

Self-Direction for All: A Training for Program Stakeholders

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Agenda & Opening Remarks

- Day 1: Foundations of Self-Direction
 - What is self-direction? How are self-directed services different from traditional services?
 - Person-centered planning in self-direction
 - Individual budgets and spending plans
 - Participant supports
 - Information & Assistance
 - Financial Management Services
 - Representatives

Agenda & Opening Remarks

- Day 2: Taking Self-Direction to the Next Level
 - Program-wide quality assurance and improvement
 - Monitoring self-direction
 - Federal policy updates: what's impacting self-direction?
 - 21st Century Cures Act/Electronic Visit Verification
 - Congressional proposed Medicaid financing changes
 - Department of Labor Home Care Final Rule
 - Creativity in service planning: making self-direction work “to the max” by thinking out of the box

We want to hear from you!

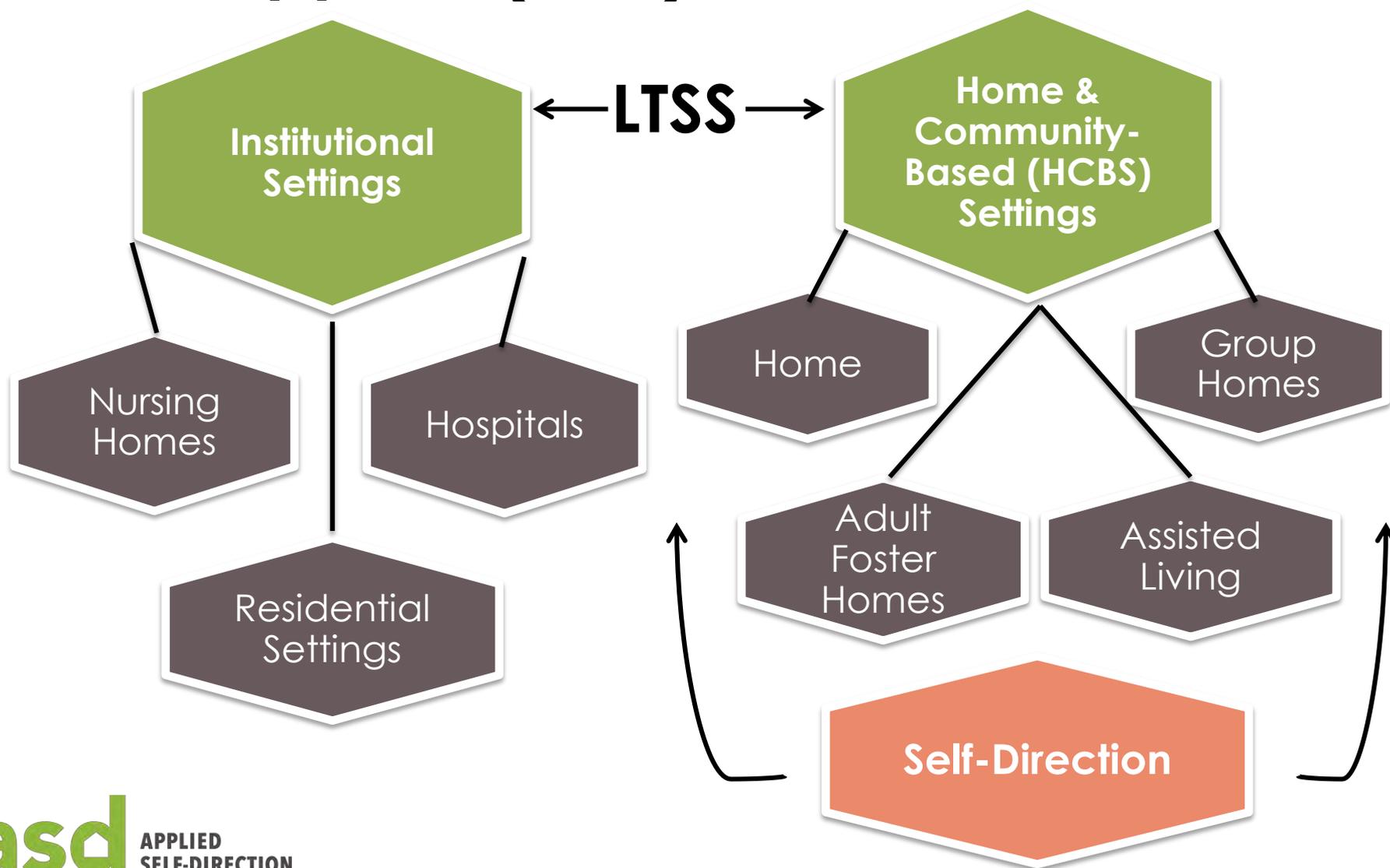
**Questions are welcome
throughout the presentation.**



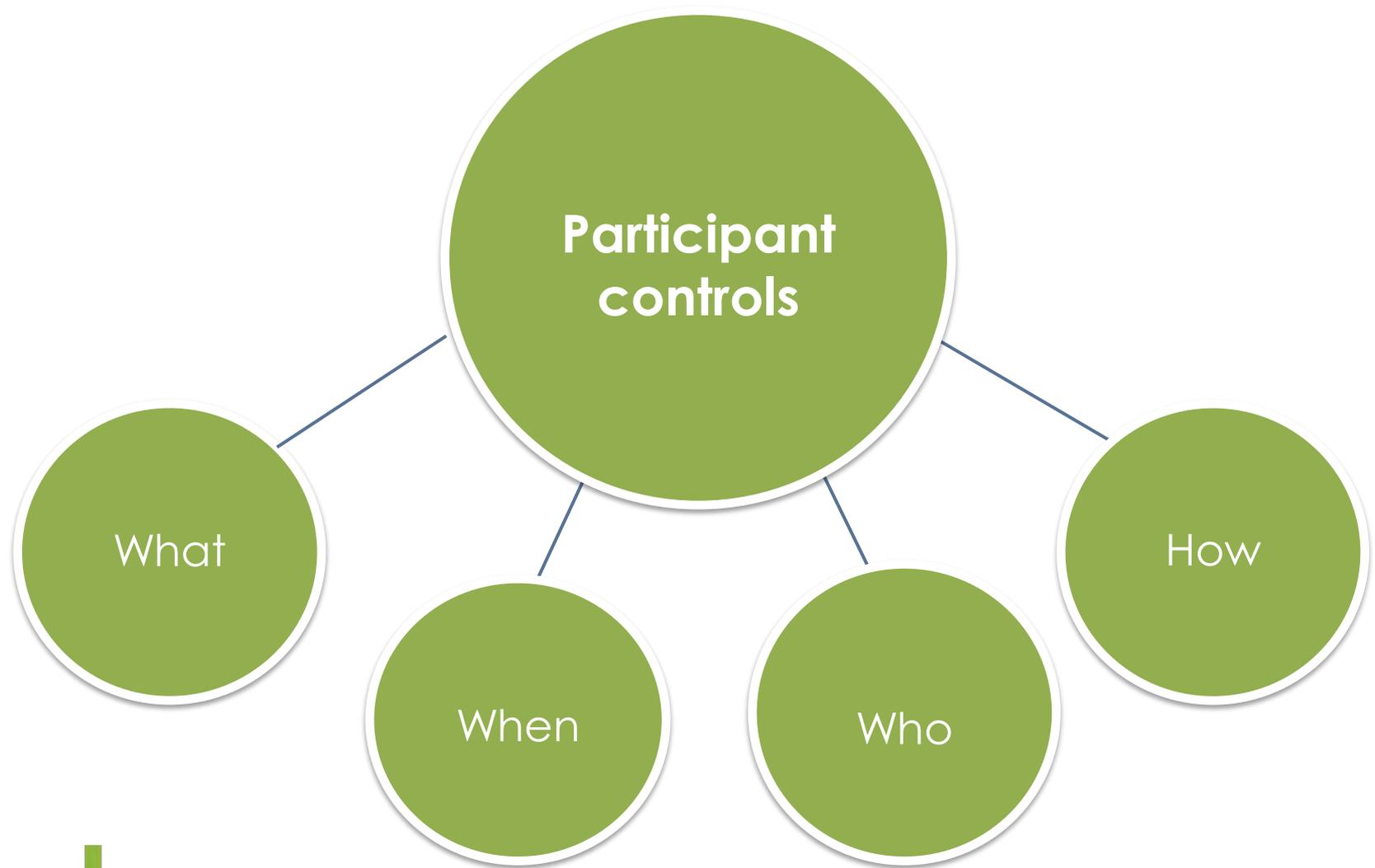
What is Self-Direction?



Self-Direction in Long-Term Services and Supports (LTSS)



What is Self-Direction?



Traditional Services



Self-Directed Services



Cash & Counseling Demonstration and Evaluation

- **3-state demonstration**



- **Offers Medicaid participants with disabilities more choices about how to get help at home**

- Hire friends, family or neighbor
- Flexible budget
- Goods and services

- **12-state expansion**

Cash & Counseling Demonstration and Evaluation

■ Study Populations

- ❑ Adults with disabilities (Ages 18-64)
- ❑ Elders (Ages 65+)
- ❑ Children with developmental disabilities (FL only)

■ Evaluation

MATHEMATICA
Policy Research

UMBC
AN HONORS UNIVERSITY IN MARYLAND

Self-directing participants were up to 90% more likely to be very satisfied with how they led their lives.



Self-direction significantly reduced participants' unmet personal care needs.



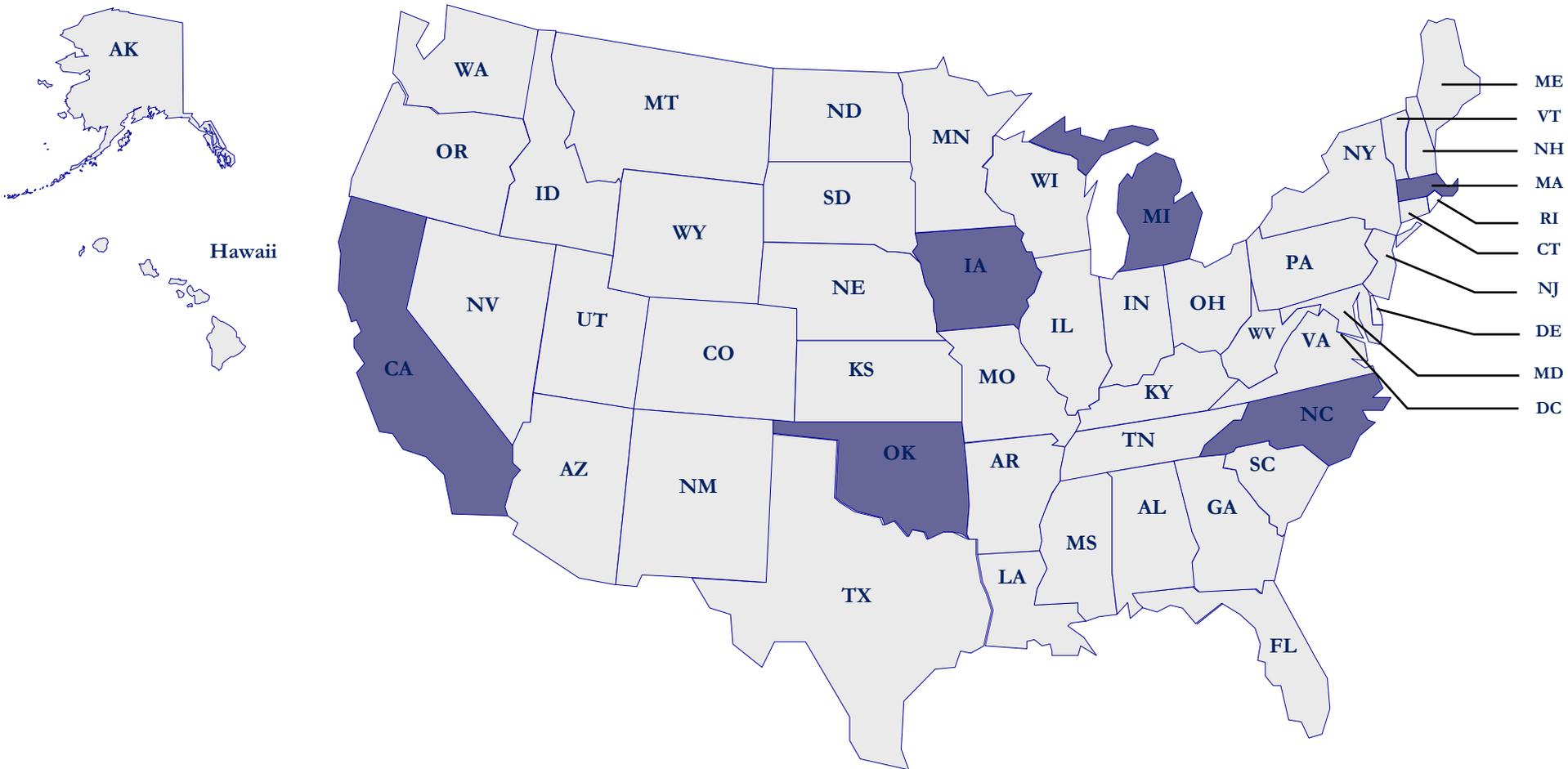
Primary caregivers were significantly more satisfied with their lives in general.



