

Self-Direction: What to Look For From the Federal, State and Provider Perspectives



Presented at:

ANCOR 2007 Government Activities Seminar

Presented by:

Susan A. Flanagan, Ph.D., M.P.H.
The Westchester Consulting Group

and

Mary P. Sowers
Centers for Medicare & Medicaid Services

September 10, 2007
Washington, DC


I. What are Self-Directed Support Services?

- In the Instructions and Technical Guidance for 1915(c) Home and Community Based waivers, CMS describes **participant/self-direction** as follows: “Participant direction of waiver services means the waiver participant has the authority to exercise decision making authority over some or all of his/her waiver services and accepts the responsibility for taking a direct role in managing them.”
- National Institute on Consumer-directed Long-term Services at the National Council on the Aging defines **consumer/self-direction** as:

*A philosophy and orientation to the delivery of HCB services whereby **informed** individuals assess their service needs, determine how and by whom these needs should be met, and monitor the quality of services received.*
- **Self-directed support services** are based on the premise that the person with the disability, and his/her representative, when appropriate, knows best about his/her needs and how to address them and should be empowered to make decisions about the services he/she receive sand the organizations and individuals who deliver them.
- **Self-Determination** originated among advocates for persons with intellectual developmental disabilities. It carries a more global connotation of the individual taking charge and asserting his/her preferences in all areas of his/her life, not simply with respect to his/her support services.

I. *What Are Self-Directed Support Services?*

(continued)

- 
- Self-directed support services do not reflect one strategy. They reflect a continuum of approaches based on individuals' and representatives' strengths and support needs and the level of autonomy and control they wish to exercise related to the support services they receive and the individuals who provide them.
 - Although there is no single service delivery model that encompasses the entire range of self-directed support service programs, in general, a program can be considered self-directed if the individual receiving the service or his/her representative is responsible for:
 - Recruiting and selecting/hiring his/her support worker,
 - Orienting and training his/her support worker,
 - Determining his/her support worker's duties and work schedule,
 - Supervising his/her support worker(s),
 - Managing his/her support worker's payroll (or having an entity to perform the task on the individual's behalf),
 - Reviewing the performance of his/her support worker, and
 - Discharging his/her support worker, when necessary.
 - Services that support individuals' use of self-directed services are Supportive Services (sometimes known as support brokers or counselors) and Financial Management Services.

II. Services That Support Individuals Using Self-directed Services

Service	Operating Entity	Worker's Employer	Entity's Responsibilities
Fiscal Conduit (FMS)	Government or Vendor	Individual or representative unless agency-based services used.	Disburses public funds via cash or voucher payments to individuals/representatives and performs other related duties.
Government Fiscal/Employer Agent (FMS)	State/County (Section 3504 of the IRS Code and IRS Rev. Proc. 80-4)	Individual or representative unless agency-based services used.	Under IRS Rev. Proc. 80-4, a government entity acts as "employer agent" for individuals for limited purpose of withholding, filing and depositing federal employment taxes. Also may invoice a state for public funds, manage payroll and related state income tax withholding, employment and locality taxes, pay vendors, generate reports, & broker worker's compensation & health insurance. May or may not delegate agent tasks to a reporting or subagent per IRS Proposed Notice 2003-70.
Vendor Fiscal/Employer Agent (FMS)	Vendor (Section 3504 of the IRS Code and IRS Rev. Proc. 70-6)	Individual or representative unless agency-based services used.	Same as Government Employer Agent described above except as vendor in accordance with IRS Rev. Proc. 70-6 and IRS Proposed Notice 2003-70. May delegate agent tasks to a reporting agent per IRS Form 2678 instructions.
Agency with Choice (FMS)	Agency (e.g., CIL, Home Health, AAA or social service)	Co-employment arrangement with the Agency or its subcontracting agency (e.g., CIL, Home Health, AAA or social service) and the individual service recipient or his/her representative as employers.	Agency and individual are co-employers of support service workers recruited and selected by the individual. Agency is the employer of the worker for human resources, payroll and Medicaid provider requirements while the individual is the <i>employer</i> of his/her worker for recruitment, training, supervision & discharge. Agency also may provide supportive services to assist individual being a managing employer and recruiting, training and supervising workers at the request of the individual or representative.
Supports Brokerage	Distinct vendor or individual. Also may be provided through other ISO models.	Individual/representative or agency	Provides an array of supportive services to individuals and representatives (i.e., assessments, employer skills training, budget and service plan development and service coordination).

