adverse decision because continuation of benefits is provided during the long administrative hearing process. DRNM is highly concerned that an overemphasis of the possibility of reimbursement will have an impermissible chilling effect on administrative appeals. In order to comply with basic due process, the state must ensure that administrative appeals are open to those who wish to use them. Therefore, the emphasis should be	***State Response: Thank you for your comment. The Standards will be revised to include language that the denial notice includes the reasons for the proposed action, the specific regulations that support the proposed action, or the change in Federal or State law that requires the action.*** ***State Response: Thank you for your comment. The Standards reflect the language found in NMAC 8.314.6.21 which includes information which indicates the responsibility for repayment if the HSD administrative final hearing decision is not in the eligible recipients favor. Participants are provided information in the Standards to alert them to the language found in the denial notice.***

	on the availability of continuation of benefits, not the threat of repayment. **Comment:** On page 16, the first sentence under FOCosonline: The Mi Via Plan of Care on-line system is incorrect. It reads: In addition to the above functions, the FMA operates the FOCosonline system through which the Mi Via program is operated through. One use of "through" should be deleted. **Comment:** A number of services listed as "Non-Covered" by the Mi Via Waiver are important to fostering participant independence in the community. There can be no valid justification for the program's refusal to provide these services to participants, and so they should be available to individuals who need them through the waiver. **Comment:** Pages 25-26 of the proposed Service Standards list the services that are not covered by the Mi Via Waiver. DRNM freely acknowledges that the Mi Via Waiver cannot cover services that are not medically necessary. The difficulty is that HSD and DOH have completely refused to cover a number of services that could be medically necessary for an individual participant. **Comment:** HSD and DOH must not completely ban the potential program services listed below. Instead, there needs to be an individual assessment of each participant to determine if the services requested are medically necessary. The blanket prohibition of these services without an individualized consideration of the Mi Via participant's medical needs offends the	***State Response: Thank you for your comment. The state will make the edit.*** ***State Response: Thank you for your comment. Mi Via participants receiving waiver services access acute, ancillary, speciality, and behavioral health benefit services through a Centennial Care Managed Care Organization (MCO). The Mi Via Home and Community Based Waiver is intended to provide eligible participants control over CMS approved waiver services and supports.*** ***State Response: Thank you for your comment. Medically necessary services are covered under the participant's MCO Benefits.*** ***State Response: Thank you for your comment. State Response is listed for each service as identified in comments below:***

	spirit of self- direction and violates the Americans with Disabilities Act. **Comment:** The proposed service standards exclude the purchase or maintenance of service animals, with a limited exception for the training of service dogs. The Mi Via Home and Community-Based Waiver is specifically intended to allow eligible participants control over their services and supports. Many people with disabilities require the assistance of service animals to maintain independence in their homes and communities. The exclusion of service animals is proposed without reason, and goes directly against the goals and philosophy that are the foundation of the waiver. **Comment:** The proposed standards contain a blanket exclusion of activities that are primarily recreational, with examples given of what constitutes a recreational activity (including sporting events, theater tickets etc.). However, DRNM has encountered numerous cases where a participant's service provider or physician has determined that these activities provide a significant therapeutic benefit for a Mi Via participant. Many participants' activities, which the Third Party Assessor (TPA) might define as "leisure" or "recreational," are in fact medically necessary for those individuals. The Department is required to provide such services, and the exclusion of all "leisure" activities from that category is both incorrect and impermissibly arbitrary. **Comment:** As was the case with the 2012 service standards, the proposed standards limit consumer electronics to the purchase of one of each "type" per year, and then only a replacement once every three years. This proposal is arbitrary, offered without any	***State Response: The Mi Via Waive Home and Community Based Waiver is intended to provide eligible participant control over CMS approved waiver services and supports. Under the current waiver, the use of waiver funds to purchase animals is not an approved service.*** ***State Response: CMS disallows the use of waiver funds for services that are diversional or recreational in nature as these fall outside the scope of §1915 (c) of the ACT. The language in this section has been revised to remove examples of activities that are considered recreational or diversional.*** ***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.***

	reason, and should be rejected. This proposal will permit the TPA to deny without analysis a second item requested in a category. For a variety of reasons, participants occasionally require more than one item identified as a particular "type" within three years, and this proposed change would arbitrarily reject items that may be vital to a participant's independence in his/her home and community. **Comments:** The proposed standards also exclude any cell phone services that include fees for data (including GPS), or more than one cell phone line per participant. Once again, this proposed change creates an arbitrary reason to reject an item without regard for the participant's disability-related needs. There are many examples of instances where a phone with internet or GPS access could be of crucial importance for a participant residing in the community. Many Mi Via participants have memory problems and/or auditory processing disorders; the ability to use cell phones to determine where they are and how to get home, or to the doctor's office, can be critical. This service must be made available to participants if it is determined that it is medically necessary. Furthermore, this arbitrary prohibition functions to ban a great many Mi Via participants from any cell phone access, given that in huge portions of New Mexico the only available cell phone providers do not offer any service options without a data **Comment:** The proposed service standards exclude dental services utilizing the Mi Via budgetary allotment. Dental services are critical to many Mi Via participants. Often, the participant will have no other option to access these services. The programmatic elimination of dental services would put	***State Response: Thank you for your comment. The proposed language has been struck that excluded cell phone services for minors. Data will be included under cell phone service with a limitation to the cost of one hundred dollars per month. The language on the limitation on the number of cell phone lines per eligible recipients shall remain as wavier services that are intended for only the eligible recipient.*** ***State Response: Thank you for your comment. Mi Via participants receiving Waiver service access acute, ancillary, specialty and behavioral health benefit services through Centennial Care Managed Care Organization (MCO). This includes dental services.***