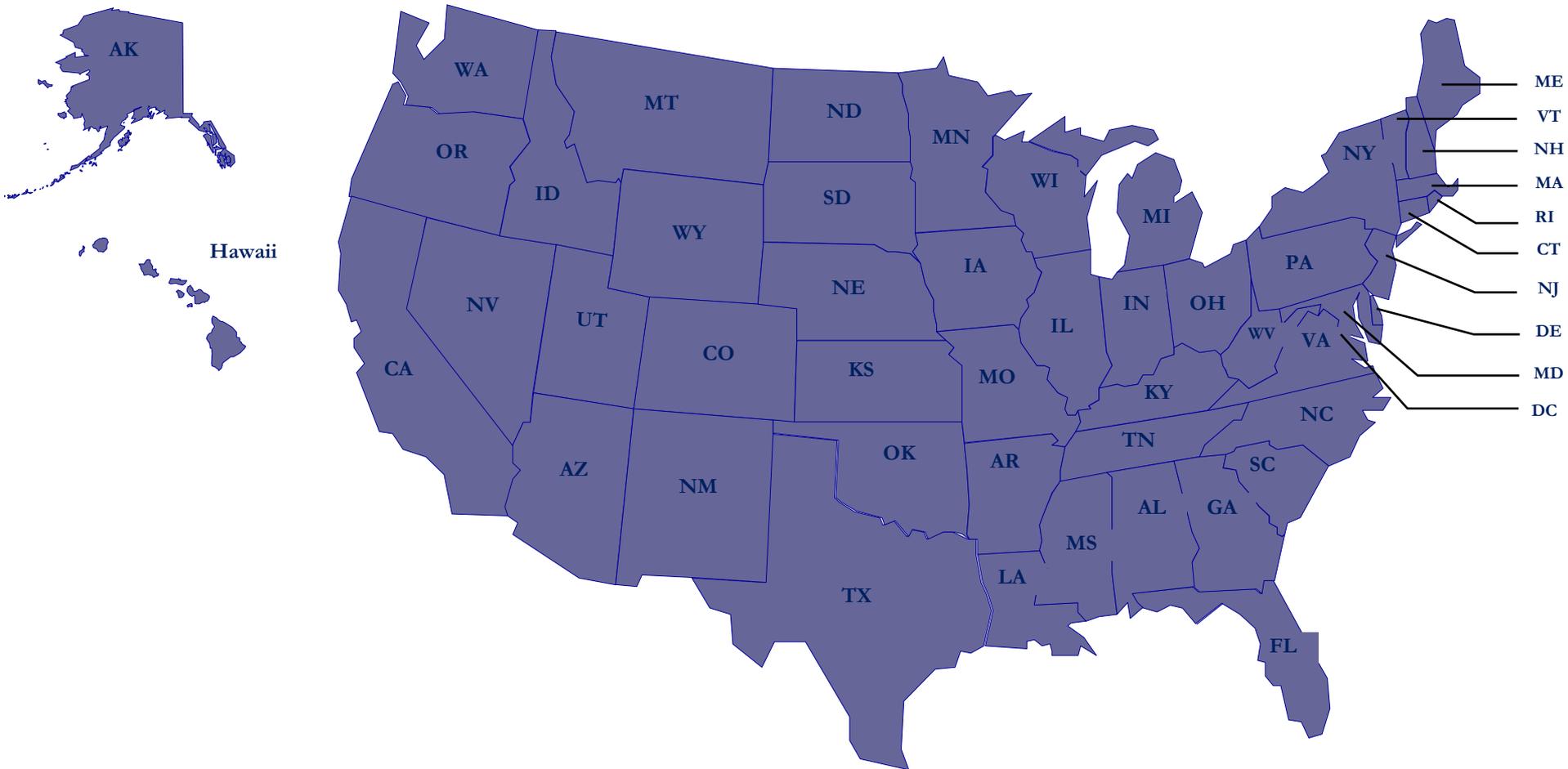
Self-direction did not result in the increased misuse of Medicaid funds or abuse of participants.



Prevalence of Self-Direction: 1970s-80s



Prevalence of Self-Direction: 2000s



Self-Direction Enrollment and Program Size

- Total enrollment is over 1,000,000
- Number of programs is approximately 250
- Average program size is about 4,000 participants; the range is from 2 to 500,000
- Thirty percent increase in number of participants served since 2013

Operationalizing Self-Direction



Commonly Used Terms

- Self-Direction, Consumer Direction, and Participant Direction = Authentic Choice and Control
- Representative
 - Unpaid person appointed by the participant to assist in directing services. Also known as surrogate or designee.
- Financial Management Services (FMS)
 - Entity appointed to assist an individual to manage fiscal employment and/or budget responsibilities.
- Worker
 - Someone chosen by the individual to provide direct personal assistance. May include friends and family.

Commonly Used Terms

- Individual Budget
 - An allocated amount of funds that a participant can use to hire workers and/or purchase other goods and services to meet their support needs. The term “flexible budget” often indicates the ability of the budget to be used as a participant moves from one setting to the next.
- Spending Plan
 - The spending plan specifies how the allocated amount or individual budget will be used. Will staff be hired? Will goods and services be purchased?
- Counselor/Support Broker/Service Coordinator
 - The person who assists the participant in developing and carrying out his/her plan

Essential Roles in Self-Direction

Counselor

- Embraces paradigm shift
- Explains the program
- Completes enrollment
- Collaborates with participant to complete the assessment, service plan, spending plan, and reassessments
- Offers skills training
- Partners with participant

FMS

- Assures that spending plan is followed
- Pays invoices including timesheets
- Figures tax liability and pays taxes
- Maintains savings
- Provides accounting reports

Participant

- Makes decision based on individual budget
- Hires, manages, and dismisses workers
- Sets tasks
- Trains (or arranges for training) of workers
- Evaluates worker performance
- Determines goods and services to be purchased

Who is Being Served?

Population Served	Number of Programs	Percentage of Reporting Programs (n=208)
Adults with Behavioral Health Issues	4	2%
Adults with Intellectual Disabilities/ Developmental Disabilities (ID/DD)	88	42%
Adults with Physical Disabilities	70	34%
Children	69	33%
Elders	58	28%
Other (e.g. Traumatic Brain Injury, Autism, HIV)	13	6%
Veterans	31	15%

Note: percentages total over 100 because programs serve more than one population

Who's Paying the Bills?

Funding Source	Number of Programs	Percentage of Reporting Programs (n=239)
Medicaid State Plan	17	7%
Medicaid 1115 Demonstration Waiver	13	5%
Medicaid 1915(b) Waiver	3	1%
Medicaid 1915(c) Waiver	142	60%
Medicaid 1915(i) State Plan Option	2	1%
Medicaid 1915(j) State Plan Option	5	2%
Medicaid 1915(k) State Plan Option	4	2%
Veterans' Administration	31	13%
State General Revenue	7	3%
Private Pay	0	0
Other funding mechanisms	11	5%

Components of Self- Direction



Defining “Person-Centered”



The Battleship and the Lighthouse



Shifting the Paradigm

**FACT: Nobody NEEDS an Adult Foster Home (AFC).
An AFC is a system response to a human need.**

People need (this would include all of us in the room):

- A safe place to live
- Food and drink
- People to help us when we need help
- Companionship
- Opportunities to learn important things
- Opportunities to learn fun things
- Time to relax
- Opportunities to contribute



If we embrace this paradigm shift, authentic person-centered approaches start to make a lot more sense.

What Do We Mean by “Person-Centered?”

Person-Centered vs. System Centered Work with Beth Mount

How Do We Understand People?

Who is George?

- ❑ A person with a mental ages of 4 years and 3 months
- ❑ A person with an IQ less than 30
- ❑ A person who is severely mentally retarded (sic)
- ❑ A person who has “an indication of organicity, including difficulty with angles, closure, retrogression, over-simplification and an inability to improve poorly executed drawings
- ❑ A person with acute temper-flare ups directed at staff



What Does He Need?

- ❑ A program for children
- ❑ To be protected from the world
- ❑ To learn very simple tasks
- ❑ To learn these skills separately from non-disabled people because he is so different from them
- ❑ Highly specialized staff who can address issues of retrogression, etc.
- ❑ An environment where his temper can be controlled
- ❑ To be repaired and sent back to the real world when he is better controlled

From “It’s Never Too Early, It’s Never Too Late: A Booklet about Personal Futures Planning” by Beth Mount and Kay Zwernik, 1988

How Do We Understand People?

Who is George?

- A 40 year old man who has missed most typical life experiences and has never had a real job
- A person with no income who is poor
- A person who has been isolated all his life
- A person who has no contacts or connections to the wider community
- A person who has little control over the direction of his life



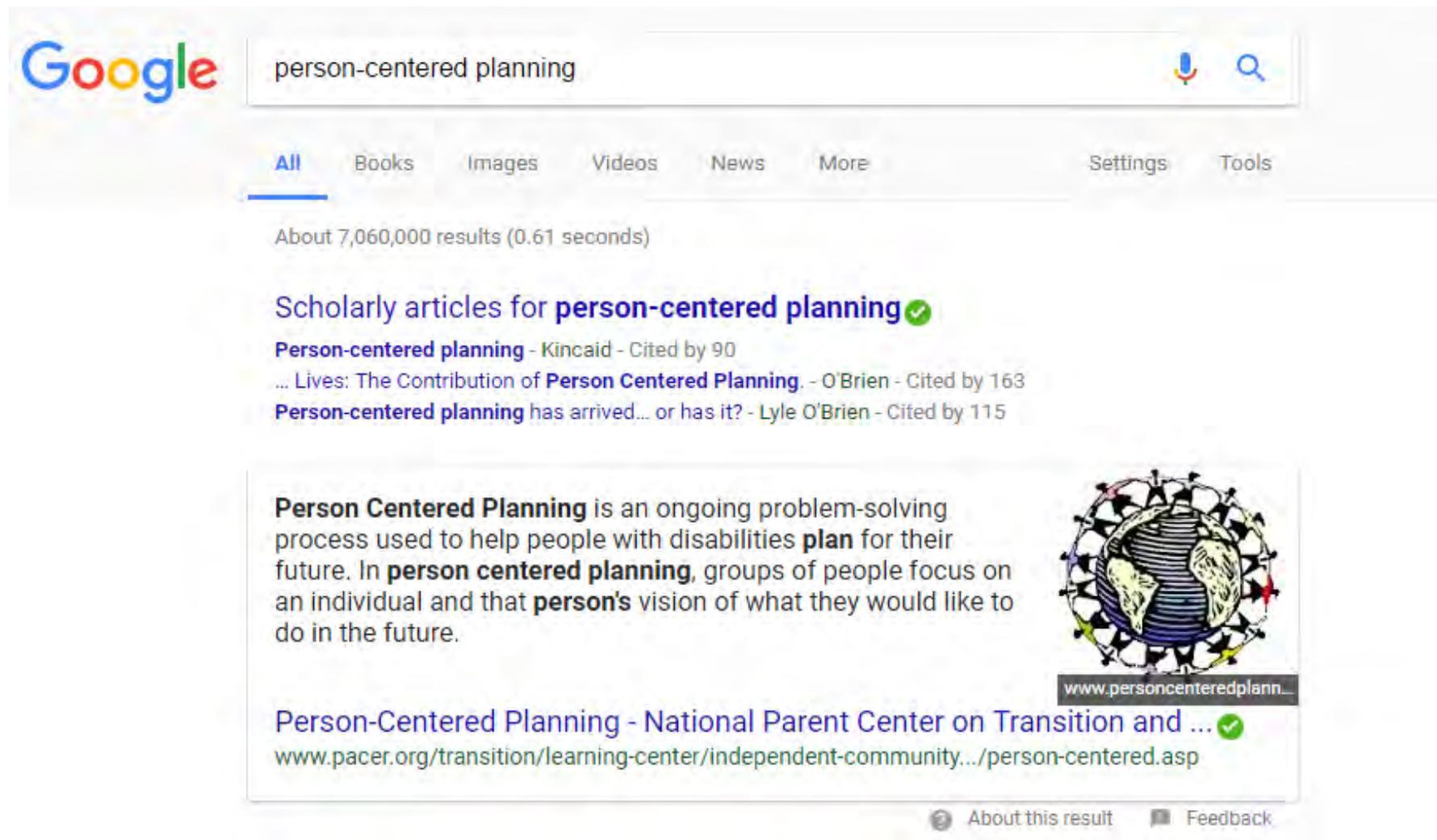
What Does He Need?

- A lot of experiences
- A real job
- An income
- To be included and present in the community
- Relationships to other people, connections to the community
- Friends
- Vision for the future and support in getting there
- Someone who can speak out on his behalf

Person-Centered Planning



Person-Centered is “Common Knowledge”



The image shows a Google search interface. The search bar contains the text "person-centered planning". Below the search bar, there are tabs for "All", "Books", "Images", "Videos", "News", and "More". The "All" tab is selected. To the right of the tabs are "Settings" and "Tools" links. Below the search bar, it says "About 7,060,000 results (0.61 seconds)".

Scholarly articles for person-centered planning ✓

- Person-centered planning** - Kincaid - Cited by 90
- ... Lives: The Contribution of **Person Centered Planning**. - O'Brien - Cited by 163
- Person-centered planning** has arrived... or has it? - Lyle O'Brien - Cited by 115

Person Centered Planning is an ongoing problem-solving process used to help people with disabilities **plan** for their future. In **person centered planning**, groups of people focus on an individual and that **person's** vision of what they would like to do in the future.



www.personcenteredplann...

Person-Centered Planning - National Parent Center on Transition and ... ✓
www.pacer.org/transition/learning-center/independent-community.../person-centered.asp

About this result Feedback

“Person-Centered” Is Not a New Idea

- [“It’s Never Too Early, It’s Never Too Late: An Overview of Personal Futures Planning”](#), 1988 by Beth Mount
- [“Finding a Way Towards Everyday Lives: The Contribution of Person Centered Planning”](#) © 1992 by John O’Brien and Herbert Lovett

“Person-Centered” Planning Comes in Many Flavors

- Individual Service Design: Component of early workshops on the principle of normalization. Asks “who is the person? what does the person need? and what would have to happen to meet those needs?”
- Personal Futures Planning: Finding capacities, discovering a vision and plan for the future, building a circle of support through action, working for systems change.

“Person-Centered” Planning Comes in Many Flavors

- MAPS: Initially used in schools to plan and support inclusion in regular classrooms; engages parents to articulate “what is the dream?” and “what is the nightmare?”
- Essential Lifestyle Planning: Developed to assist individuals moving from institutions to community settings. “Non-negotiables, strong preferences, highly desirables.”

Think Pizza



Pizza



Not Pizza



What Do the Rules Say About Person-Centered Planning?

From the Final Rule: HCBS Setting Requirements

- ❑ Person will lead the *process* where possible
- ❑ Person's representative in a participatory role as needed and defined by the individual
- ❑ Includes people chosen by the individual
- ❑ Information and support provided so that the person can direct the process to the maximum extent possible
- ❑ Timely and occurs at times and locations convenient to the person
- ❑ Reflects cultural considerations of the person



What Do the Rules Say About Person-Centered Planning?

From the Final Rule: HCBS Setting Requirements

- Use of plain language – easily accessible
- Addresses conflict resolution and conflict of interest
- Offers informed choices regarding services and supports the individual receives and from whom
- Documents alternatives that were considered by the person
- Identifies the strengths, preferences, needs and desired outcomes of the individual
- Provides a method to request updates



Person-Centered Planning and Self-Direction

One of the key characteristics of self-direction as defined by CMS:

- Process directed by the individual
- Assistance as needed or desired from someone the person chooses
- Identifies strengths, capacities, preferences, needs and desired measurable outcomes
- May include others freely chosen by the individual who are recognized as important contributors
- Needs to include back-up plans and an assessment of risks

Overview of Key Concepts



Common Themes

Gifts

Choices

TALENTS

Capacity

Empowerment

Support
Network

CONTROL

STRENGTHS

Key Concept: Finding the Balance

- Learning what's important “to” the individual
- Understanding what's important “for” the individual
- Continually seeking the balance between important “to” and “for”

What's Important To a Person?