III. *What Major Initiatives Have Encouraged the Growth of Self-Directed Services?*

- Robert Wood Johnson Foundation *National Self Determination for Persons with Developmental Disabilities Project (1997-2000)*
- Robert Wood Johnson Foundation *Cash & Counseling Demonstration/ Evaluation (1996-2005) and Replication Projects (2004 -2008)*
- Federal *New Freedom Initiative (2001- Present)*
 - National initiative with the goal of removing barriers to community living for individuals with disabilities of all ages
- *The Deficit Reduction Act of 2005*
 - Section 1915(i) of the Social Security Act: HCBS as a State Plan Option
 - Section 1915(j) of the Social Security Act: Self Directed Personal Assistance Services.

IV. *Common Misperceptions Related to Self-Direction*

- *Self direction is just an “experiment.”*

Every state and the District of Columbia has implemented, or is in the process of developing and implementing, at least one state or Medicaid-funded self-directed service program.

- *Self-directed services are mandatory.*

Under federal Medicaid rules, states must offer eligible individuals a choice of self-directed and traditional home and community-based services.

- *All elders and persons with disabilities wish to use self-directed services.*

A person’s need for home and community-based services can vary along with how he/she wishes his/her services to be provided. Some individuals may choose to use services provided under the “traditional” model while others may choose to use services that offer a self-directed approach. Some individuals may wish to receive services through both models.

IV. Common Misperceptions Related to Self-Direction (continued)

- *Self-directed service programs are not necessary because traditional agency-based services can meet individuals' needs.*

The RWJ Foundation Cash & Counseling Demonstration and Evaluation (RWJF C&CDE) found elders, adults with disabilities and children receiving self-directed services had lower unmet need than those receiving traditional agency-based services. Nationally, assessed hours of services are not consistently provided and individual preference and the need for service flexibility is not consistently being addressed.

- *Self-directed service providers are not as well trained as agency-employed providers and put individuals at risk.*

The RWJF C&CDE found individuals receiving self-directed services had no worse health outcomes than individual receiving services from agencies. In addition, a report issued by the US DHHS and the University of California, Los Angeles, and the RWJF C&CDE found that self-directed services outperformed agency services within three broadly defined areas, satisfaction with services, empowerment and quality of life.

IV. Common Misperceptions Related to Self-Direction (continued)

- *Self-directed services are not appropriate for elders and persons with intellectual developmental disabilities and put them at risk.*

The RWJF C&CDE found when individuals' experience and outcomes were compared in self-directed and agency-based programs, no significant differences were found in individual outcomes and unmet need was less with self-directed services. In addition, individuals who used self-directed services and hired family and friends as their service providers had better outcome measures related to safety and sense of security.

- *Self-directed services are more costly than traditional home and community-based services.*

In some cases, states have found costs to be higher related to self-directed services. However, the C&CDE Demonstration Evaluation found that the higher costs seem to be associated with eligible individuals receiving their total assessed hours of service rather than the cost/unit of service delivered.

IV. Common Misperceptions Related to Self-Direction (continued)

- *Self-directing individuals will “misuse funds” or “be exploited.”*

The use of Financial Management Services (FMS), in particular Fiscal/Employer Agent and Agency with Choice FMS increases financial accountability, compliance with federal and state tax, labor and workers' compensation insurance laws and minimizes concerns about misuse of funds or financial exploitation of vulnerable individuals while reducing the administrative/employer responsibilities for self-directing individuals and their representatives.

- *Self-directed service programs negatively affect agency providers' access to workers.*

Self-directed service programs liberate a “nontraditional” workforce (neighbors, friends and relatives) that might never consider being support service workers if they did not have a relationship with the individual in need of support services.

- *Self-directing service programs negatively affect market share for agency providers*

There is no evidence documented. In addition, self-directed service programs often attract individuals who agencies consider to be a “challenge” and serve them successfully.

V. *Self Direction from the Federal Perspective*

- CMS is very supportive of States' efforts to design and implement a continuum for service delivery that includes self-direction.
- States may offer self-direction under Medicaid through a number of vehicles:
 - 1915(c) HCBS waivers,
 - 1915(b) waivers,
 - 1915(i) HCBS as a State Plan Option, and
 - 1915(j) Self-directed Personal Assistance Services.
- 1915(c) HCBS waivers are most commonly used by States to institute self-direction.
- States may offer a range of self-direction under 1915(c) -- from a limited amount of self-direction opportunities to the gold-standard of Independence Plus.
- More than 30 States have approved 1915(c) waivers offering some form of self-direction.


V. *Self Direction from the Federal Perspective*

(continued)

- For States using 1915(c) waiver authority to implement self-direction, the State must describe the following:
 - The opportunities for participant direction;
 - Whether the waiver affords individuals employer and/or budget authority;
 - The functions/services available in support of participant direction (including FMS and information and assistance in support of participant direction);
 - The services in the waiver available for participant direction;
 - The individual budget methodology;
 - Quality management strategies for the waiver as a whole; and
 - Other information necessary to determine whether the State's approach comports with CMS guidelines.

