



*Agency with Choice: Key Components for
Practical Implementation while Maintaining
individual Choice and Control*

January 8, 2014

NRCPPDS Team Introduction



Suzanne Crisp
Director of Technical Assistance

NRCPPDS Team Introduction



Mollie Murphy
FMS Lead

Purpose of Today's Training

- Learn about Agency with Choice so providers can decide if they want to offer this service
- Present required components of Agency with Choice

A Person-Centered System: The Desired State

- All programs within the system operate using a person-centered approach
- Individuals direct the assessment, planning, implementation, management, & evaluation process
- Individual's strengths, capacities, preferences, and personal outcomes are identified and documented
- Individuals understand person-centered practices

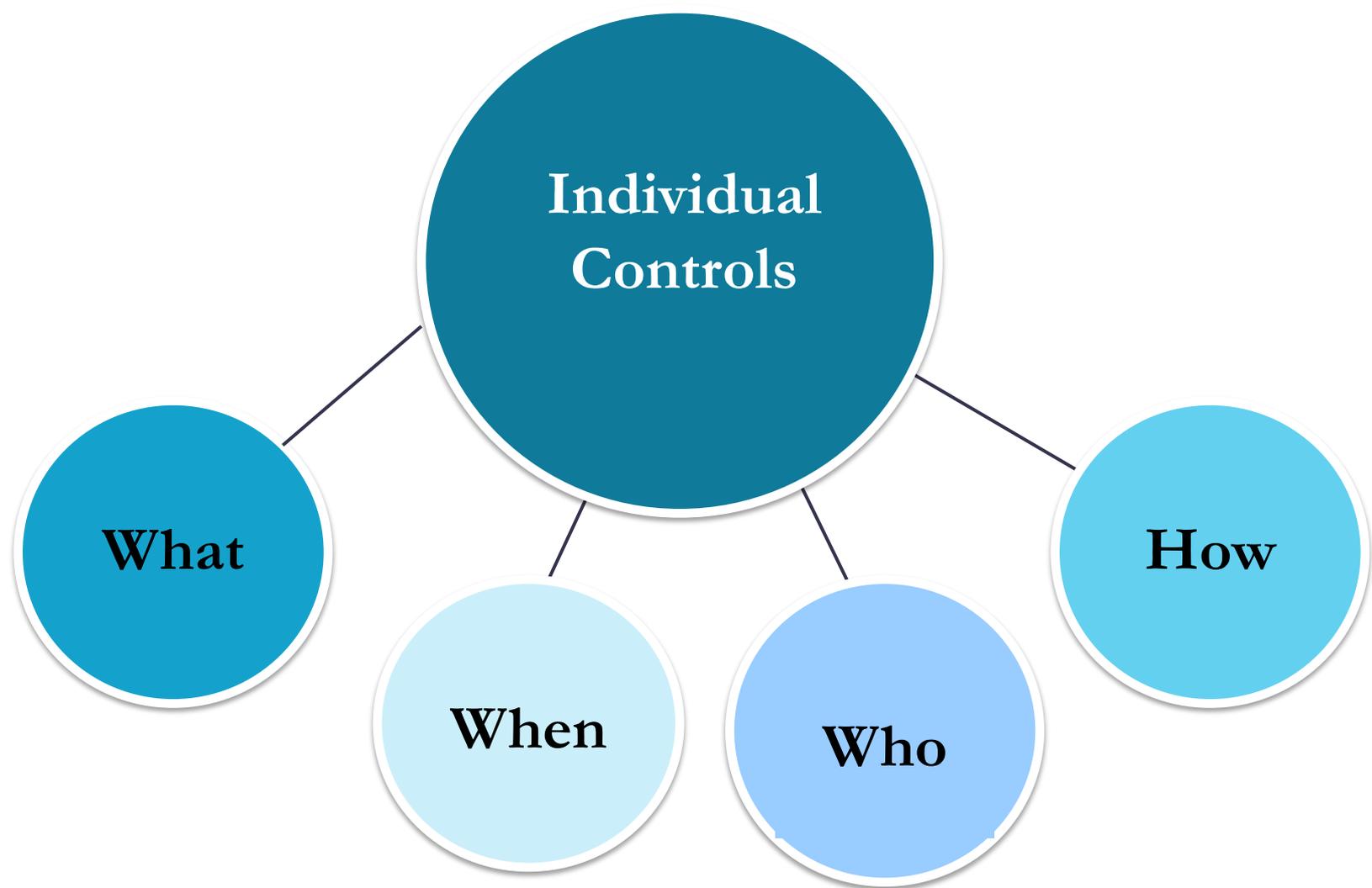
Achieving the Desired State

- Person-centered planning is a major objective or guiding principle of the system
- Person-centered practices are embedded in policies & procedures
 - Assessment process includes formal questions
 - Narrative must include goals and outcome
 - Reassessments must include a section on meeting goals
- Sufficient staff time must be committed
- Staff training (initial and continuous) must be conducted

How do you Know a Person-Centered System Exists?