What is important to a person includes those things in life which help us to be *satisfied, content, comforted, and happy*.

It includes:

- People to be with /relationships
- Things to do
- Places to go
- Rituals or routines
- Rhythm or pace of life
- Things to have”

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What's Important To Katie?



*Feeling loved and
secure*



FOOD!
More Food!



What's Important For a Person?

What is important for people includes only those things that we need to keep in mind regarding

- ❑ Issues of health and safety
 - Physical health and safety, including wellness and prevention
 - Emotional health and safety, including support needed
- ❑ What others see as important to help the person be a valued member of their community

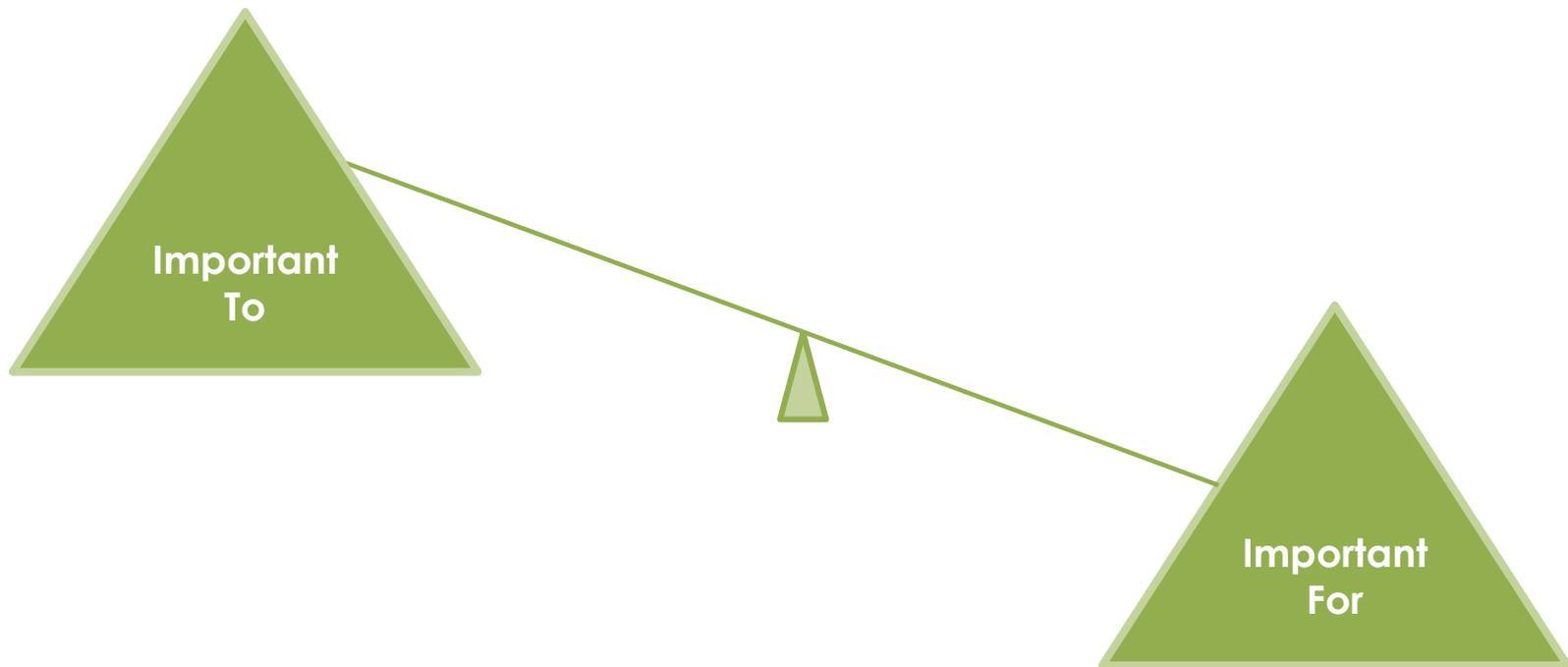
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What's Important For Katie?

- A medical professional she trusts
- Staying sober
- Environments that allow her to move freely
- Keeping busy so she won't be bored
- A strong, trusting primary relationship
- Finishing high school
- Work with her therapist on her anxiety and depression
- Understand her responsibility for her personal finances

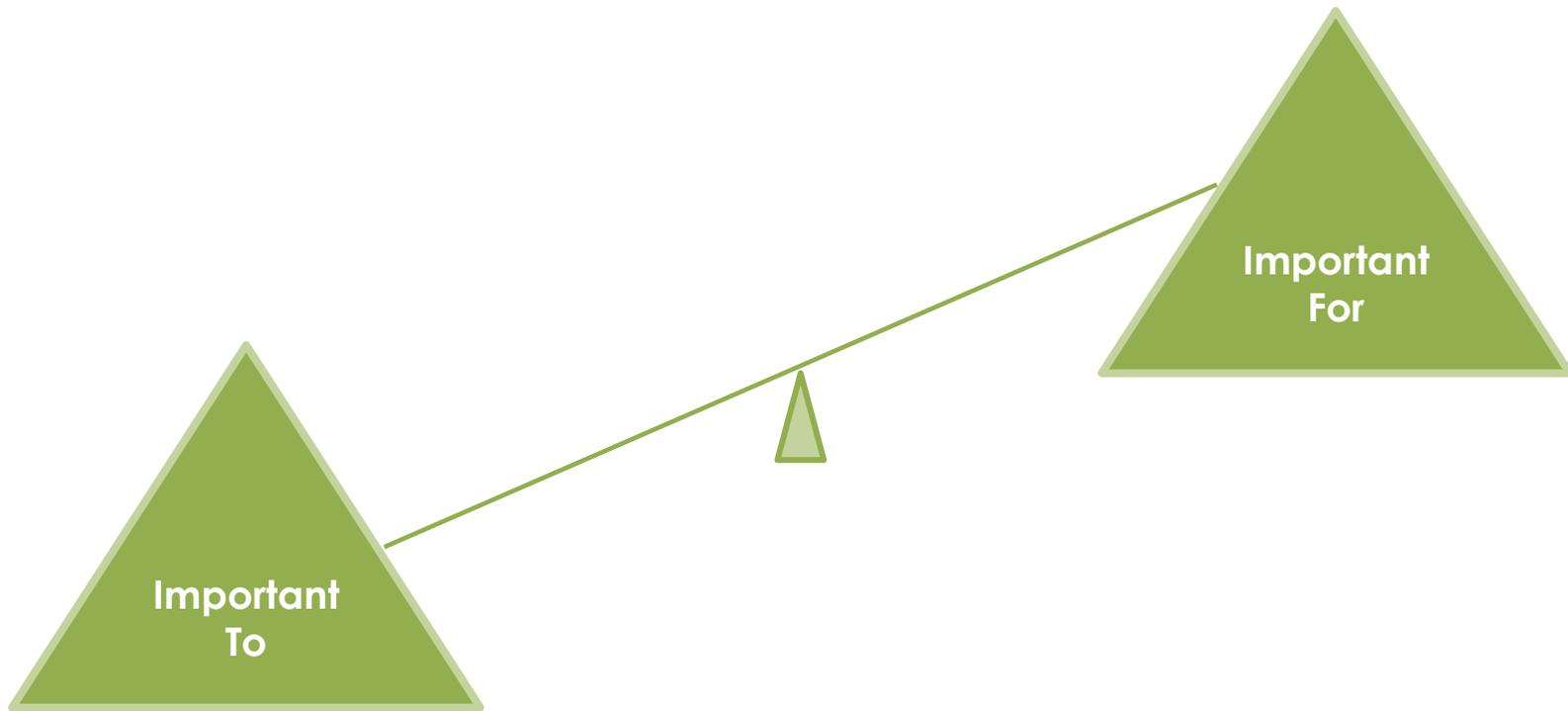
Striving to Balance “Important To” and “Important For”

- When a person’s health and safety needs dictate their lifestyle and overpower services and supports, “important for” has taken over.



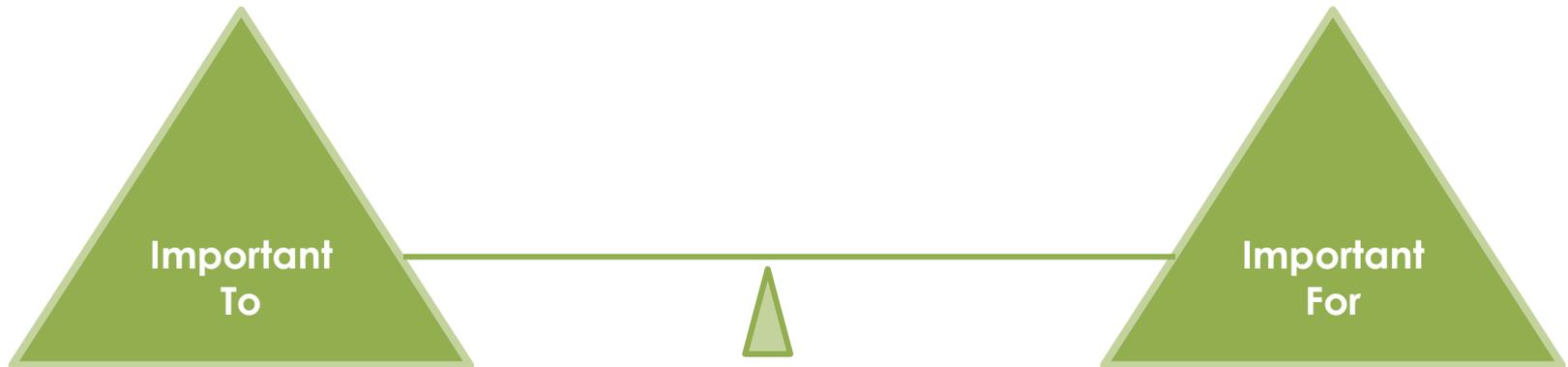
Striving to Balance “Important To” and “Important For”

- When a person’s life is driven by their choices without the accompanying responsibility, “important to” has taken over.



Striving to Balance “Important To” and “Important For”

- If something is important for us, but is not important to us, we have little interest in doing it.
- When things are both important to us and important for us, we are more likely to do it.



Person-Centered Planning Tools



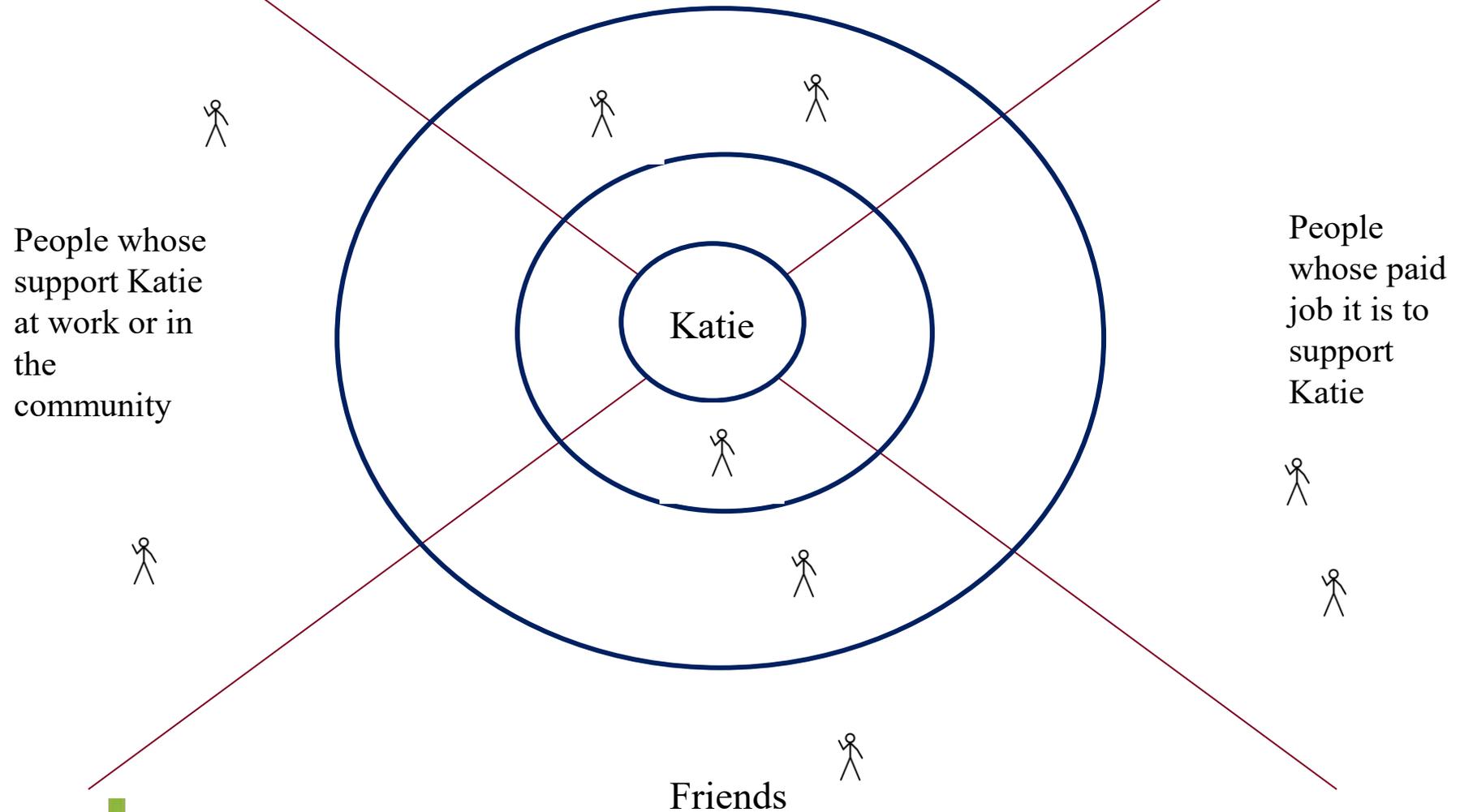
Useful Tools for Discovery and Learning About a Person

- Relationship maps
- Rituals and Routines
- Good day and Bad day
- 2-minute Drill
- One Page Description

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Relationship Map

Family



Useful Tools for Discovery and Learning About a Person

- How would this information be useful in the development of a person-centered plan?
- How could this information inform the team in identifying supports for self-direction?

