



Participant Direction:
Established Practices and New Challenges

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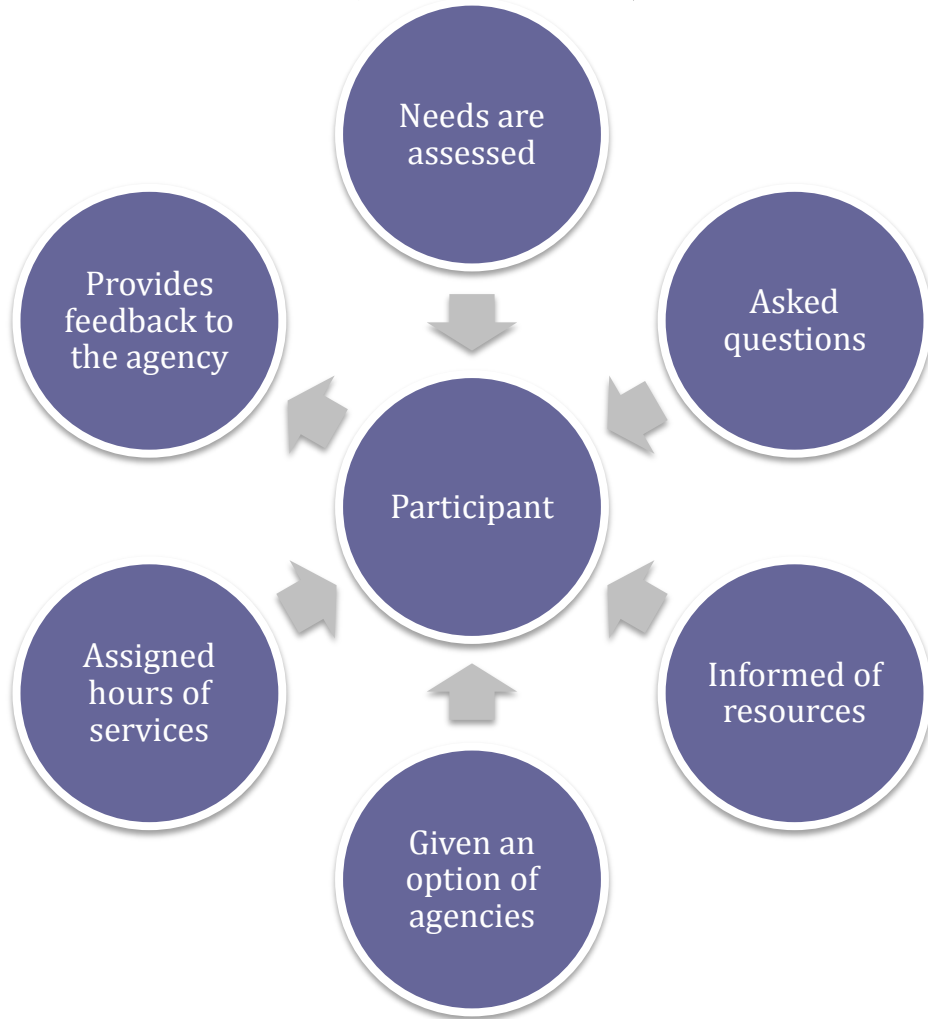
Director of Veterans Initiatives

Agenda

- Overview of Participant Direction
- Participant Direction in Respite Services
- New Department of Labor Rules
 - Companionship Exemption
 - Joint Employment

What is Participant Direction?

Traditional Services



Participant-Directed Services



What is Participant Direction?

