Participant Direction:
Established Practices and New Challenges
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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

- Needs are assessed
- Participant
- Informed of resources
- Given an option of agencies
- Assigned hours of services
- Provides feedback to the agency
- Asked questions

Participant- Directed Services

- Makes decisions based on budget
- Participant
- Determines goods and services purchased
- Assigns hours of service
- Evaluates workers
- Hires, manages, dismisses workers
- Trains, or arranges for training of, workers
- Provides feedback to the agency
- Asked questions

Participant

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

- Employer Authority
- Employer and Budget Authority
- Employer Authority and VD-HCBS
- Employer and Budget Authority and VD-HCBS
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 **


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

45 hours total

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!