V. *Self Direction from the Federal Perspective*

(continued)

- 
- For detailed information regarding CMS policy and requirements regarding self-direction, please see the *Instructions, Technical Guide and Review Criteria for 1915(c) HBCS Waivers*. These may be accessed online at:

http://www.cms.hhs.gov/HCBS/02_QualityToolkit.asp

VI. *Self-direction from the State Perspective*

Successes

- Growth of self-directed services available as an “option” for individuals across the country and in the number of self-directed service programs that allow individuals to have a representative assist them in managing their services and workers.
- Results of RWJ Foundation Cash & Counseling Evaluation- Self directed service:
 - Can increase access to care,
 - Greatly improve quality of life for elders and individuals with physical and intellectual developmental disabilities of all ages,
 - Caregivers also benefit greatly, and
 - States may be concerned about costs, but have learned how to control them.
- Growth in the number and sophistication of F/EAs, Agency with Choice FMS and Supportive Service organizations.
- Development of a workers’ compensation rating code that is applicable to self-directed service programs, program participant-employers and their support workers and an increase in insurance carriers who will sell these policies.

VI. *Self-direction from the State Perspective*

(continued)

Challenges

- Related to Fiscal/Employer Agents (F/EAs) states are still working on:
 - “How Many F/EAs and Supportive Service Organizations Are Enough.” Balancing choice of provider with service volume, effective service delivery and unit cost.
 - Whether to develop F/EA certification standards or issue Requests for Proposal (RFPs) to engage F/EAs. Balancing the receipt of federal program versus administrative matching funds with the costs associated with F/EA provider certification.
 - Identifying and educating program agency staff in F/EA operations and federal and state tax, labor and state workers’ compensation insurance requirements in order to effectively select F/EA vendors and monitor their performance.
 - What State income tax withholding and unemployment insurance tax requirements are related to self-directed service programs and F/EAs and how they mesh (or not) with federal income tax withholding and employment tax requirements.

VI. *Self-direction from the State Perspective*

(continued)

Challenges (continued)

- How to get individuals' assessment and budget information from the field (from Support Brokers or Care Managers) into the State's Service/Budget Authorization Systems and then to the F/EAs in an accurate and timely manner.
- How best to reimburse F/EAs for services rendered.
- Whether to provide F/EA and Supportive Services separately or under one umbrella organization. Balancing "one-stop" service delivery with potential service steering.
- Related to Agency with Choice providers, states are still working on:
 - How best to certify these providers and monitor their performance, in particular, assessing the level of choice and control being afforded to individuals and their representatives.
 - How best to reimburse these providers for services rendered.

VII. *Self Direction from the Provider Perspective*

Successes

- In some states, traditional agency providers and self-directed service programs are working together to improve service delivery for individuals through the availability of both service delivery options. Self-directed services are not considered “the end of the world as we know it.”
- Information from federal and state taxation agencies on the policies and procedures that apply to F/EAs and the program participant/representative-employers they represent as agent is improving but there still are gaps.
- FEAs are developing a variety of accounting and information technology solutions to manage the F/EA paperwork and payroll effectively as the volume of program participants increase.
- Agency with Choice providers are getting better at balancing the provision of individual choice and control with any potential risk of liability as a direct care service provider in a co-employment arrangement.

VII. *Self Direction from the Provider Perspective*

(continued)

Challenges

- Fiscal/Employer Agents continue to:
 - Struggle with states' delays in getting self-directed service program implemented and low initial numbers of enrollees in some cases.
 - Struggle with incomplete information from the IRS and state taxation agencies and changing IRS and state policies and procedures.
 - Find new ways to manage payroll and paperwork related to F/EA operations effectively.
 - Find effective ways to provide F/EA services at the rate states are willing to pay.

VII. *Self Direction from the Provider Perspective* (continued)

- Agency with Choice Providers continue to:
 - Some traditional agencies struggle with the new paradigm of long-term support service delivery that emphasizes individual choice and control and service flexibility.
 - Find it difficult to recruit and retain enough quality staff to provide assessed hours of care for individuals.
 - Struggle with ways to provide choice, control and service flexibility to individuals and their representatives while managing perceived and actual risks associated with providing services under a co-employment model.
- Support Service providers (supports brokers, counselors, service coordinators) continue to:
 - Struggle with how to develop initial and revised individual service plans and budgets, effectively and transmit the information into states' service/budget authorization systems in an accurate and timely manner.