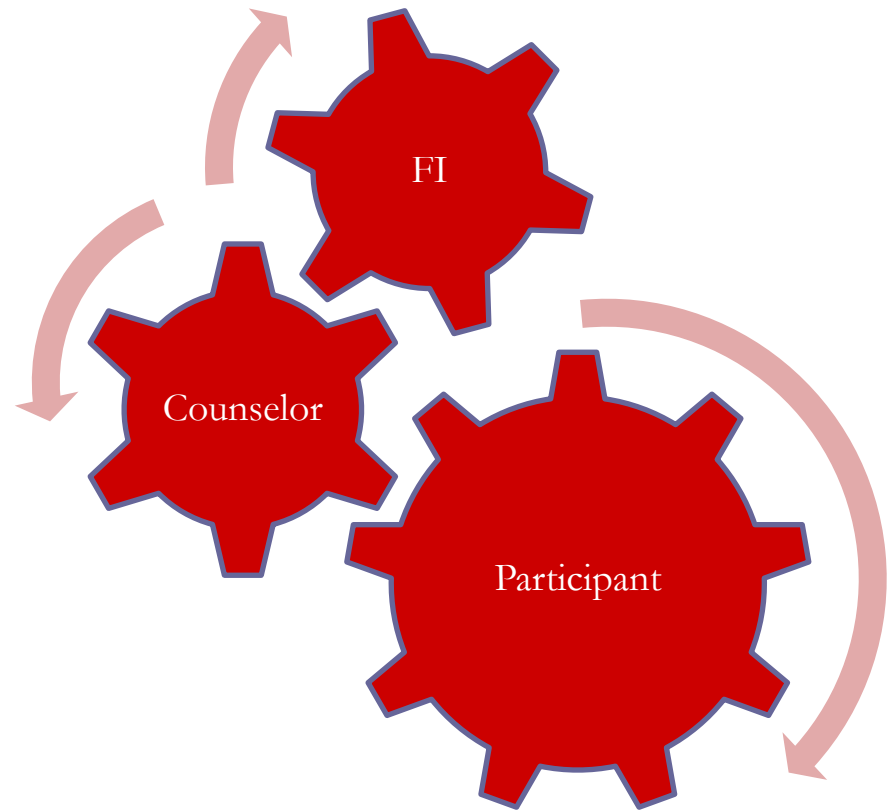
- Maximizes participants' control over their care
- Care reflects participants' goals and preferences
- Participants have control over a budget for their care
- Spending plan is determined through a person-centered planning process
- Participants have support in developing and implementing their plans

Models of Participant Direction

- Budget Authority
 - Dollar amount to spend on care
 - Hires workers
 - Sets wages
 - Sets hours and tasks
 - Purchases goods and services
- Employer Authority
 - Authorized hours or dollars to allocate
 - Hires workers
 - May or may not set wages
 - Sets hours and tasks
 - No goods and services

Three Roles

- Participant
- Counselor
- Fiscal Intermediary (Also known as Financial Management Service or FMS)