Rituals and Routines



- Morning
- Bedtime
- Vacation
- Comfort
- Holidays
- Celebrations



Useful Tools for Discovery and Learning About a Person

- How would this information be useful in the development of a person-centered plan?
- How could this information inform the team in identifying supports for self-direction?

Good Day – Bad Day

What Makes It a Good Day

- No alarm clock
- Getting things on my list accomplished
- Laughing
- Time to read
- Clean kitchen
- Having time to take a walk
- Snuggle time with my kids
- Appropriate caffeine levels

What Makes It a Bad Day

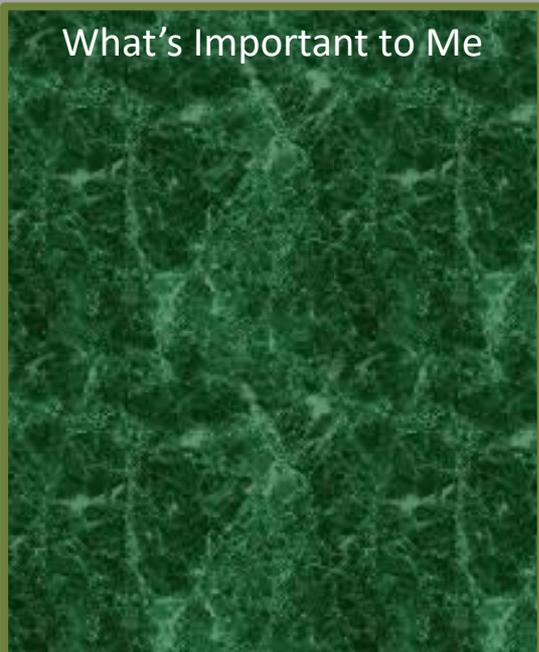
- Not getting enough sleep
- Getting interrupted when I'm trying to focus
- Listening to the news too much
- Surprises that require I make adjustments
- Having a headache
- Being disappointed when someone doesn't follow through
- Inconsiderate drivers

Useful Tools for Discovery and Learning About a Person

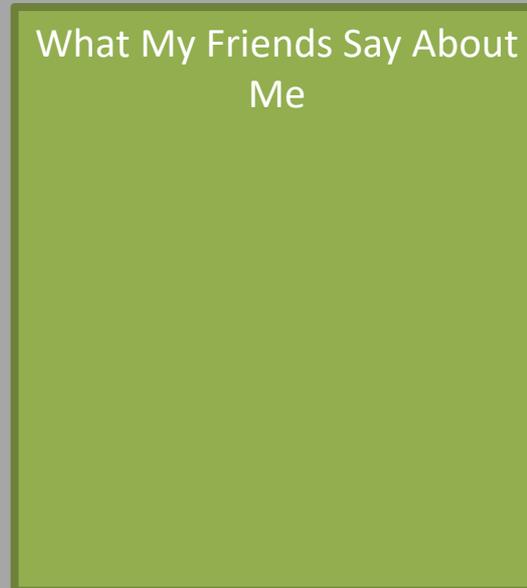
- How would this information be useful in the development of a person-centered plan?
- How could this information inform the team in identifying supports for self-direction?

Example of One Page Description

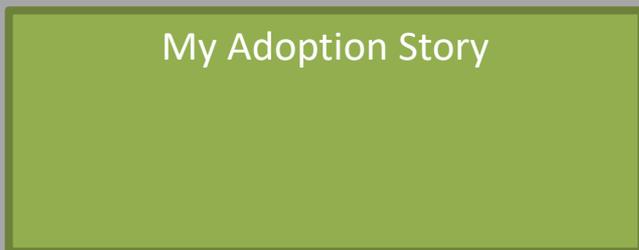
What's Important to Me



What My Friends Say About Me



My Adoption Story



How You Can Best Support Me



**“The difficulty lies, not so much
in developing new ideas as in
escaping from old ones.”**

—John Maynard Keynes



Individual Budgets and Spending Plans



Budgets in Self-Direction: What Are They?

- Budget = amount participant can spend on his/her care
- Program sets limits on what budget can cover
- In New Hampshire budgets may cover
 - Payroll
 - Purchased Services
 - Goods

Services NH participants may self-direct:

- Assistive Technology Support Services
- Wellness Coaching
- Respite
- Environmental and Vehicle Modification Services
- Specialty Services
- Community Participation Services
- Participant Directed and Managed Services (PDMS)
- Community Support Services (CSS)
- Service Coordination
- Supported Employment

Budgets in Self-Direction: Where Do They Come From?

- Budgets based on cost of care
 - Historical costs
 - Assessment leads to budget
 - Plan leads to budget
- NH Budget determined by...



The Spending Plan

- Spending plan = how the budget is going to be spent
- Goes by many names
- Whole team uses it to guide and oversee spending
- FMS checks payments against spending plan



Building the Spending Plan



- Spending plan may include
 - Hiring staff
 - Purchasing services
 - Purchasing goods
 - Participants may save funds for major purchase
- Spending may occur in these service areas:
 - (See slide 62)

Matching Needs and Budget

- Start Person-Centered Plan
 - Person's needs and goals
- Services available from informal network
- Services available cheap or free from other groups or agencies
- Services that require hired staff
- Goods and services that may be purchased



THE BUYERARCHY
of NEEDS
(with apologies
to Maslow)

Determining Staff Costs

- Determine tasks
- Determine hours
- Determine wages
 - FMS will help with wage guidelines
 - May pay different wages
 - Include employer costs
 - FICA
 - Workers' Comp
 - FMS knows this
- Hours x (wages + employer costs) = **staff costs**



Now Hiring

Other Costs: Goods and Services

- Criteria
 - ❑ Meet goals of PCP
 - ❑ Within service limits of waiver
- Non-staff services
 - ❑ May be cheaper and more flexible
 - ❑ Transportation
 - ❑ Gym membership
- Goods
 - ❑ May replace staff time
 - ❑ May better support goals



A Budget Template

Spending Plan

For Services Beginning

3/1/2018

Name Randy King
ID number xxxxxxxxx
Date 20-Oct-15
Monthly Allocation \$2,000.00

Agency Contact
FMS Contact

Tina Turner
 Beth Hamson

Planned Service	Employee	Rate to Employee	Estim. Employer Taxes & WC	Units	Total
Personal Care	Sandy Sue	\$ 20.00	\$	6.00	25 \$ 650.00
Personal Care	Betty Lou	\$ 15.00	\$	4.50	20 \$ 390.00
Personal Care	Brandon Harris	\$ 12.00	\$	3.60	23 \$ 358.80
Personal Care	Sarah Watts	\$ 15.00	\$	4.50	15 \$ 292.50

Total Services \$ 1,691.30

Routine Planned Non-Employee

Good/Service	Vendor	Unit Cost	Units	Total
Laundry Service	Mr Clean	\$	5.00	8 \$ 40.00
Transportation	Yellow Cab	\$	10.00	5 \$ 50.00

Total Non-Employee Goods/Services \$ 90.00

Savings	Vendor	Estimated Cost	Months to Save	Monthly Savings
Roll-In Shower	Ace Contracting	\$ 2,000.00	12	\$166.67
Grab Bars	Ace Contracting	\$ 100.00	6	\$16.67
Emergency Savings		\$ 35.00	1	\$35.00

Planned Savings \$218.33

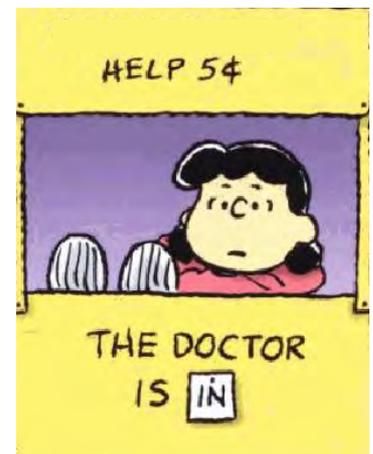
Month Total \$1,999.63

Supporting Self-Direction: Information and Assistance (I&A)



Definition: CMS

- One of the key characteristics of self-direction
- A system of supports that are responsive to an individual's needs and desires for assistance in:
 - ❑ Developing the person-centered and budget plan
 - ❑ Managing the individual's services and workers
 - ❑ Performing the responsibilities of an employer



Examples of Self-Directed Supports

- Information regarding how a self-directed care program works
- Individual rights and responsibilities
- Available resources
- Counseling
- Training and assistance in using a support broker and financial management services
- Access to advocacy independent advocacy system

Key Differences

Information and Referral

- Databases
- Variety of delivery methods: phone, office visits, online searches, texting, instant messaging
- Looking for answers

Information and Assistance

- Experiences
- Typically face-to-face interactions to develop a relationship
- Identifying the questions



Service Coordinators, Support Brokers, Planners, Counselors ...

- Variety of job titles for person providing the service
- Range of work arrangements:
 - Employees of agencies
 - Employees of I&A organizations
 - Independent Contractors
- Background and experiences vary:
 - Working directly with people with disabilities
 - Social services
 - Parents or family members
- States take different approaches:
 - Service
 - Administrative function

Training and Qualifications

- Training and certification approaches:
 - Meet minimum qualifications and pass background check
 - State program training requirements
 - Certification and recertification process
- Standards and expectations:
 - Core competencies
 - Training post-tests
 - Service standards



Representative Support Planner Functions

Plan
development

Implementing

Monitoring

Job
descriptions

Worker
management

Evaluation and
management of
plan

Modifying
plan as needed

Arranging for
other services

Supporting Self-Direction: Financial Management Services (FMS)



Purpose of FMS

- Agencies that provide FMS perform administrative responsibilities so that:
 - ❑ Participants can focus on managing their services and supports
 - ❑ Tax, employment and insurance regulation compliance is maintained
 - ❑ Payments to participant's providers are made in accordance with the participant's budget/authorization
 - ❑ Additional controls are in place to detect and prevent fraud and abuse
- The model of FMS will impact the participant's degree of choice and control
 - ❑ The design of your specific self-direction program(s) will also impact the participant's degree of choice and control
 - ❑ Virtually every self-direction program is unique and will have unique requirements

Employer Authority and Budget Authority

Employer Authority

- Participant recruits, hires, supervises, and manages worker
- Participant must fulfill employer/payroll related tasks

Two Authorities in Self-Direction

Budget Authority

- Participant manages a budget
- Participant free to make decisions about purchasing other goods and services

Employer Authority

- **Employer Authority** means that participants can directly hire workers of their choice and is responsible for training, managing, scheduling, and dismissing workers.
- The role of the agency providing FMS is to:
 - ❑ Facilitate employment of workers by the participant or representative by performing certain employer responsibilities on behalf of the participant-employer
 - ❑ Process payroll
 - ❑ Withhold and deposit applicable employee federal, state and local income taxes

Budget Authority

- **Budget Authority** means that a participant has choice and control over what goods and services to purchase within their spending plan
- The role of the agency providing FMS is to:
 - ❑ Maintain separate accounting for each participant-directed budget
 - ❑ Process vendor invoices and worker timesheets according to each participant's budget
 - ❑ Assure that all vendor and worker payments are approved in the budget and meet all program requirements
 - ❑ Prepare reports showing budget amounts, spending and amounts remaining

FMS Duties

- The agency that provides FMS:
 - ❑ Supports the participant through the administrative process of hiring workers
 - ❑ Supports the participant to ensure workers are legally hired, or the entity itself makes sure workers are legally hired
 - ❑ Can conduct criminal background checks on workers
 - ❑ Ensures that workers and other providers are paid in compliance with applicable rules and regulations
 - ❑ Makes payments in accordance with spending plans, authorizations and program rules
 - This can include paying workers, agencies, or other goods and services vendors

FMS Duties, continued

- The agency that provides FMS:
 - ❑ Has controls in place to detect and prevent fraud and abuse
 - ❑ Helps protect the participant by getting workers' compensation policies in place
 - ❑ Generates reports for participants and program administrative agencies showing expenditures and individual budget information
 - ❑ Maintains fiscal accountability and oversight in a flexible program

Models of FMS

- Two primary models of FMS used in most self-directed programs
 - Fiscal/Employer Agent
 - Agency with Choice
- Both models can have:
 - Employer Authority and/or
 - Budget Authority
- Currently, all self-directed programs have employer authority, but only some also have budget authority

Models of FMS: Fiscal/Employer Agent (F/EA)

- Participant (or representative) is the common law employer of workers
 - Participant hires, fires, trains, and manages workers
- F/EA is usually (not always) a private entity contracted by the state Medicaid agency
- F/EA shares liability for federal taxes and penalties with the participant/representative common law employer*
- F/EA is an agent of the participant/representative common law employer, managing all payments to employees, tax deposits, tax filings, and year-end information returns

F/EA Considerations

- F/EA is considered the “gold standard” of FMS models because it maximizes participant choice and control
- Services provided in the F/EA model can sometimes be lower-cost than in Agency with Choice due to federal and state tax exemptions that come into play in F/EA as well as other considerations
- The role of the FMS provider is more complex in F/EA, particularly with regard to taxes
- The F/EA model is used much more frequently in self-direction than the AwC model

Models of FMS: Agency with Choice

- Agency and participant have a joint employment relationship for workers that provide services to the participant
- The agency is the primary employer
- The participant is the managing employer
- The agency hires the worker and manages all duties related to tax, labor and workers' compensation rules and regulations
- The participant may refer a worker to the agency for hire, participate in training the worker and have some control over scheduling and dismissing the worker

Agency with Choice: Benefits

- A good option for participants who want to choose and schedule their workers, but would prefer limited or no involvement with other employer responsibilities, like hiring, disciplining, or discharging workers
- Since the agency is the common law employer of workers, agency can provide ample worker-related assistance to participants
- More robust support available to participants in Agency with Choice model than in Fiscal/Employer Agent model
 - In Fiscal/Employer Agent model, the agency providing FMS is not the employer of the participant's workers, so they are limited in what employer tasks with which they can assist

Agency with Choice: Challenges

- Unlike the F/EA model, participant choice and control is not inherent in the AwC model. Standards and monitoring must be in place to ensure that this model is participant-directed
- Agencies may have liability concerns about the joint employer relationship. The agency is the primary employer, but with the participant as managing employer, the agency cannot always effectively manage the agency's risk without infringing on participant choice and control
- Conflicts of interest can arise for Agencies with Choice who both manage budget funds and provide services that participants could choose to purchase with budget funds
- Passage of the Affordable Care Act caused some states to move away from the Agency with Choice model because of new health insurance costs

Supporting Self-Direction: Representatives



What is a Representative?