- Case file review
- Feedback from Individuals
- Policy and procedures are updated
- Evaluate training

What is Self-Direction?



What is Unique about Self-Direction?

- More responsibility placed on individuals
- Role of the traditional case manager changes
- Support Brokers are introduced
- State may delegate authority to FMS/AwC
- More moving parts
 - FMS/AwC
 - Information and Assistance
- Risk assessment and management, back-up plans, and incident reporting are more critical
- Monitoring strategies must be expanded

Achieving the Desired State

- Person-centered thinking and practices are required
- Option is presented in a standardized and unbiased manner
- Case load ratios consider the extra time and attention to enroll, orientate, and provide continuous support
- Effective monitoring strategies are designed in the program
- State specifies duties, reporting requirements and how the State will assess quality of the FMS & AwC

Agency with Choice: Employment Roles for Agency and Individual

- Agency has major role in employment of workers
- Individual has major role in selecting, training, scheduling workers
- Introduces legal ambiguity in some cases

Self-Directed Agency with Choice

- We are trying to avoid:
 - Erosion of individual control because the agency tries to manage its own risk

OR

- The individual having more risk than he/she understands

Division of Responsibility: *Worker Selection*

	Individual	Agency
Selecting workers who serve the individual		

- One of the primary tenets of self direction is that individuals can receive services from the workers **of their choice**
- Ideally, the individual identifies prospective workers within his/her community or circle of support, including friends and neighbors
- Individuals may recruit workers
- Some individuals 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*

	Individual	Agency
Interviewing workers		

- For maximum self-direction, the ideal is that the individual is the sole interviewer of prospective employees. Not realistic in Agency with Choice
- Agency is an employer of the workers and should also have a role in interviewing workers
- A individual should have a major role in interviewing workers as the individual 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 him/her

Division of Responsibility: *Officially Hiring Workers*

	Individual	Agency
Officially hiring workers		

- As the primary employer of the workers who provide services to individuals, the agency will officially hire the individuals' selected workers as its own employees
- This includes collecting and reviewing new hire paperwork
 - Such as an *IRS Form W-4* and *USCIS Form I-9*
- To remain a self-directed Agency with Choice, Agency should not have hiring criteria that make it difficult for most workers referred by individuals to be hired
 - Agency may have qualification or criminal background check requirements

Division of Responsibility: *Discharging Workers*

	Individual	Agency
Discharging workers from serving the individual		

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

Division of Responsibility: *Terminating Workers*

	Individual	Agency
Terminating workers		

- As an employer, the agency ultimately decides whether a worker should be terminated from employment
- As an employer, the agency can decide whether to terminate the worker from employment with the agency or to re-assign the worker to provide services to other individuals when the worker is terminated from providing service to a particular individual
- The agency should ensure that the worker was not discharged by the individual for a discriminatory or otherwise illegal reason.
 - If the individual 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*

	Individual	Agency
Training workers		

- The individual knows best how his/her services should be provided to meet his/her needs
- The individual, or his/her family, spouse, friends, or representative, should have a major role in training the worker to provide the specific services to the individual or in determining the training that the worker needs
- As an employer, the agency may have some training requirements for the worker
 - 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 individual
 - All training that the individual wants above and beyond what is required per the waiver definition is identified in the **Self Direct Plan of Care**

Division of Responsibility: *Scheduling Workers*

	Individual	Agency
Scheduling workers	[REDACTED]	

- The individual should have the primary role in scheduling the worker's hours with the him/her
- Ideally, the agency has little to no role in determining when the worker provides services to the individual
- To maximize self-directedness, the individual 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 individual determines that the service is needed, the individual may recruit and hire another worker
- Individuals should communicate the schedule of a worker with the agency

Division of Responsibility: *Managing Workers' Daily Activities*

	Individual	Agency
Managing the workers' on-the-job work activities with the individual		

- A key element of self-direction is that the individual can direct how the work provided for him/her is performed
- The individual should direct how work is performed as specified in the plan of care
- The individual should direct the day-to-day work duties performed by the worker when providing services to the individual
- The agency should not have a large role in managing the regular duties at the individual's worksite (which is usually his/hers home)

Division of Responsibility: *Determining Location of Service Provision*

	Individual	Agency
Managing the workers' on-the-job work activities with the individual		

- All services directed by individuals should be provided in the individual's home or community, or in a location otherwise chosen by the individual as appropriate for the service (job site), including services provided by employees, contractors and vendors
- If a individual uses his/her budget to purchase goods, the individual should generally elect from where those goods are purchased
 - Make sure the individual is educated on the importance of providing a safe work environment

Division of Responsibility: *Setting Workers' Pay Rate*

	Individual	Agency
Setting the workers' pay rate		

- The Agency and individual must each have a role in determining worker rate of pay
- Practically, most self-direction programs have parameters for permissible rates of pay
- We recommend that the agency or program establish an allowed and reasonable minimum and maximum rate of pay and that the individual determine the appropriate rate to pay their worker within that range. Some exceptions may be permitted.

