



FMS Member Forum

May 31st, 2012

Welcome!

- Today's call will allow time for questions & comments via phone or online
- Please remember to take our survey at the end of the forum!

Today's Agenda

- General updates regarding participant direction
- General updates Q&A
- Agency with Choice update
- Agency with Choice Q&A

NRCPDS Team Introductions



Suzanne Crisp,
Director of
Program Design &
Implementation



Mollie Murphy,
FMS Lead



General Participant Direction Update

Suzanne Crisp

Behavioral Health Project

- Eighteen month grant funded by the RWJ to ascertain interest in a demonstration of employer/budget authority for individuals with behavioral health issues
- Review of literature and practices
- Conduct webinars with State Mental Health Program Directors
- Interview key stakeholders
- Issues recommendation and demonstration design



CMS Updates

- New Official CMS Website: www.medicaid.gov
- Community First Choice Option Final Regulation
- Advanced Notice of Proposed Rulemaking 1915(i)
- Advance Notice of Proposed Rulemaking HCBS Setting
- MFP Update

Balancing Incentive Payment Program (BIP)

- Authorized by Section 10202 of the PP&ACA
- Provides enhanced Federal Medical Assistance Percentages
 - State spending less than 25% on HCBS (5%)
 - States spending less than 50% on HCBS (2%)
- Qualify
 - Implement No Wrong Door/Single Entry Point
 - Develop Core Standardized Assessment Instrument(s)
 - Present conflict-free case management

BIP Implementation Manual

- Implementation Manual
- Provides specifics about the application, reporting requirements, checklists to implement and examples of program legislation
- [http://www.balancingincentiveprogram.org/sites/default/files/Balancing Incentive Program Manual_FINAL.pdf](http://www.balancingincentiveprogram.org/sites/default/files/Balancing%20Incentive%20Program%20Manual_FINAL.pdf)

Administration for Community Living

- Combines Administration on Aging, Administration on Developmental Disabilities, and the Office of Disability into the Administration on Community Living (ACL)
- Kathy Greenlee = Administrator
- Henry Claypool = Principal Deputy Administrator
 - Edwin Walker = Administrator of Aging
 - Sharon Lewis = Administration ID/DD
 - John Wren = Administrator for Disability and Aging Policy

Q&A

- Any questions or comments?
 - Submit online via the Q&A pod
 - Share over the phone (remember to press *# to mute/unmute yourself)

- A summary of response to all questions will be distributed following the forum



Agency with Choice Update

Mollie Murphy

Goals of Agency with Choice White Paper

- Present legal challenges and risks with AwC
- Present practical strategies for navigating legal challenges and risks
- Present required components for AwC to be participant-directed
- Not a goal: comparing F/EA and AwC

Agency with Choice includes Joint Employment

- Agency is primary employer
- Participant is managing employer
- Both are joint employers of worker
- Joint employment introduces legal ambiguity in some cases

Legal Issues

- 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

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

Participant-Directed Agency with Choice

- We are trying to avoid:
 - the participant's control is eroded because the agency tries to manage its own risk
 - OR
 - the participant has more risk than he/she understands

Model

- The agency serves as the primary employer of the participant's workers.
- AwC FMS operates only in states that recognize joint employment.
- AwC FMS and F/EA FMS are different and the operations of AwC FMS should reflect the differences.
- AwC FMS can operate under both employer and budget authority if the participant direction program allows.

Recruiting, Interviewing, Hiring and Discharging Workers

- The participant selects the workers of his/her choice.
- The participant has a primary role in interviewing prospective workers, but the agency also interviews.
- An agency officially hires the participant's workers as its own employees.
- The participant can discharge the worker from providing service to him/her at any time.

Recruiting, Interviewing, Hiring and Discharging Workers

- The agency terminates or re-assigns workers who are discharged by the participant from providing services to the participant.

Training, Scheduling and Managing Workers and Services

- The participant has a major role in training his/her own workers.
- The agency may have some worker training requirements.
- The participant determines when services are performed and schedules workers.
- The participant supervises and manages the worker when the worker provides services to the participant.

Training, Scheduling and Managing Workers and Services

- Goods and services are provided in locations dictated by the participant.

Financial Operations

- The participant and agency play a role in setting the worker's rate of pay.
- The participant approves timesheets and submits them to the agency for payment.
- In programs where it is allowed, an agency performs the financial duties for the participant to procure goods and non-employee services.
- The participant approves invoices and submits them to the agency for payment.

Financial Operations

- The agency tracks each participant's budget & spending plan on an individual basis.
- An agency manages the accounting for participants to save portions of their budgets, if the program allows.
- The agency handles all tax and insurance reporting and payment.
- The agency can elect to provide benefits to workers as its own employees.

Agency Support of Participant

- The agency should understand participant direction and be able to communicate with individuals with disabilities.
- The agency has systems in place to support the participant with responsibilities that the participant is unwilling or unable to perform.

Risk Mitigation

- The agency obtains professional liability insurance, general liability insurance, and workers' compensation policies that cover workers serving participants.
- The agency does not require the participant sign an agreement accepting liability.

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Advancing choice and control for people living with disabilities

www.participantdirection.org