	participants at risk, and would violate the spirit and law of this self-directed Waiver. **Comment:** The Americans with Disabilities Act requires an individualized assessment of need for each participant. Many of the Mi Via services not covered by the proposed service standards would be deemed medically necessary for some participants following an individualized evaluation. Arbitrary exclusion of those services from consideration both violates the ADA, and goes against the spirit of a waiver where services are self directed. **Comment:** HSD and DOH must alter the section of the service standards pertaining to non-covered services in order to allow for individual assessment of need and comply with the ADA and federal law generally.	***State Response: Thank you for your comment. Participants are assessed individually and service plan development is individualized. Medically necessary services are covered under the participant's MCO Benefits.*** ***State Response: Thank you for your comment. Participants are assessed individually and service plan development is individualized. Mi Via participants receiving waiver services access acute, ancillary, speciality, and behavioral health benefit services through a Centennial Care Managed Care Organization (MCO). The Mi Via Home and Community Based Waiver is intended to provide eligible participants control over CMS approved waiver services and supports.***
December 11, 2015 Submitted via Email	**Comment:** **Proposed 2015 Service Standards** Philosophy of Self-Direction Self-direction is a tool that leads to self-determination, through which participants can have greater control over their lives and have more freedom to lead a meaningful life in the community. -- "the" doesn't match verbiage in NMAC which reads his/her which narrows the definition of community. **Comment:** **Proposed 2015 Service Standards** GENERAL AUTHORITY AND REQUIREMENTS The Centers for Medicare and Medicaid Services (CMS) approved the Mi Via Self-	***State Response: Thank you for your comment. The state will revise 8.314.6.7 NMAC Section N with the suggested language.*** ***State Response: Thank you for your comment. Those receiving Mi Via Waiver services must meet medical and financial eligibility requirements as well as eligibility requirements***

	Directed Waiver effective October 1, 2015. Mi Via provides self-directed home and community based services (HCBS) to individuals who are both financially eligible and medically eligible under the ICF/IID Level of Care (LOC) guidelines (8.314.6.13 NMAC). Eligible waiver participants include people who are eligible to receive services through the Home and Community Based Services Waivers for those that are Developmentally Disabled (DD) or Medically Fragile (MF). -- Verbiage " Developmentally Disabled (DD) or Medically Fragile (MF)" doesn't match NMAC verbiage, which language is appropriate?	***established through the Department of Health (DOH) for Developmental Disabilities and/or Medically Fragile conditions.***
	<u>Comment:</u> **Proposed 2015 Service Standards** Personal Representative (PR) – The participant may choose to appoint a personal representative designated to have access to information for the purpose of offering support and assisting the participant in understanding Mi Via waiver services. The participant can designate a person to act as a personal representative by signing a release of information form indicating the participant's consent to the release of confidential information --- "consent to the release of confidential information" This language is too broad allows representative access to all client information.	***State Response: Thank you for your comment. The state will make the edit.***
	<u>Comment:</u> **Proposed 2015 Service Standards** Community Membership Supports The second section of the SSP covers Community Membership Supports, which help the participant participate in community life in order to enhance relationships with others, work or participate in meaningful activities. These supports include: Community Direct Support, Employment Supports and Customized Community Group Supports --	***State Response: Thank you for your comment. Customized Community Group Support is the new service name as approved in the Mi Via Waiver by Centers for Medicare and Medicaid (CMS) effective October 1, 2015. This service name change has to be updated in the new Mi Via Standards and Regulations.***

	"Customized Community Group Supports" language doesn't match NMAC **<u>Comment:</u>** **Proposed 2015 Service Standards** 7. NON-COVERED SERVICES h. Any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household or personal expense; --- too broad and limiting in nature, households without disabilities don't have the same technology needs that a home with a disabled individual would have. s. Regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, except upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the participant's qualifying condition or disability; --- limiting of potential emods for secondary diagnoses and potential physical limitations/disabilities not listed on 378, but may benefit member's primary diagnosis/condition. x. Consumer electronics such as computers (including laptops or any electronic tablets), printers and fax machines, or other electronic equipment that does not meet the criteria specified in Section 15 Subsection A of 8.314.6.15 NMAC. No more than one (1) of each type of item may be purchased at one (1) time, and consumer electronics may not be replaced more frequently than once every three (3) years, including those consumer electronics previously purchased through any other MAD program; --technology is required to maintain Mi Via budgets and if an individual weren't disabled or on Mi Via they wouldn't need access to the above technology y. Cell phone services that include fees for data (to include GPS) or more than one (1)	***State Response: Thank you for your comment. The comment has been noted by the state. The language stands as proposed.*** ***State Response: Thank you for your comment. Mi Via services must address a clinical, functional, medical, or habilitative need which is reviewed by the Third Party Assessor.*** ***State Response: Thank you for your comment. Technology can be purchased through the Mi Via program and this support must address a clinical, functional, medical or habilitative need.*** ***State Response: Thank you for your comment. Data will be included***

	cell phone line per participant. -- limits accessibility to emergency services, police, ems, etc...	***under cell phone service with a limitation to the cost of one hundred dollars per month. The language on the limitation on the number of cell phone lines per eligible recipients shall remain as wavier services that are intended for only the eligible recipient.***
	z. Cell phones and cell phone services for participants who are minors as these are items that legally responsible individuals (parents/guardians of minors) would ordinarily purchase for household members of the same age who do not have a disability or chronic illness. -- assumption that all homes purchase cell phones for minors, not all families would necessarily have financial means to purchase cell phones for safety if not in the Mi Via program, this is a potential healthy and safety risk.	***State Response: Thank you for your comment. The proposed language has been struck that excluded cell phone services for minors.***