- Manages the participant's self-directed service program when a he or she *cannot* or *does not want to* manage it
- Allows for a wider range of people to benefit self-direction, including people with cognitive limitations

Substituted Judgement vs. Best Interest – An Important Digression

- Substituted Judgement: The decision the individual would have made based on his or her values and goals
- Best Interest: What is objectively “best” for the individual
 - “Best” may be based on health or safety criteria
 - “Best” may be based on general social values
- Substituted Judgement is more closely aligned with Person-Centeredness

A Representative Is Not...

- A Guardian
 - Legal relationship established by a court
 - Person under guardianship does not exist as a legal entity
 - May not enter into a contract
 - Similar status to minor children
- A Power of Attorney
 - Authority given to a surrogate by the individual
 - Financial POA
 - Healthcare POA
- BUT... a representative may also be a guardian or a POA

Representatives

- Only have authority over managing participant's budget
- May need to pass agency-defined criteria
 - Knowledge of the person and his/her needs
 - Proximity to person
 - Ability to see person and workers regularly
 - Ability to use substituted judgement
- May be removed by participant or Agency at any time
- Are unpaid

Why Use a Representative?

- Participant *cannot* manage the budget or serve as an employer
 - Generally for cognitive limitations
 - May be because physical limitations make routine management tasks too difficult
- Participant *does not want* to manage the budget or serve as an employer
- Representatives make self-direction available to many more people

What a Representative Does

- *Assist* with the development of the spending plan
- *Implement* the spending plan
- *Serve* as the employer
- *Authorize* all spending in the participant's plan
- *Include* the participant to the greatest extent possible in all decisions

Identifying a Representative

- Generally identified by participant
- If person not competent, identified by trusted family or friends
- May be identified by the Agency (rare)
- Identifying a representative does not require legal process
 - Agency and participant/family approving is sufficient

Representative Limitations

- Can make decisions *only* around managing the participant's budget and employing workers
 - Cannot make other financial decisions *as the representative*
 - Cannot make healthcare decisions *as the representative*
 - Representative *may* also be a guardian or a POA
- Cannot be paid either as the representative *or* an employee
- Makes decisions based on substituted judgement not on values and choices of the representative

Quality Management in Agency with Choice



Key Considerations for Quality in Agency with Choice

- As with all FMS, compliance with all applicable federal and state rules is key in Agency with Choice
- Unlike the F/EA model, participant choice and control is not inherent in the Agency with Choice model
- Strong safeguards should be implemented to ensure that services provided within an Agency with Choice context are truly participant-directed
 - This is a key aspect of quality in Agency with Choice
 - Important that participants are “the boss” around key aspects of the employment relationship and that the Agency is there to support participants and handle administrative tasks on their behalf

Participant Individual Budget Compliance

- Does AwC have proof of paying timesheets and invoices such that they do not exceed the participant's authorized budget for the budget time period?
- Does the AwC have proof of maintaining compliance with other budget rules?



Monitoring for Customer Service Quality

- Does AwC have proof of all complaints received?
- Has the AwC recorded follow-up action for any complaints received?
- If a participant, worker, or other related individual calls after business hours and leaves a message, on average how long does it take the Agency with Choice to follow up with the caller?

Participant Satisfaction Surveys

- Each Agency with Choice should be contractually obligated to conduct annual Participant Satisfaction Surveys
- Surveys should assess the following, at minimum:
 - ❑ Overall participant satisfaction;
 - ❑ Customer service experiences;
 - ❑ Extent of choice and control (to be self-reported by participants)
- State should monitor survey results
 - ❑ If necessary, state can request an Agency with Choice to develop a corrective action plan for deficiencies identified in the survey

Principles of Self-Direction: Hiring

- Does AwC have documentation on file declaring that the participant is the legal employer of the workers and/or absolving AwC from any legal responsibility?*
- Does AwC have hiring criteria that make it difficult for most workers referred to the agency to be hired?*
- Can participant discharge the worker from providing service to him/her at any time?
- Does only the participant interview a new worker prior to hire, or do both the participant and agency interview the worker?

Principles of Self-Direction: Hiring

Participant identifies potential worker.



Participant interviews potential worker to determine whether the worker would be a good fit.



Participant refers worker to agency for hire.



Agency interviews worker.



Agency extends formal offer of employment to the worker.

Principles of Self-Direction: Training

- Does AwC make clear to the participant that the participant is responsible for training workers on their individual job performance?
 - ❑ Participant should take major role in training workers
 - ❑ Agency should support participant when and as necessary, but should not diminish participant control over these responsibilities
 - ❑ The AwC may implement some training requirements (e.g. First Aid, CPR, fraud and abuse training), but self direction philosophy dictates that participants know best how their services should be provided to meet their needs

Principles of Self-Direction: Discharging and Firing Workers

- AwC should be responsible for formally firing workers
- Participant should be permitted to dismiss a worker at any time by notifying the AwC that the participant no longer wishes to receive that worker's services
 - Does not necessarily mean that the worker is fired
 - Agency could continue to employ the worker in a different capacity

Principles of Self-Direction: Managing and Scheduling Workers

- Does the participant have control over worker scheduling or does the agency also have involvement?
- Does the participant have control over managing workers' on-the-job activities with him/her or does the agency also have involvement?
- Is the participant required to approve a worker timesheet before it is paid?

Legal Issues in Agency with Choice

- Compensation, tax and insurance
 - To determine which employer is at fault for an issue related to compensation and benefits, courts and hearing officers will seek to determine which employer is directing and controlling the work and the agreements in place between employers and the employee
- Employment practices
 - When employment practice wrongdoing takes place (e.g. unlawful discrimination, an unsafe work environment), each employer's action or inaction in regard to the worker is reviewed

Tax, Insurance and Benefits

- Employment Tax
 - Generally, the payer (agency) is held liable for issues
- Worker Classification (independent contractor vs. employee)
 - Agency or participant could be held liable
- Wage and Hour (overtime, minimum wage etc.)
 - Agency and participant could be held liable
- Workers' Compensation
 - Depends on state; generally agency would be held liable
- State Unemployment Insurance
 - Depends on state
- Health and Retirement Plan Benefits
 - Should be structured so that agency maintains tax benefits; seek professional review
- Family and Medical Leave
 - Both have some responsibility

Compensation, Tax, and Insurance

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- Worker Classification (independent contractor vs. employee)
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- Wage and Hour (overtime, minimum wage, etc.)
 - Agency and participant could be held liable
- Workers' Compensation
 - Depends on state

Employment Practices

- Employee Authorization to Work in US
 - Both agency and participant could be held liable
- Equal Employment Opportunity
 - Each can be held liable for their wrongdoing. Agency could be held liable for not responding to employee complaints of participant discrimination or for complying with participant discrimination
- Workplace Safety
 - Both agency and participant could be held liable, depending on which party created the safety hazard

Division of Responsibility: Worker Selection

	Participant	Agency
Selecting workers who serve the participant		

- One of the primary tenets of participant direction is that participants can receive services from the workers **of their choice**.
- Ideally, the participant identifies prospective workers within his/her community or circle of support, including friends and neighbors.
- Participants may recruit workers.
- Some participants may neither be interested in identifying workers from his/her own community or circle of support nor in recruiting workers.
- The agency may provide prospective workers from a registry or suggest several workers, who may already be employees of the agency.

Division of Responsibility: *Interviewing Workers*

	Participant	Agency
Interviewing workers		

- For maximum participant direction, the ideal is that the participant is the sole interviewer of prospective employees, but if the agency does not have a role in interviewing workers, the agency may appear more like an administrative agent of the participant as the sole employer. This can make the participant vulnerable to liabilities for which protections are not in place.
- A participant should have a primary role in interviewing workers as the participant will use that experience to make an informed decision about the quality of the prospective worker and whether that worker will be a good fit for the participant.
- As the primary employer, the agency should also have a role in interviewing the worker.

Division of Responsibility: Officially Hiring Workers

	Participant	Agency
Officially hiring workers		

- As the primary employer of the workers who provide service to participants, the agency will officially hire the participant's selected workers as its own employees.
- To remain a participant-directed AwC FMS provider, the agency should not have hiring criteria that make it difficult for most workers referred by participants to be hired. While the agency does make the final hiring decision, ideally the hiring criteria are structured such that the vast majority of workers referred by participants are hired by the agency.

Division of Responsibility: *Discharging Workers*

	Participant	Agency
Discharging workers from serving the participant		

- If the participant determines that the worker's services are not satisfactory, the participant can discharge the worker from further providing services to the participant.
- The participant notifies the agency that the worker's services are no longer requested for the participant.
- Both the participant and agency ensure that the worker discontinues providing service to the participant.
- This does not necessarily mean the worker is "fired."
- The agency, however, continues to be the primary employer of the worker, as explained on the next slide.

Division of Responsibility: *Terminating Workers*

	Participant	Agency
Terminating workers		

- As the primary employer, the agency ultimately decides whether a worker should be terminated from employment.
- As the primary employer, the agency can decide whether to terminate the worker from employment with the agency or to re-assign the worker to perform other duties or provide services to other individuals when the worker is discharged from providing service to a particular participant.
- The agency should ensure that the worker was not discharged by the participant for a discriminatory or otherwise illegal reason. If the participant discharged the worker for a discriminatory or illegal reason and the agency subsequently terminates the worker from employment, the agency could be held liable.

Division of Responsibility: *Training Workers*

	Participant	Agency
Training workers		

- The participant knows best how his/her services should be provided to meet his/her needs.
- The participant, or his/her family, spouse, friends, or representative, should have a major role in training the worker to provide the specific services to the participant or in determining the training that the worker needs.
- As primary employer, the agency may have some training requirements for the worker. This also supports the agency's role as primary employer, rather than as a mere administrative agent.
- The agency's training requirements should not be overly onerous, nor should agency-required training detract from the training that the worker receives directly from the participant.

Division of Responsibility: *Scheduling Workers*

	Participant	Agency
Scheduling workers		

- As the managing employer in a participant-directed AwC FMS model, the participant should have the primary role in scheduling the worker's hours with the participant.
- Ideally, the agency has little to no role in scheduling when the worker provides services to the participant.
- To maximize participant-directedness, the participant and worker should work together to agree on when the worker will perform services.
- If a worker will not or cannot provide service when a participant determines that the service is needed, the participant may recruit and hire another worker.

Division of Responsibility: *Managing Workers' Daily Activities*

	Participant	Agency
Managing the workers' on-the-job work activities with the participant.		

- A key element of participant direction is that the participant can direct how the work provided for him/her is performed.
- As the managing employer, the participant can and should direct how work is performed, including providing the worker with feedback about elements that should be improved or done differently.
- The participant should direct and control the day-to-day work duties performed by the worker when the worker is providing services to the participant.
- The agency should have a very minor role, if any, in managing the regular duties at the participant's worksite (which is usually his/her home).

Division of Responsibility: *Determining Location of Service Provision*

	Participant	Agency
Managing the workers' on-the-job work activities with the participant		

- All services directed by participants should be provided in the participant's home or community, or in a location otherwise chosen by the participant, including services provided by employees, contractors and vendors.
- If a participant uses his/her budget to purchase goods, the participant should generally elect from where those goods are purchased.

Division of Responsibility: Setting Workers' Pay Rate

	Participant	Agency
Setting the workers' pay rate		

- To achieve maximum participant-directedness, the participant would be the sole determiner of the worker's rate of pay
- In order to preserve the joint employer relationship of the agency and participant, the agency must also have some role in setting the worker's pay
- Practically, most participant direction programs have parameters for permissible rates of pay
- We recommend that the agency establish an allowed and reasonable minimum and maximum rate of pay and that the participant determine the appropriate rate to pay their worker within that range. (Some exceptions may be permitted.)

Division of Responsibility: *Approving a Worker's Timesheet*

	Participant	Agency
Approving a worker's timesheet		

- When a pay period ends, the participant should review the worker's recorded time worked.
- If the timesheet does not reflect the participant's understanding of the time worked, the participant and the worker should work together until the timesheet reflects their shared understanding of the time worked.
- Once the participant approves the timesheet, that approval should be documented.
- Participant- and worker-approved timesheets should be submitted to the agency for review and payment.

Division of Responsibility: *Matching Service to Spending Plan*

	Participant	Agency
Ensuring service usage is approved in the participant's spending plan prior to paying for it		

- The agency confirms that expenditures are in line with the spending plan, and provides regular reports to the participant and funding entity, as applicable.
- The agency must provide separate accounting for each participant's budget and process participant-approved invoices and timesheets in accordance with the budget's permitted expenditures and the program's rules.
- In general, the agency should use the participant's budget funds to pay employees only when the participant has approved the time worked.
- Similarly, the agency should only use the participant's budget funds to pay for goods and non-employee services purchases when the participant has approved them.

Division of Responsibility: *Paying Workers and Vendors*

	Participant	Agency
Paying workers and vendors		

- The agency pays the workers and vendors who provide services (and in some cases, goods) to the participant at the participant's direction.
- In general, the agency should ensure the payment is in accordance with the participant's spending plan and is first approved by the participant.

Division of Responsibility: *Tax and Insurance Payments*

	Participant	Agency
Tax and insurance reporting and payments		

- The agency withholds from employee pay, files, and deposits all relevant federal, state, and local taxes (Social Security, Medicare, Federal Income Tax, State Income Tax, Unemployment Taxes, local taxes, etc.) using its own Employer Identification Number and State Account numbers.
- The agency is responsible for all operations of tax and insurance filing and payment.
- The funding for the employer tax and insurance costs may be different depending on the program or agency. Funds may be from the participant's budget, the agency or some other funding source.
- The agency should also furnish a workers' compensation policy to cover workers in the participant's home.

Fostering and Growing Self-Direction: Introducing S-D To Staff



Introducing Innovation: Questions to Answer

- Does it work?
- How do I do it?
- What will happen if I do it wrong?
- What will happen if I do it well?
- Are the cool kids doing it?



Does Self-Direction Work?