Participant Role

Participants control the

- Who
- What
- When
- Where
- How

of their care

Counselor



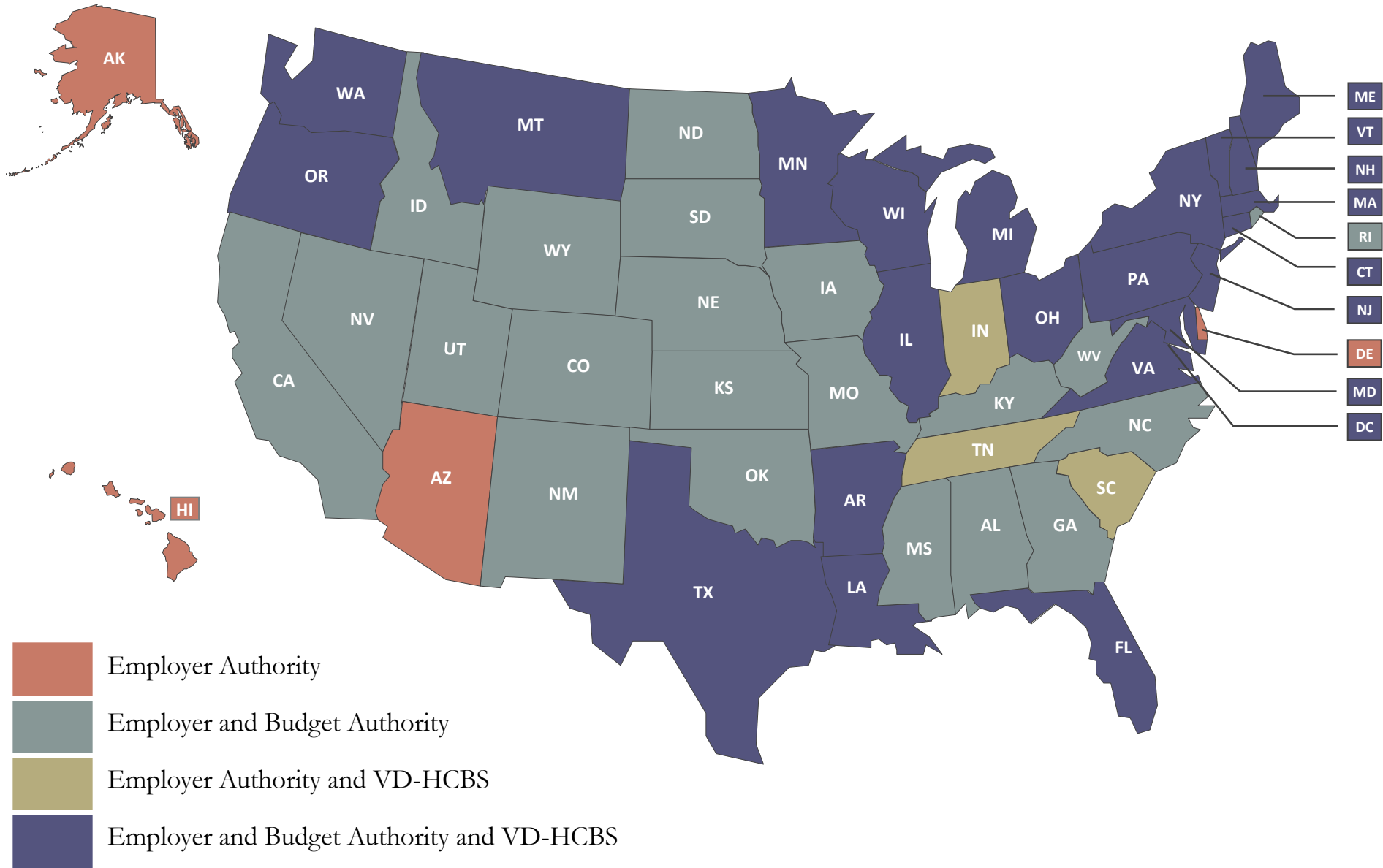
- Assures participant understands rights and responsibilities
- Supports person-centered assessment process
- Supports development of service/spending plan
- May or may not be involved in setting budget amount
- Monitors plan implementation

Financial Intermediary

- Processes payroll
- Manages withholding taxes and W-2s – if necessary
- Takes care of Unemployment and Worker's Comp Insurance (as needed)



Prevalence of Participant-Directed Programs



Effect on Total State Costs

- Short term costs were higher:
 - Participant-directed participants used the services they were authorized
 - In many instances, people receiving traditional services were not receiving all the services they were authorized to receive
- Nursing facility use was 18% lower for treatment group than those using agency care during a 3 year follow-up evaluation in Arkansas*
- Investment in all HCBS results in long term savings
 - Doesn't reflect the 18% nursing facility reduction seen in participant direction **

* AR Department of Human Services. (2009). *IndependentChoices Final Report*. www.hcbs.org/moreInfo.php/doc/2549

**Kaye, HS, LaPlante, MP, and Harrington, C, "Do non-institutional long-term care services reduce Medicaid spending?", *Health Affairs* 28, no 1 (2009): 262-272