Usual & Customary Rate

- Ok to have differing pay rates and Medicaid billed rates by worker
- Ok to pay one worker \$10 per hour and another \$12 per hour for a job with the same title
- Ok to bill Medicaid for different amounts depending on rate paid to worker
- Ok to bill Medicaid for different amounts for the employer tax cost associated with different rates paid to the worker
- **NOT** ok to bill Medicaid different amounts for the admin function
- Develop a transparent approach for how worker rate is determined (could be set by the participant) and how Medicaid is billed
- Apply that approach consistently to all workers rates
 - Does **NOT** mean all workers must be paid the same rate

Example for Usual & Customary Rate

- Tom and Mary are both participants in Agency with Choice
- Tom chooses to pay Rita \$10 an hour as a PCA
- Mary pays Patti \$12 an hour as a PCA
- ABC Agency bills Medicaid per the below:

Costs per hour	Rita	Patti
Gross pay	\$10	\$12
Employer tax cost	\$1.10	\$1.32
AwC admin fee	\$5	\$5
Total billed to Medicaid per hour	\$16.10	\$18.32

- **Total billed to Medicaid per hour cannot exceed the standard rate for that service (see rates manual)**

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

	Individual	Agency
Approving a worker's timesheet		

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

Division of Responsibility: *Matching Service to Individual Cost Plan*

	Individual	Agency
Ensuring service usage is approved in the Individual Cost Plan (ICP) prior to paying for it		

- The agency confirms that expenditures are in line with the ICP, and provides regular reports to the individual and case manager, as applicable
- The agency must process individual-approved timesheets and maintain accounting documentation each month noting the rate to be charged to the ICP and hours worked to justify the invoice
- In general, the agency should use the individual's ICP funds to pay employees only when the individual has approved the time worked
- The agency should only use the individual's ICP funds to pay for goods and non-employee services purchases when they have been approved in the Plan of Care
- Agency is responsible for providing documentation of the activities performed and that the service billed for was delivered (e.g., progress notes)

Division of Responsibility: *Paying Workers and Vendors*

	Individual	Agency
Paying workers and vendors		

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

Division of Responsibility: *Tax and Insurance Payments*

	Individual	Agency
Tax and insurance reporting and payments		

- The agency withholds from employee, pays, 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 tax and insurance filing and payment
- The funding for the employer tax and insurance costs should be paid according to the Agency's transparent approach for developing a usual and customary amount billed to Medicaid
- The Agency must also furnish a workers' compensation policy to cover workers in the individual's home

Other Key Agency with Choice Components

- The agency can elect to provide benefits to workers as its own employees
 - The Affordable Care Act impacts whether the Agency is required to provide health insurance
- The agency should understand the principles of self-direction and be able to communicate those principles with individuals with disabilities

Potential 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 in different states seek to determine which employer is directing and controlling the work and the agreements in place between employers and the employee
- Employment practices
 - Other states have experienced situations when employment practice wrongdoing takes place (e.g., unlawful discrimination, an unsafe work environment), and each employer's action or inaction in regard to the worker is reviewed

Agencies should consult with professionals who know about Montana laws and court precedence

Compensation, Tax, and Insurance

- Employment Tax
 - Agency is expected to be responsible for all employment tax obligations
- Worker Classification (independent contractor vs. employee)
 - Agency is expected to correctly classify workers according to State laws
- Wage and Hour (overtime, minimum wage, etc.)
 - Agency must maintain compliance with overtime and minimum wage requirements. May require coordination with individual

Agencies should consult with professionals who know about Montana laws and court precedence

Compensation, Tax, and Insurance (cont'd)

- State Unemployment Insurance
 - ❑ Agency is expected to be responsible for all employment tax obligations
- Health and Retirement Plan Benefits
 - ❑ Should be structured so that agency maintains tax benefits; seek professional review
- Family and Medical Leave
 - ❑ Both may have some responsibility
 - ❑ Agencies should educate individuals about their role

Agencies should consult with professionals who know about Montana laws and court precedence

Employment Practices

- Employee Authorization to Work in US
 - Agency expected to review before hiring worker
- Equal Employment Opportunity
 - Different states have situations where each can be held liable for their wrongdoing. Agency could be held liable for not responding to employee complaints of individual discrimination or for complying with individual discrimination.
- Workplace Safety
 - States have situations where both agency and individual could be held liable, depending on which party created the safety hazard

Agencies should consult with professionals who know about Montana laws and court precedence

Risk Mitigation

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

Matters in Progress

- Performance Measures for AwC
- I/M protocol in self-direction
- Negotiating a new fee structure with Acumen
- The process to become formally recognized as an AwC

Questions?