Cash and Counseling

Demonstration and Evaluation

- Experimental/Control Group Study
- Random Assignment
- N=6,000

The self-directing group:

- Got more services
- Were more satisfied with their lives
- Caregivers (paid and unpaid) were happier
- Health outcomes were as good or better
- No increase in fraud

How do I do it? The Counselor Role

Counselor

- Embraces paradigm shift
- Explains the program
- Completes enrollment
- Collaborates with participant to complete the assessment, service plan, spending plan, and reassessments
- Offers skills training
- Partners with participant

Differs from the traditional case manager

- Focuses on supporting the self-directed experience.
- Facilitates vs. manages
- Very personalized approach
- Attention to positive personal outcomes
- Advises participant on problem solving strategies

How do I do it? Self-Direction Can Be For Everyone!



- Value shift
- Does the participant *want* to self-direct—not *can* they
- Supports are available:
 - I&A
 - FMS
 - Representatives

How do I do it? Learning the details

- Self-direction is *not* free-range service provision
 - Self-direction is highly technical
- Need to Know**
- Role of the service coordinator
 - Role of the FMS
 - Role of the participant
 - Becoming and acting as an employer
 - Developing a spending plan
 - Monitoring services and spending plan
 - *Supporting* the participant in the process

Risk and Reward

What happens if I get it wrong?

- Importance of supportive supervision
- Mistakes are part of the process
- You and participant will take risks
- There is an endpoint where it is no longer new

What happens if I get it right?

- Benefits to participants
- Less responsibility for you

Are the Cool Kids Doing It?



- The idea of *champions*
- Who might be a champion?
 - Early adopters
 - Who is respected by line staff?
- Formal and informal use of champions
- Expanding peer support

Some General Rules

- In change, there is no such thing as over communication
- Give it time, but not too much time
- Set a timeline, tell people about it, and keep to it
- You might want to think about communicating more

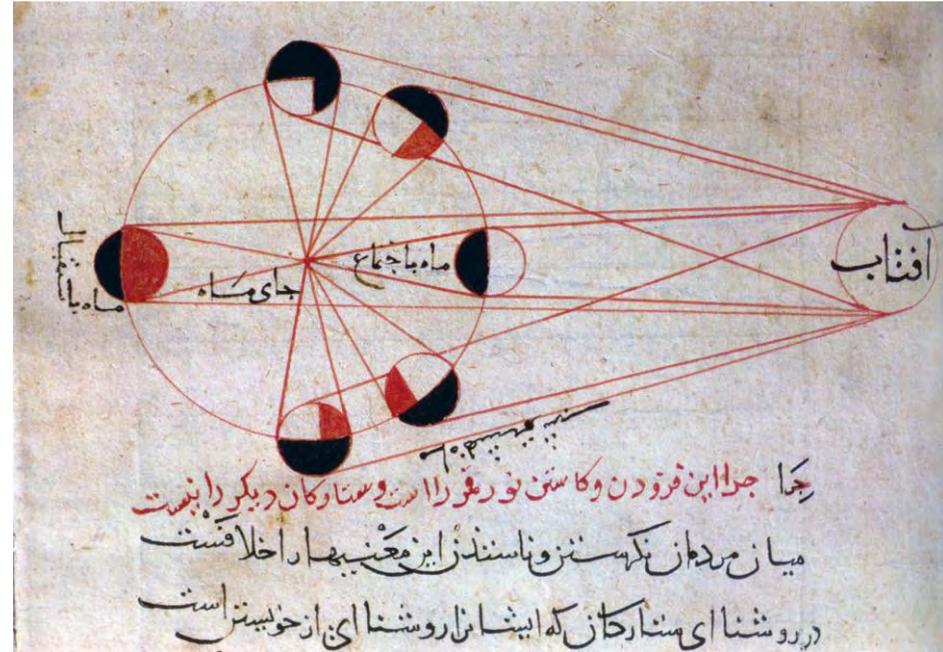


Fostering and Growing Self-Direction: Introducing S-D To Participants



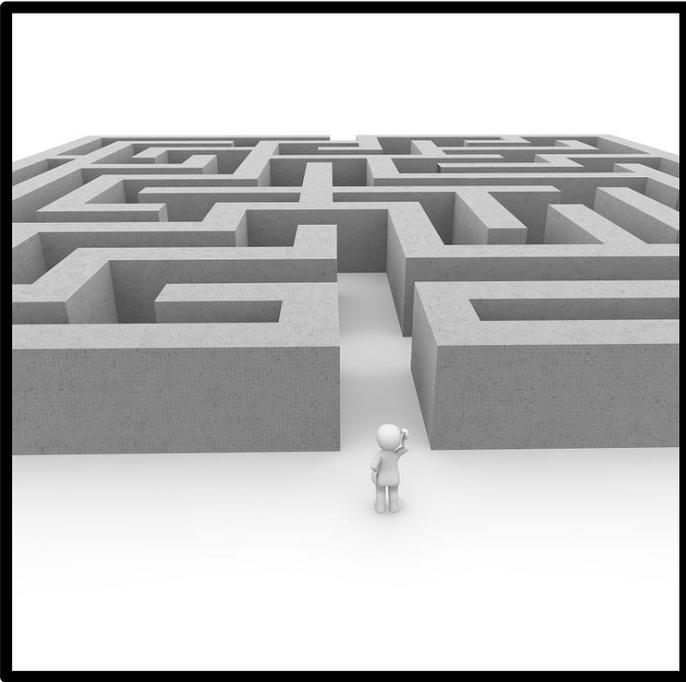
Tell Me Again How that Works?

- Staff need to have a solid understanding of self-direction, including all the “moving parts.”
- It’s OK to “practice” when you are learning something new
- Let’s take a quick “reality check”



Al-Biruni’s explanation of the phases of the moon from *Islamic Science: An Illustrated Study*

De-mystifying Self-Direction



- Introduce the self-direction option during the standard orientation to services
- Resist mentioning self-direction as an afterthought
- Be ready to answer a lot of questions
- Don't assume everyone understands the acronyms and jargon
- Make sure your information includes both risks and responsibilities in a balanced manner

Include Key Support People



- Make sure to include key support people when introducing self-direction to participants
- The participant should identify who should be included
- “Unofficial” team members should be welcome, since they may be key sources of support
- Even Steven Spielberg had help – don’t overthink the “self” in self-direction.

Lather, Rinse, Repeat

- People may be hesitant to try something new, especially if it seems difficult
- If people are under pressure for an answer, they may be more likely to say “no”
- Plan to revisit the option to self-direct at least annually
- Consider sharing success stories and specific examples to clarify the possibilities
- The “Rule of Seven” in marketing suggests that people need to hear your message seven times before they will take action

Understanding “No Thanks”

- Listen carefully and ask clarifying questions to identify factors that may be contributing to “no thanks”
 - “Not now, but maybe later”
 - “I’ve never done this before and I don’t like change”
 - “I can’t do this alone”
 - “I’ve never hired anyone before and I don’t know how to do it”
 - “What if I make a mistake?”
 - “I’m not sure how this would work but don’t want to feel stupid about asking questions”
- The “no thanks” may be strongly influenced by the family member; be respectful, but honor the individual’s choices

No One Needs to Work without a Net

- Self-direction does not mean that a person is left alone to succeed or fail
- Plans need to include a wide range of backup options
 - What happens if a worker calls in sick or doesn't report for a shift?
 - What needs to happen if the person experiences a crisis situation?
 - Who are the key people to call for specific challenges?



Assessment and Planning Process

- The individual's choices about who is included need to be honored
- Family members can make important contributions to the assessment and planning process
 - Understanding of past successes and challenges – the “backstory”
 - Resource for what works and what doesn't work
 - An understanding of the person's needs that professionals may not have
- May need to “independently confirm sources”

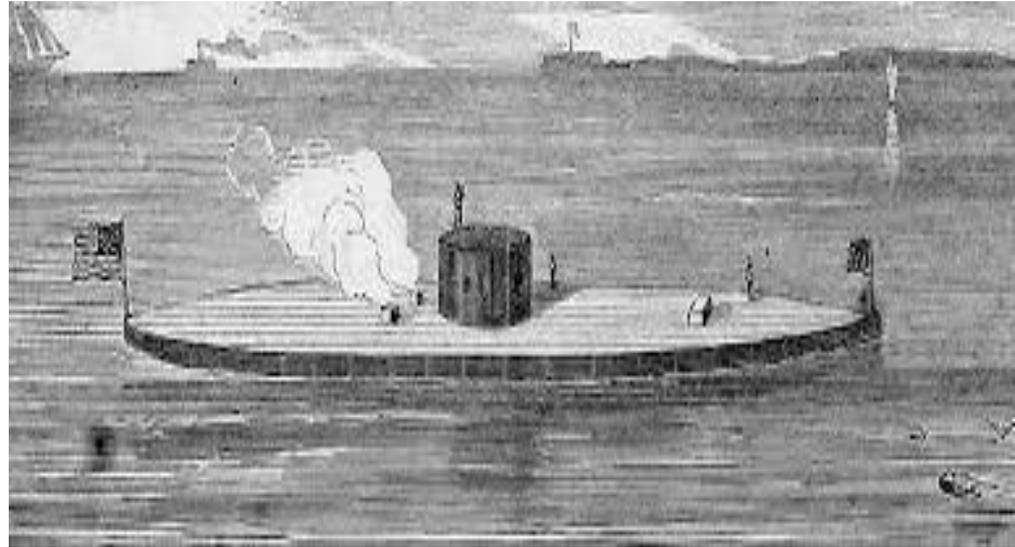


The Importance of Monitoring



What is “Monitoring”?

- It is *not* using a Civil War warship
- Monitoring = oversight of participants’ care
- May include:
 - ❑ In-person visits
 - ❑ Telephone calls
 - ❑ Contacts with other providers
 - ❑ Review of FMS materials

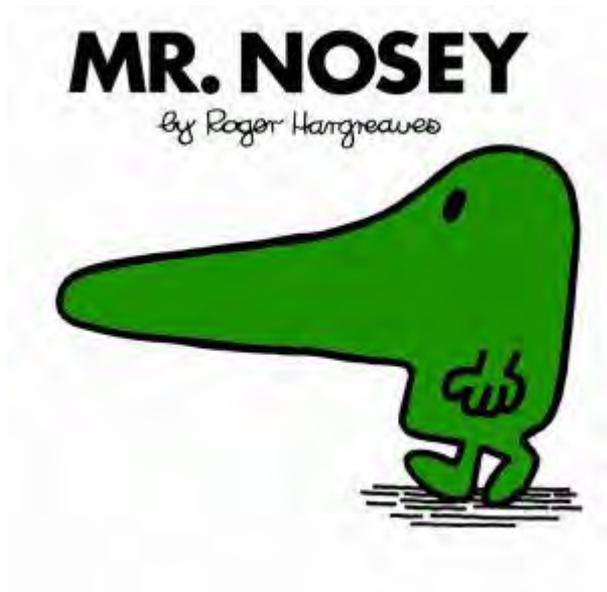


Why Monitor?

- Life is risk
- “Vulnerable Populations”
 - ❑ Higher incidence of abuse/neglect/exploitation
 - ❑ Poorer health outcomes
 - ❑ More dependent on support networks
- Agreed upon service plan
 - ❑ Is it happening?
 - ❑ Is it working?
- Tax dollars = public interest
 - ❑ Community values
 - ❑ Values for investment



There Is A Downside



- All people have a right to privacy
- Dignity of risk
- Perfect safety is not possible
 - Or desirable

What do we monitor?



Health and Safety: Critical Incidents



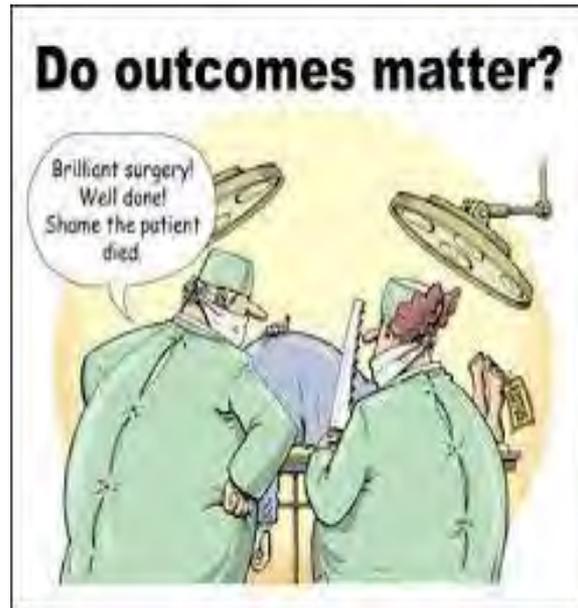
- Critical Incidents
 - Events which harmed or could have harmed participant
 - Abuse/Neglect/Exploitation
 - Accidents
 - Significant drug errors
 - Lapse in needed supervision
 - Generally required to report to agency
 - Abuse/neglect/exploitation always reported per state mandated reporting laws
 - May require corrective action
 - Harm vs. normal wear and tear

Service Provision: Delivery of Services

- Are services being delivered?
 - ❑ Workers hired and trained?
 - ❑ Workers showing up?
 - ❑ Workers doing tasks?
 - ❑ Participant getting places as planned?
 - ❑ Goods/services purchased and used?
- Role of the FMS
 - ❑ Payroll accurate and timely?
 - ❑ Delays/problems with other reimbursements?
- Using spending reports



Outcomes



- Service Plan Goals
 - ❑ Met/Not Met
 - ❑ Plan Change/Update
 - ❑ Goal Change/Update
- Satisfaction
 - ❑ Participants
 - ❑ Family
 - ❑ Workers
 - ❑ Agency providers

Protecting Against Fraud

- Importance of unscheduled home visits
- *Timesheet signature audits*: are signatures identical from week to week, suggesting signatures are copied?
- *Electronic timesheets*: are users accessing the system from strange locations? (E.g., if the participant is logging in from New Hampshire and the worker is logging in from Florida, can be a red flag)
- Making sure participants and families receive adequate training on program rules to guard against “unintentional fraud”—for example, billing for services while the participant is in the hospital
- Confidential fraud hotline for all program stakeholders to report fraud and abuse

Continuous Quality Improvement: Moving from the individual to the system



The Quality Hierarchy

Outcomes

Service
Process

Health and Safety

Data! Data! Data!

- What you don't know *will* hurt you
 - And your participants
- Bad data may be worse than no data
 - Reinforces biases
- Information → data → information
- Data = observation points
- Information = data organized so it *means* something



Case Level Information

- Health and Safety
 - Monitoring visit notes
 - Critical Incident reports
- Service Provision
 - FMS reports
 - Service plan meetings and updates
- Outcomes
 - Satisfaction?
 - A word on satisfaction surveys
 - Goals addressed in service plan meetings?

