



# Self-Direction 102: A Deeper Dive and Discussion

Kate Murray, Principal  
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# Agenda for Today

- Update on self-direction and COVID-19
- Continue our discussion on self-direction in greater depth and focus on key decision points on program design and the trade-offs of structuring them different ways
  - Participant supports
    - Financial Management Services
    - Information and Assistance
  - Individual-Directed Goods and Services
- We want choice, control, flexibility, but there are many different ways to get there
- Program design is never “one-size-fits-all”—and that’s where all of us come in

# Update on Self-Direction and COVID-19

- In the era of COVID-19, self-direction is thriving
- Many waiver programs have filed an Appendix K, which allows states to temporarily modify their waiver requirements in the event of an emergency
  - In Appendix K instructions, CMS encourages increasing use of self-direction in emergencies like pandemics and natural disasters
  - Many states are expanding self-direction and allowing certain family members (e.g., parents, legal guardians, spouses) to provide paid services to participants when they would normally not be permitted to do so
  - Other emergency measures include:
    - Waiving location requirements (e.g., the community) where certain services are to take place
    - Allowing verbal attestation of timesheets instead of signature

# Quick Refresh on Employer & Budget Authority

## Appendix E-1: Overview

- a. **Description of Participant Direction.** In no more than two pages, provide an overview of the opportunities for participant direction in the waiver, including: (a) the nature of the opportunities afforded to participants; (b) how participants may take advantage of these opportunities; (c) the entities that support individuals who direct their services and the supports that they provide; and, (d) other relevant information about the waiver's approach to participant direction.

- b. **Participant Direction Opportunities.** Specify the participant direction opportunities that are available in the waiver. *Select one:*

|                       |  |
|-----------------------|--|
| <input type="radio"/> | <b>Participant – Employer Authority.</b> As specified in <i>Appendix E-2, Item a</i> , the participant (or the participant's representative) has decision-making authority over workers who provide waiver services. The participant may function as the common law employer or the co-employer of workers. Supports and protections are available for participants who exercise this authority. |
| <input type="radio"/> | <b>Participant – Budget Authority.</b> As specified in <i>Appendix E-2, Item b</i> , the participant (or the participant's representative) has decision-making authority over a budget for waiver services. Supports and protections are available for participants who have authority over a budget.  |
| <input type="radio"/> | <b>Both Authorities.</b> The waiver provides for both participant direction opportunities as specified in <i>Appendix E-2</i> . Supports and protections are available for participants who exercise these authorities.  |

# Employer Authority

- Employer Authority means that a participant can directly hire workers of his/her choice and will train, manage, schedule and dismiss workers
- When most people think self-direction, we're thinking about employer authority
- With the exception of some small behavioral health programs, all self-direction programs in the United States have employer authority

# Budget Authority

- Budget Authority means that a participant has choice and control over what goods and services to purchase within their spending plan
- With budget authority, participants can select their worker's rate of pay (usually within parameters set by the state)
  - Important for parameters to be meaningful—in other words, a \$9.25 minimum rate to a \$10 maximum rate is not very meaningful
  - Participants should be permitted to pay higher-quality, more efficient workers more
- Budget authority can also (although does not always) include the ability to purchase goods and services

# Financial Management Services



# CMS Allows Two Models of FMS

## Appendix E-2: Opportunities for Participant-Direction

- a. **Participant – Employer Authority** *(Complete when the waiver offers the employer authority opportunity as indicated in Item E-1-b)*
- i. **Participant Employer Status.** Specify the participant’s employer status under the waiver. *Check each that applies:*

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | <b>Participant/Co-Employer.</b> The participant (or the participant’s representative) functions as the co-employer (managing employer) of workers who provide waiver services. An agency is the common law employer of participant-selected/recruited staff and performs necessary payroll and human resources functions. Supports are available to assist the participant in conducting employer-related functions. <i>Specify the types of agencies (a.k.a., “agencies with choice”) that serve as co-employers of participant-selected staff; the standards and qualifications the State requires of such entities and the safeguards in place to ensure that individuals maintain control and oversight of the employee:</i> |
| <input type="checkbox"/> | <b>Participant/Common Law Employer.</b> The participant (or the participant’s representative) is the common law employer of workers who provide waiver services. An IRS-approved Fiscal/Employer Agent functions as the participant’s agent in performing payroll and other employer responsibilities that are required by federal and state law. Supports are available to assist the participant in conducting employer-related functions.   |



# Types of Financial Management Services: Agency with Choice

- Agency with Choice (co-employer)
  - ❑ Participant/family co-employs workers along with FMS entity
  - ❑ Participants/families refer workers to agency for hire
  - ❑ Agency can provide more support with recruiting and providing workers
  - ❑ Participant choice and control not inherent in this model, but can be upheld with careful division of responsibilities between FMS entity and participant
  - ❑ Can be expensive
    - Live-in exemption from overtime cannot be used
    - Affordable Care Act requires employees working >30 hours per week to be offered health insurance