Participant Direction in Respite



- Two “participants”
 - Person with the disability
 - Caregiver
- Two sets of goals and preferences
- Caregiver often the employer
 - Caregiver often speaks for the “team”
- Principle of maximizing control remains

Participant Direction in Respite

- Budgets often quite small and not variable
- “Counselor” service is streamlined
 - May consist of eligibility and orientation materials
 - May be part of a larger I/R/A process
- FI function may be provided by the state or a service agency



Employer Considerations

- The respite worker is an employee of the caregiver
- Employer must contribute to FICA if employee is paid *\$1,900 year* or more
- Employer must pay unemployment taxes if total of all wages to all employees wages is over *\$1,000 quarter*
- Income taxes must always be withheld
- There are some exemptions for family members

Department of Labor Rules

New rule on Companionship Exemption and Joint Employers

- Narrows who is considered a “companion”
- Broadens circumstances when a state or agency is considered a “joint employer”

Why Do you Care?

- Will often require paying minimum wage
- May increase requirements to pay overtime
- May require payment for worker travel

Companionship Rules

Old Rule

- Anyone providing in-home care was a “companion”
- Qualifying for the “companionship exemption” meant
 - ❑ No minimum wage requirement
 - ❑ No overtime requirement

New Rule

- Only those people providing “paid friend” services are exempt
- Virtually anyone providing hands-on care must be paid
 - ❑ Minimum wage
 - ❑ Overtime for any hours over 40 worked in a week

Companionship Exemption

- Cannot be taken if employee provides “medically related services” that require training or skill
 - Examples of medically related services: catheter care, tube feeding, bed turning or repositioning, physical therapy
- Cannot be taken in an employment relationship in which more than 20% of any workweek is devoted to “care”, which includes assistance with ADLs/IADLs
- Cannot be taken if employee provides services primarily for the benefit of other members of the household
- Cannot be taken in employment relationships in which there is a joint third party employer
- Worker must only do companionship services for the whole work week to use the companionship exemption

Some Respite Workers *Do* Qualify

- Provide company and socialization
- May accompany on outings
- Prepare simple meals
- Provide developmentally appropriate care
- Provide incidental special care



Joint Employment

- DoL rules may mandate more than one employer: “Joint Employment”
- Companionship exemption does not apply in joint employment
- Travel costs may need to be covered



Determining Joint Employment

- Joint employment determined by the “Economic Realities Test”
- Who controls hiring, wage setting, scheduling and tasks performed?
 - State or agency may set minimal requirements such as passing a background check
 - State or agency may set wage *range* but it must allow for meaningful discretion by the participant

Joint Employment - Overtime

- Must pay overtime for work more than 40 hours in a work week.
- 40 hours for *all* of the joint employers combined
- Who pays the overtime is not clear

Joint Employment - Overtime

Worker works for

20 Hours for Jane



10 hours for Bill

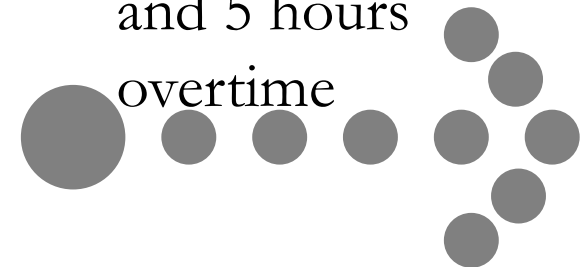


15 hours for Laura



Worker is paid

40 hours
straight time
and 5 hours
overtime



Joint Employment – Travel Costs

- Wages must be paid for travel between participants
- For example:
 - Work for Jane from 8 – 11 AM
 - Work for Bill from 12 – 3 PM
 - The travel time from Jane's to Bill's must be paid
- Doesn't include time from or to worker's home
- Again, who pays for travel is not clear

Questions?

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Thank you!