Converting Case Level Information To Data



- This is where it gets hard
 - Case information is usually narrative
 - Even in electronic records
 - Data needs to be discrete
- Extracting data from case notes: single project
 - Best what answering a specific question
 - “Are participants meeting their goals?”
 - Generally requires developing a sample
 - A word on sampling
 - Can be time consuming

Developing Ongoing Data Collection

- What information do you want to track?
 - Indicators along the hierarchy
- What do you already know that tracks them?
 - Most indicators you already know at the participant level
- How do you abstract the indicators?
 - CMS rewards providers for simply tracking some indicators
 - e.g., depression screening
 - Need to be countable
 - 47% of the participants are engaged in employment activities



Getting Data In... And Information Out

- Getting in
- Best case: tracking data enters system automatically
- OK case: separate sheet with hand entry
 - This can become a low priority

- Getting Out
- Regular reporting
 - 3months/6 months/annually
 - Reports broadcast widely
- *Ad hoc* reports
 - May require more flexible data entry

Getting a Quality Snapshot: Participants

- Focus Group
 - ❑ 4 – 8 people
 - ❑ 4 or 5 open – ended questions
 - ❑ Independent moderator
 - ❑ Assurance of confidentiality
 - ❑ 3 or 4 groups
 - ❑ Rewarding participants
- Purpose needs to be clear
- Require independent analysis
- Can be quick and cheap



Getting a Quality Snapshot: Stakeholders

- Just ask
 - Ask a lot
- Systematic approach
 - Planned interviews with stakeholders
 - Predetermined focus area
 - Independent interviewer or board members
 - Board writes the report



Organizational Issues

Is the organization ready?

- Quality monitoring requires follow-up
- Follow-up requires organizational energy
- Is the organization prepared to follow-up?

Does it have what it takes?

- Organizational values
- Organizational structures
- Leadership and board support
- Role of stakeholders
- Participant engagement

Organizational Values

- Improvement is possible
 - Are we perfect?
 - Do we have the resources to change?
- Failure is an opportunity
- Staff, participants, agency partners, and the community deserve transparency

Organizational Structure and Leadership

- Is someone in charge of quality improvement?
- Does that person have authority?
- Does that person have resources?
- Does leadership lead (or just talk) on quality
- Does the Board challenge leadership on quality?



Participants and Stakeholders

- Is participant feedback sought regularly and systematically?
 - Does anyone pay any attention to it?
- Are partner providers asked for feedback?
 - Are they seen as useful sources in feedback?
- Are participants and other stakeholders informed of quality results?

Upcoming Policy Landscape:

Medicaid Financing, Program
Integrity/EVV, Federal Labor Rules



How Medicaid Works Now

- The nation's Medicaid program is a federal-state partnership with joint federal and state funding
- States each run their own Medicaid program with oversight from the Centers for Medicare and Medicaid Services (CMS)
- Since the inception of Medicaid in 1965, it has always been funded as an open-ended entitlement
 - For every Medicaid dollar spent by a state, the federal government will match a certain amount—always at least \$1 for each state dollar spent
 - This is known as the Federal Matching Assistance Percentage (FMAP)

How Medicaid Works Now

- The amount matched by the federal government varies from state to state and is set annually for each state
 - States like New Hampshire have 50% FMAP
 - Other states with lower per capita income relative to the national average have higher FMAP rates—for example, New Mexico has an FMAP of 72.16% for Fiscal Year 2018
- In 2015, the federal government paid 63% percent of all Medicaid spending, with states paying the other 37%

New Hampshire Medicaid Expenditures



🇺🇸 Federal Dollars 🇺🇸 State Dollars

New Mexico Medicaid Expenditures



🇺🇸 Federal Dollars 🇺🇸 State Dollars

A Different Approach: “Per Capita” Caps

- In 2017, Congressional Republicans sought to end Medicaid’s open-ended entitlement system in favor of an approach called “per capita” caps
 - Per capita means “per head”
- Per capita caps are a per-person, fixed maximum annual amount of Medicaid dollars that the federal government will match
- Once an individual has exceeded the per capita cap, the state would be on the hook for 100% of the rest
- This achieves massive savings for the federal government

A Different Approach: “Per Capita” Caps

- In 2017, the House of Representatives passed the American Health Care Act (AHCA), which would convert Medicaid to a per-capita cap system in addition to other drastic changes
 - Similar measures failed in the Senate by one vote and did not become law
- According to the Congressional Budget Office, per capita caps as designed in the American Health Care Act would achieve \$834 billion in Medicaid “savings” for the government (i.e., cuts for the states) over 10 years
 - If passed, could cause states to reduce variety in service offerings, narrow eligibility criteria, etc. to “make the numbers work”
- Unlikely to see similar measures in 2018, but similar measures may be attempted if Republicans keep the House and gain more seats in the Senate after the 2018 midterm elections

How Would Per Capita Caps Affect Self-Direction?

- Per capita caps would increase financial strain on state Medicaid programs in which funding is already stretched to the limit
- HCBS waiver services, including self-directed ones, may be cut under per capita caps, because state Medicaid programs are not required to offer waiver HCBS—HCBS waiver services are optional
 - In contrast, all state Medicaid programs are required by federal law to offer institutional services
- However, self-direction is extremely cost-effective, so it may continue to serve states well even under per capita caps

Self-Direction and Program Integrity: Electronic Visit Verification



What is the 21st Century Cures Act?

- Comprehensive and wide-ranging federal legislation passed by Congress and signed into law in December 2016
- Provides funding for the National Institutes of Health
- Includes 18 Titles and over 200 Sections
- The bill is 312 pages long
 - Only 3 pages relate to Electronic Visit Verification

Review of 21st Century Cures Act: EVV System Requirements

- These pages require states to ensure that anytime Medicaid-funded personal care or home health services are provided, the following data is “electronically verified” for each visit:
 - ❑ Type of service performed
 - ❑ Individual receiving service
 - ❑ Date of the service
 - ❑ Location of service delivery
 - ❑ Individual providing the service
 - ❑ Time the service begins and ends

Review of 21st Century Cures Act: EVV System Requirements

- Modern EVV solutions include use of smartphones/tablets, as well as other electronic devices to report and verify visit information
 - ❑ Landlines can also be used, but are not optimal in self-direction
 - ❑ CMS has warned against reliance on using landlines for EVV in self-direction
- EVV can take many forms, including use of biometrics (voice verification or fingerprinting), mobile apps, computer software, etc.
 - ❑ The Cures Act doesn't mandate what type of EVV is used—it just requires that a service is “electronically verified”

Review of 21st Century Cures Act: EVV System Requirements

- As of March 2018, there is no exception from the EVV mandate in place for self-directed services or any other type of service
- States cannot exempt themselves from the mandate, because it is a federal requirement
- The only governmental entities who can change this law are Congress or a court of law

Review of 21st Century Cures Act: EVV System Requirements

- ***Common question:*** Would attestation by the participant or participant's representative be sufficient to meet the new federal requirement?
- ***Answer from CMS:*** No. The Cures Act requires *electronic* verification, so an attestation by the consumer would not be sufficient.

Review of 21st Century Cures Act: Applicability

- Personal Care Services: Deadline for EVV implementation is January 1, 2019
 - Covers the following Medicaid statutory authorities:
 - 1905(a)(24) State Plan Personal Care
 - 1915(c) HCBS waivers
 - 1915(i) HCBS State Plan option
 - 1915(j) Self-directed Personal Attendant Care Services
 - 1915(k) Community First Choice State Plan option
 - 1115 Demonstration
 - Home Health Services: Deadline for EVV implementation is January 1, 2019

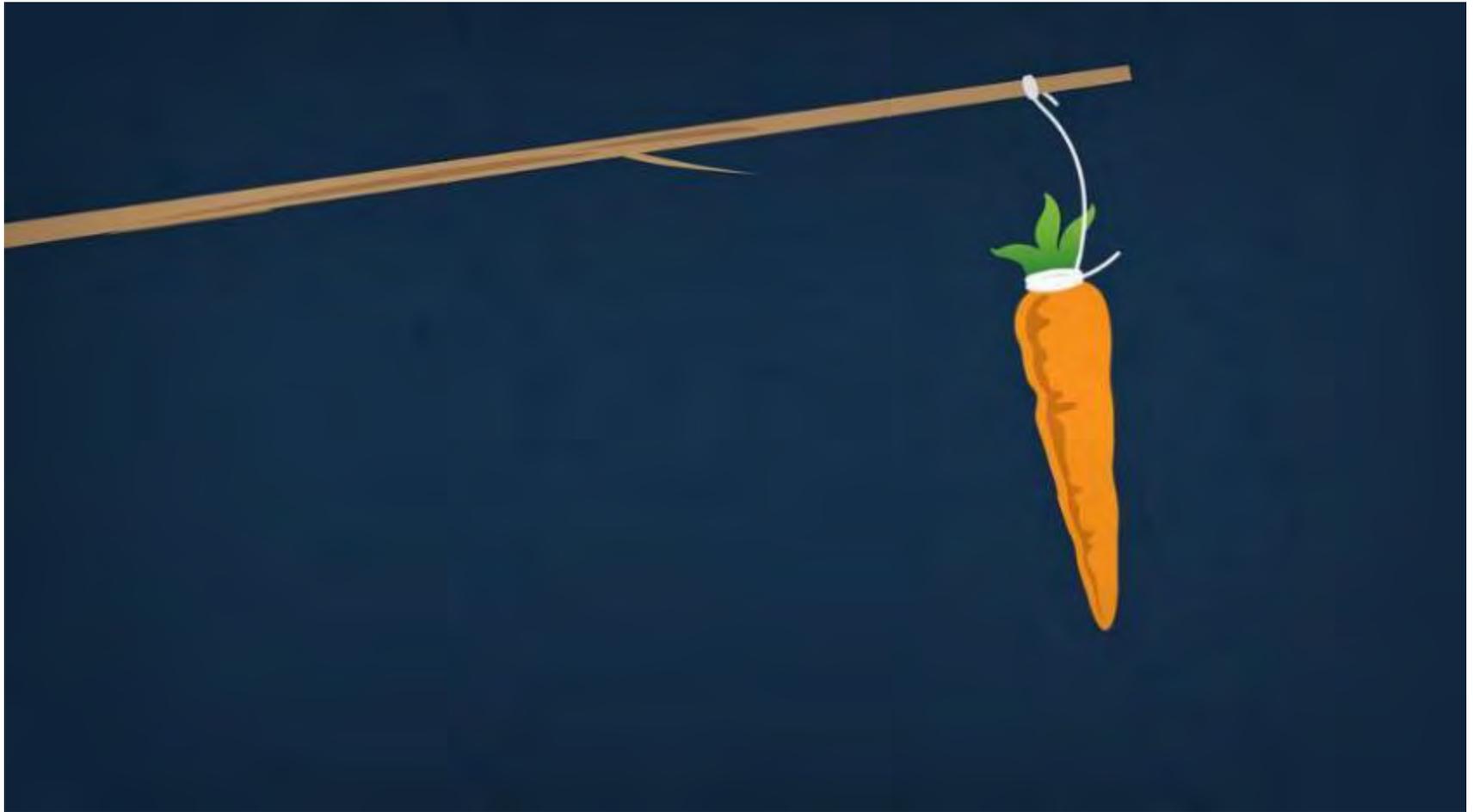
What Does the Cures Act Mean By “Personal Care”?

- The Cures Act defines “personal care” as all services that *support individuals to accomplish* activities of daily living (ADLs) or instrumental activities of daily living (IADLs)
 - ADLs are activities to meet fundamental needs on a daily basis, such as eating, bathing, dressing, movement, transfers from one position to another, and personal hygiene
 - IADLs are day-to-day tasks that allow an individual to live independently but not considered necessary for fundamental daily functioning; would include meal preparation, light housework, and shopping for food and clothing
- State waivers may include broader and more flexible services, such as those that address behavioral issues

Personal Care: The Big Takeaway

- A service does not have to be called “personal care” to qualify as personal care for purposes of the Cures Act & EVV mandate!
 - Services like respite, Community Living Support, companion services, etc. may or may not be covered by the EVV mandate
 - It really comes down to how the state has defined that service
 - For waiver services, states may need to go back to the waiver to determine which services are covered by the EVV mandate and which are not

Considerations for States: A Carrot and a Stick



Considerations for States: The “Stick”



- Noncompliance with the mandate by deadlines will result in a reduction of Federal Medical Assistance Percentage (FMAP)
- Reductions effective 2019 and start at 0.25%
- Penalties will be applied to the relevant personal care service

Considerations for States: The “Stick”



Exception for non-compliance (limit of one year):

- Must have made a “good-faith effort” to comply, which includes taking steps to adopt the technology
- Initiating the process of selecting a vendor will not be considered sufficient to meet the exception criteria
- Must be implementing a system and have encountered “unavoidable system delays”

Considerations for States

- ***Common Question:*** Can a state pilot EVV before implementing state-wide? Would a pilot satisfy the deadline requirement?
- ***Answer from CMS:*** States are encouraged to plan for a phased rollout or pilot; however, full implementation by January 1, 2019 is a Congressional requirement. The “good faith effort” extension could be granted if the state has a system in place and it has encountered a barrier *during implementation*.

Considerations for States: The “Carrot”



States may be eligible for various forms of Federal match related to EVV implementation:

- 90% for costs related to design, development and installation
- 75% for costs related to operation, maintenance, and system updates
- 50% for costs of administrative activities, education and outreach

Considerations for States: The “Carrot”

Based on National Association of Medicaid Directors survey results (September 2017):

- 24 states reported planning to apply for enhanced FMAP for EVV for personal care services
- 8 states reported that they have completed an Advanced Planning Document (APD) for personal care services



Looking Ahead

- There is nothing to suggest that the EVV mandate will be put on hold or delayed
 - Remember, only Congress or a court of law could do this!
 - States can have their penalty waived for one year after January 1, 2019, but only if they have encountered “unavoidable system delays”
- It is **critical** that any EVV solution is thoughtfully implemented and does not result in the loss of choice and control for individuals who self-direct

...And Looking Back

- Historically, EVV has not worked especially well in self-direction
 - A number of states tried, and for the most part, it did not work out
 - EVV use eventually made optional for self-directing participants in Texas, New York, etc.
- EVV was originally developed for traditional services, which are different and much less flexible than self-direction
- Hallmarks of early EVV systems included:
 - **Fixed scheduling**, which means the person receiving the service could not alter the worker's schedule on the fly
 - **Landline-based systems**, which restrict services to the individual's home
- Inflexible schedules and being stuck at home limit the potential of self-direction

EVV in Self-Direction

- Per CMS, any EVV solution used in self-direction should:
 - Allow for flexible scheduling
 - Allow for individuals to receive “personal care” services in not just the home but also the community
- Therefore, avoid landline-based solutions in self-direction
- Most states who are currently moving forward with EVV are opting to use a GPS-based solution to report service locations
- For the most part states are not yet far enough along in EVV implementations to determine “best practices” in self-direction

EVV-Related Advocacy and Technical Assistance

- Many individuals and families are uncomfortable with GPS-based solutions and EVV in general due to privacy concerns
- Advocates and disability rights organizations across the country are speaking out against EVV
- Applied Self-Direction continues to provide technical assistance regarding EVV to help ensure that self-direction is not negatively impacted by EVV implementations
 - Ongoing free EVV webinar series open to the public
 - If you have questions regarding EVV, please contact us at info@appliedselfdirection.com at any time!