# Types of Financial Management Services: Fiscal/Employer Agent

- Fiscal/Employer Agent (common law employer)
  - Participant/representative/family is sole employer of workers
  - Fiscal/Employer Agent role is to handle administrative tasks, like getting participants/families set up as employers with federal and state government, processing timesheets, paying taxes, and preparing reports for families
    - Does NOT exert control over service delivery, employment relationship between families/employees, etc.
  - Maximum choice and control for participants and families
  - Can be especially cost-effective
    - Use of live-in exemption from overtime for “live-in” workers usually allowed
    - Tax exemptions available when hiring certain family members, creating savings to the budget of 15+%

# One, A Few, or Many FMS Entities?

- Will depend on how FMS is structured in the waiver
- If FMS is a waiver service, must allow any “willing and qualified provider” to provide FMS per Medicaid rules
  - ❑ There is a risk of ending up with too many FMS entities depending on how qualifications are developed
- If FMS is an administrative activity, state can limit the number of FMS entities
  - ❑ CMS prefers this approach
  - ❑ FMS is most often procured by the state issuing a Request for Proposal for FMS to receive bids from qualified vendors
  - ❑ Usually paid a Per-Participant-Per-Month administrative fee for every participant served

# Information and Assistance (I&A)



# Otherwise known as support brokerage, service coordination, consulting, the list goes on...

Appendix E: Participant Direction of Services  
 HCBS Waiver Application Version 3.5

j. **Information and Assistance in Support of Participant Direction.** In addition to financial management services, participant direction is facilitated when information and assistance are available to support participants in managing their services. These supports may be furnished by one or more entities, provided that there is no duplication. Specify the payment authority (or authorities) under which these supports are furnished and, where required, provide the additional information requested (*check each that applies*):

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | <p><b>Case Management Activity.</b> Information and assistance in support of participant direction are furnished as an element of Medicaid case management services. <i>Specify in detail the information and assistance that are furnished through case management for each participant direction opportunity under the waiver:</i></p>  |
|                          |   |
| <input type="checkbox"/> | <p><b>Waiver Service Coverage.</b> Information and assistance in support of participant direction are provided through the waiver service coverage (s) specified in Appendix C-3 entitled: _____</p>  |
| <input type="checkbox"/> | <p><b>Administrative Activity.</b> Information and assistance in support of participant direction are furnished as an administrative activity. <i>Specify: (a) the types of entities that furnish these supports; (b) how the supports are procured and compensated; (c) describe in detail the supports that are furnished for each participant direction opportunity under the waiver; (d) the methods and frequency of assessing the performance of the entities that furnish these supports; and, (e) the entity or entities responsible for assessing performance:</i></p> |
|                          |   |

# Support Brokerage/Information and Assistance

- Can be provided by independent support brokers or by agencies, or both
- The support broker works for the participant and is an expert informational resource, coach, and advocate
- In other programs, responsibilities vary but often include:
  - Supporting participants/families with their role as employer
  - Helping participants think through their needs, preferences, and goals, and working with the participant to develop strategies to “get from A to B”
  - Usually this takes place by collaboratively developing a spending plan with the budget
  - Reviewing spending reports to make sure participant is receiving services appropriately and in line with agreed-upon expectations

# Support Brokerage/Information and Assistance

- Critical that support brokers receive ample training on both the philosophy and mechanics of self-direction
  - Can't just be one or the other
  - Ideally, should be a self-direction specialist
- They should be the experts on getting participants and families the info they need to make the program work for them

# Individual-Directed Goods and Services





# Individual-Directed Goods and Services

- Two ways states design individual-directed goods and services:
  - ❑ Approach A: participant can select from limited menu of state-approved purchases
  - ❑ Approach B: participant creates their own personalized menu of goods and services based on their needs
    - May be some “Not Allowed” items, but anything else is fair game
- The goal of these purchases should be reasonably related to managing or treating the person’s disability, or enhancing community integration/independence
  - ❑ Can’t purchase things that are for the primary benefit of other members of the household, or pay room and board
  - ❑ Can’t use waiver dollars for routine auto or home repair, recreation, or basic expenses that someone without a disability would be expected to incur (e.g., groceries)

# Individual-Directed Goods and Services

- Some goods and services purchase requests will fall into a grey area that aren't immediately clear-cut
  - ❑ Important to avoid gatekeeping, but also critical to make sure purchases stand up to potential public scrutiny
  - ❑ Also critical to make sure the program is equitable, regardless of a participant/family's socioeconomic background
- The most critical thing is to identify the rationale of why a particular good or service is needed
  - ❑ How will this purchase help the participant manage or treat their disability?
  - ❑ How will this purchase enhance the participant's community integration or independence?
  - ❑ Just because a purchase is appropriate for one participant does not mean it is automatically appropriate for someone else

# Time for Questions and Discussion