The Fair Labor Standards Act: Home Care Final Rule



The Fair Labor Standards Act Home Care Rule

- Final rule promulgated by the U.S. Department of Labor on September 17, 2013
- Went into effect in 2016
- Narrowed exemptions for companions and live-in workers under the Fair Labor Standards Act (FLSA)
 - Third-party employers no longer eligible for these exemptions

What is the Companionship Exemption?

- Exemption from minimum wage and overtime
- Worker's primary duty must be providing **fellowship and protection** to an elderly person or person with an illness, injury or disability
 - Fellowship: social, physical and mental activities, such as conversation, reading, games, crafts, or accompanying the person on walks, on errands, to appointments, or to social events
 - Protection: accompanying the person to monitor their safety and well-being
- **Cannot be used by third party employers**

Care Services

- Care services are allowed under the companionship exemption, but are capped at 20% of the worker's hours per care recipient and per week
- “Care services” means:
 - Assistance with activities of daily living
 - “Dressing, grooming, feeding, bathing, toileting, and transferring”
 - Assistance with instrumental activities of daily living
 - “Meal preparation, driving, light housework, managing finances, assistance with the physical taking of medications, and arranging medical care”

Duties Not Allowed Under the Companionship Exemption

- Work for other members of the household
 - Except for incidental benefits to other household members (e.g. dusting in a shared room, or household member eating leftovers)
- Medically related services
 - Services that typically require medical training and are typically performed by trained healthcare personnel such as nurses or nursing assistants
 - Examples: “Catheter care, turning and repositioning, ostomy care, tube feeding, treating bruises or bedsores, and physical therapy”
 - Does not include emergency first aid such as CPR, or minor health-related tasks such as applying an adhesive bandage
- Exemption cannot be claimed in a **workweek** when any such services are performed
- 20% allowance does not apply

Who Can Claim the Exemption?

- Exemption only available to the participant, or to a member of the participant's family or household employing the companion
 - Family and household defined broadly: authorized representatives, housemates, extended relatives qualify
- **Third-party employers cannot claim the exemption, even in joint-employment situations**

Live-in Workers

- Exempt from overtime
- Not exempt from minimum wage
- Applies to domestic service workers living in the household where they are employed, if they live there “permanently” or “on an extended basis”
 - At least 5 consecutive days and 4 nights per week, or vice versa, e.g. 9 a.m. Monday to 5 p.m. Friday
 - 24-hour shifts do not automatically turn the worker into a live-in worker
- Domestic service = providing “services of a household nature in or about a private home”
 - Includes housekeeping, cooking, cleaning, personal care, home health services, etc.

New Rules for Live-in Workers

- **Third-party employers can't claim the live-in worker exemption**
- **New recordkeeping requirements**
 - Must record the exact hours worked each day
 - Agreement regarding regular working hours also required by not sufficient
 - Worker must be paid for actual number of hours worked, even if different from the agreement

Economic Realities Test Joint Employment Factors

- Power to hire and fire
 - Provider qualifications
 - Hiring decisions
 - Firing decisions
- Control over the wage and other employment benefits
 - Setting a wage rate
 - Reimbursement rates
 - Setting a cap or wage range
- Hours and scheduling
- Supervises, directs, or controls the work
- Performs payroll and other administrative functions
- Other factors

Understanding the Factors

- Each factor can be a “strong,” “moderate,” or “weak” indicator of joint employment
- Factors are a guide to answer the question:
 - On whom is the employee ultimately economically dependent in the course of this employment?
- “Because the ultimate question is one of **economic dependence**, the factors are not to be applied as a checklist, but rather the outcome must be determined by a qualitative rather than a quantitative analysis.” – Department of Labor, Administrator’s Interpretation 2014-2

Common Law & Economic Realities Tests



Both are tests of employment, but they are used for different purposes. Some factors are similar, but may be weighted differently for the tests. The result of one test should not influence the result of the other.

Employer Test Results

Scenario A: Common Law Test Results

Consumer



IRS & Many
State Tax
Agencies

Scenario A: Economic Realities Test Employers



FLSA

Implications of Joint Employment under DOL Rules

- Companionship and live-in worker exemptions not available to the third-party employer
 - Minimum wage and overtime must be paid
- Joint employer is liable for FLSA violations, such as unpaid minimum wage or overtime
- Hours worked for different consumers must be added up for overtime if the consumers are served by the same joint employer entity
- Worker travel time between participants must be paid if there is a joint employer

Overtime Scenario

- ❑ Ed Employee provides services to two consumers served by the same agency: to Carrie Consumer for 20 hours/week and to Carl Consumer for 30 hours/week
- ❑ The agency is deemed a joint employer of care providers in this program
- ❑ Carrie and Carl each have their own EIN and are considered employers by the IRS
- ❑ Does the agency have to pay overtime to Ed Employee?

Agency as Joint Employer



Carrie
Consumer

20 hrs/
week



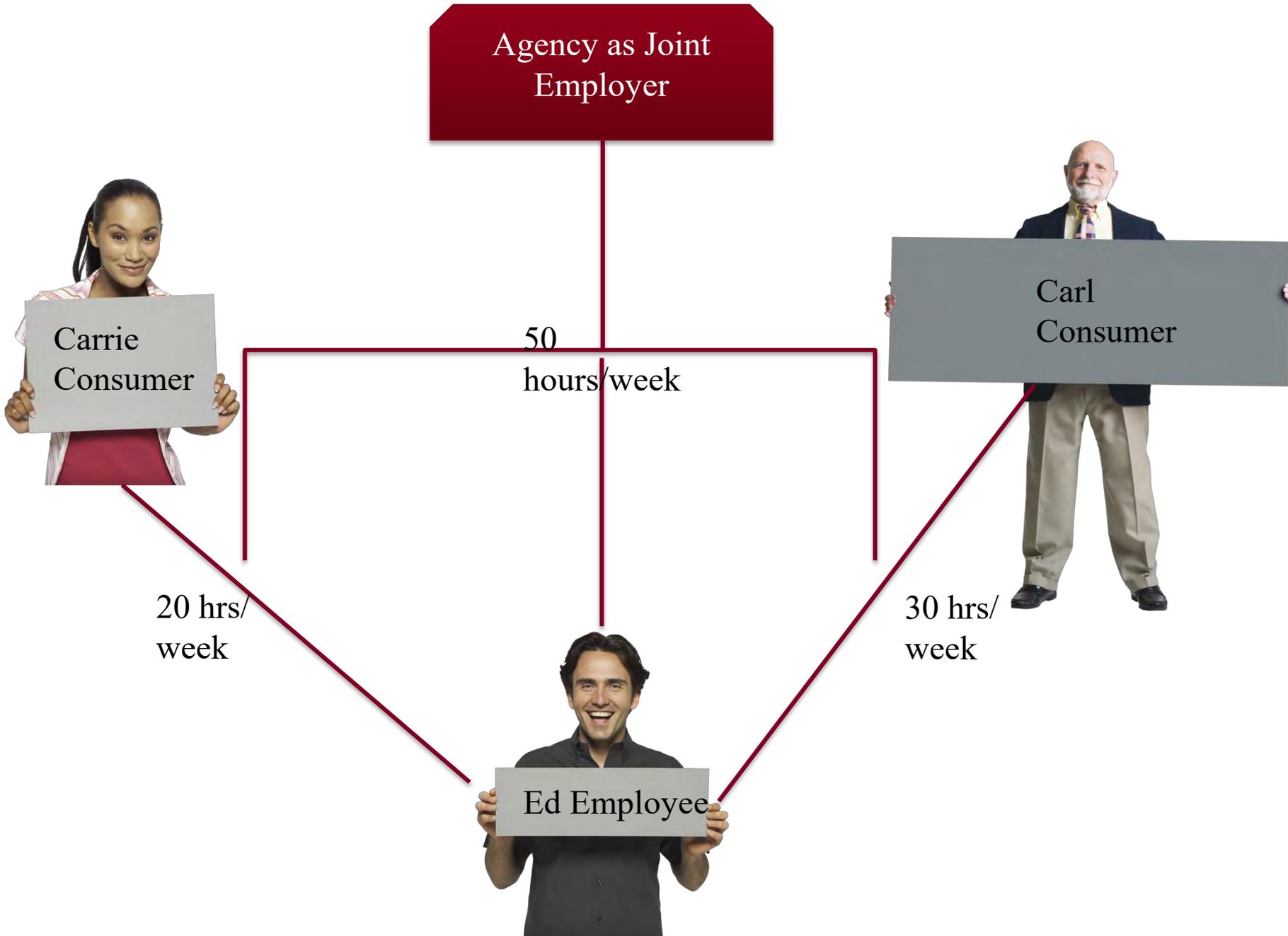
Carl
Consumer

30 hrs/
week

50
hours/week



Ed Employee



Travel Time

- Ed Employee provides services:
 - to Carrie Consumer from 8 am to 11 am, and
 - to Carl Consumer from 12:30 pm to 5 pm
- Ed drives from Carrie's home to Carl's home every day, and stops on the way at a pizza place for 30 minutes to get lunch for himself
- Driving straight from Carrie's home to Carl's home would take 1 hour without the stop for lunch
- Carl and Carrie receive services through the same agency, which is deemed is a joint employer of workers by DOL rules
- Does Ed have to be paid for travel time?

Ed's home



Carrie's home



Carl's home



20 minutes
Commuter

40 minutes
Commuter

1 hour driving distance
Driving on the job for joint employer



Lunch: 30 minutes

Agency with Choice: Fair Labor Standards Act Considerations

- In the Agency with Choice model, the agency and participant are generally considered joint employers for purposes of the Fair Labor Standards Act
- Because the agency is a “third party employer” (i.e., an employer other than the participant and their household) who jointly employs workers alongside the participant, the participant cannot use the companionship or live-in exemption
 - ❑ The FLSA Home Care Rule prohibits third party employers from using the companionship exemption from minimum wage and overtime as well as the live-in exemption from overtime
- Each worker in an Agency with Choice model usually must be paid at least minimum wage and overtime for all hours worked over 40 in a workweek
 - ❑ Overtime hours must be aggregated across all participants to whom the worker provides services

Creativity in Service Planning

...

More Than Personal Care

- Services
- Goods
- Community Services
 - Which might be *free!*



Thinking About Goods & Services

- Services = *Activities*, generally delivered by people who are not the participant's employees
- Goods = *Things* which support or enhance a participant's plan
- When to use goods and services
 - ❑ Related to a need or goal identified in the participant's person-centered plan
 - ❑ Increase independence or substitute for human assistance
 - ❑ Promote opportunities for community living
 - ❑ Accommodate with participant's budget without compromising health and welfare
 - ❑ Provided for the benefit of the participant
 - ❑ Not available through other programs or agencies

Services NH Participants May Self-Direct



Rules
and
Expectations

- Assistive Technology Support Services
- Wellness Coaching
- Respite
- Environmental and Vehicle Modification Services
- Specialty Services
- Community Participation Services
- Participant Directed and Managed Services (PDMS)
- Community Support Services (CSS)
- Service Coordination
- Supported Employment

Participant Directed and Managed Services (PDMS)

- PDMS enables individuals to maximize participant direction affording the option to exercise choice and control over a menu of waiver services and utilization of BDS authorized funding. This service category includes an individually tailored and personalized combination of services and supports for individuals with developmental disabilities and their families in order to improve and maintain the individual's need for transportation, opportunities and experiences in living, working, socializing, accessing therapeutic recreation (up to the service limits specified in this waiver for therapeutic recreation), personal growth, safety and health.
- Individuals whose services are funded through PDMS direct and manage their services according to the definition of Direction and Management in State Administrative Rule He-M 525.

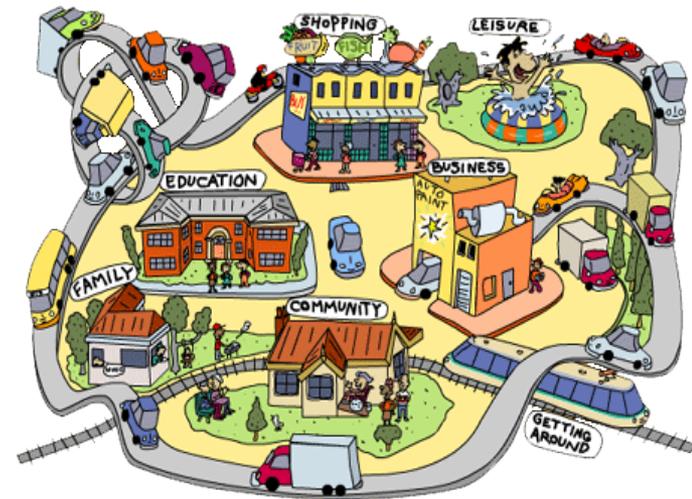
Source: New Hampshire's approved 1915(c) Developmental Disabilities Waiver

Goods and Services Examples

1. Someone is having trouble managing his/her diabetes and really wants to eat better
2. An adult with continence issues who requires lots of laundry
3. An adult who lives independently but has difficulty with meal preparation
4. A family with a child who wanders off and gets lost

Community Services

- You and your agency don't have to do it all
- Using other community services
 - ❑ Uses external expertise
 - ❑ Integrates participants into the community
 - ❑ May be free
 - If cost, can use participant's budget in many cases



Community Services Examples

1. An older participant needs help with routine foot care
2. A participant's family needs help learning how to manage some of the participant's more challenging behaviors
3. A participant has just gotten her first very own computer and wants to get good at using it
4. A participant wants to work with animals

Thank You!

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