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Service Planning and Self-Direction in Medicaid Managed Long-Term Services and Supports

Introduction to An Advocate’s Library

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The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at www.NSCLC.org.
Webinar Logistics

• All attendees are on mute
  – For technical questions, use chat box
  – For substantive questions, use questions box
• E-mail trainings@nsclc.org if unable to access webinar
• Slides and recording will be at nsclc.org
Webinar Series on “An Advocate’s Library”

• Thank you to
  – The Retirement Research Foundation
  – Atlantic Philanthropies
  – Skadden Fellowship Foundation
The Problem

• Contracts with states and managed care organizations (MCOs) are important ...

• But difficult to find or use
  – Typically 300 to 600 pages long
Developing “An Advocate’s Library”

• Review of State/MCO Contracts in most states offering MLTSS
  – Collecting and categorizing important provisions
  – Allows user to
    • See what states are doing
    • Obtain exact contractual language
Using “An Advocate’s Library”
Benefits of “An Advocate’s Library”

• Individual advocacy

• Systems advocacy
  – Get in front of issues!
“Person-Centered” Services:
Can Reality Match Rhetoric?
Arizona “Guiding Principles”

• “The member is the primary focus of the [MLTSS] program. The member [and representatives] are active participants in the planning for and the evaluation of services provided to them. Services are mutually selected to assist the member in attaining his/her goal(s) for achieving or maintaining their highest level of self-sufficiency.”

More Good Principles in Service Planning

• MCO “shall provide care coordination in a comprehensive, holistic, person-centered manner”
  – Tenn. Contract, p. 108

• MCO with “patient-centered, holistic, service delivery approach to coordinating member benefits across all providers and settings.”
  – Haw. RFP, p. 155
Service Planning: Goal is Member-Centered Services

- In “managed care” the care is (of course) “managed”
  - Best case scenario: MCO offers expertise and options, with consumer making decisions
  - Worst case scenario: MCO dictates to consumer in short-sighted way unduly focused on cost savings
Consumer Should Have Fair Chance in Service Planning

• How do systems balance consumer and MCO (and providers)?
Facilitating Productive Discussions

• Inclusion of “individuals whom the Member wishes to participate in the planning process”
  – N.M. Contract, p. 44

• Requiring face-to-face discussion with member, member’s representative, and any other member-approved person.
  – Fla. Contract, Att. II, Exh. 5, p. 36
Consumer Should Not Be Peripheral

- “In conjunction” with member
  - Haw. RFP, p. 162
- “Cooperating” with member
  - Minn. Contract, p. 111
- “Consultation” with member
  - N.Y. Medicaid Advantage Plus Contract, sect. 10, p. 10
Ensuring Meaningful Participation

• MCO required “to ensure that each member has a meaningful opportunity to participate in the initial development, of, and updating or, his/her member-centered plan.”
  – WI Contract, p. 48
Meaningful Participation (cont.)

- MCO must “provide information, education and other reasonable support as requested and needed by members, members’ families or authorized representatives in order to make informed long-term care and health care service decisions.”
  - WI Contract, p. 48
• MCO with policies ensuring that member “is involved and in control, to the extent possible and desired by the Member of development of” service plan
  – N.M. Contract, p. 44
Cultural Competency

• “[R]espect for the member and member’s family’s preferences, interests, needs, culture, language and belief system”
  – Ariz. Contract, p. 40

• Case manager training including cultural competency
  – Fla. Contract, Atch. II, Exh. 5, p. 32
What Happens If MCO and Member Disagree?

• Appeals/Grievances to be discussed in more detail in subsequent webinar

• Worst case scenario: Member ends up “agreeing,” reluctantly

• Best case scenario: Disagreement is acknowledged openly, and member appeals to objective party
Signing, Without More, Is Insufficient

• Must be signed by member and coordinator
  – Haw. RFP, p. 162

• “The Service Plan should be agreed to and signed by the Member ... to indicate agreement with the plan.”
  – Tex. Contract, p. 19
Appeal Rights

• If member disagrees, case manager must provide “written notice of the action and the member’s right to appeal the decision.”
  – Ariz. Contract, pp. 40-41
• “If the enrollee disagrees with the assessment and/or authorization of placement/services (including the amount and/or amount and/or frequency of a service) the case manager must provide the enrollee with a written notice of action that explains the enrollee’s right to file an appeal regarding the placement or plan of care determination.”

Broad Definition of Appealable “Action”

• Appeals for “actions” including plan that
  – Requires member to live in unacceptable place
  – “[D]oes not provide sufficient care, treatment or support to meet the member’s needs and support the member’s identified outcomes”
  – “[R]equires the member to accept care, treatment, or support items that are unnecessarily restrictive or unwanted”
• Wis. Contract, p. 145
What is Self-Direction?

The unifying force in the range of consumer-directed and consumer choice models is that individuals have the primary authority to make choices that work best for them, regardless of the nature or extent of their disability or the source of payment for services.

Self-Direction and Managed Care

• Self-direction and managed care can be compatible
  – Best Case Scenario: consumer choice and autonomy are preserved
  – Worst Case Scenario: consumers have little control over services
Can older adults benefit from self-direction?
Self-Direction in the Advocate’s Library

- Consumer Responsibilities and Rights
- Requirements for Self-Direction
- Training and Oversight
Consumer Responsibilities and Rights

- Consumer Responsibilities Generally
- Employer Authority
- Budget Authority
- Family and Friends as Providers
- Surrogacy
- Consumer Rights

Requirements for Self-Direction

- Information about Care Options
- Assisting Consumers in Self-Direction
- Services for which Self-Direction Is Available:
  - Eligibility for Self Direction:
  - Authorizing Services
  - Care Planning Requirements
  - Maintaining Policies and Procedures

Training and Oversight

- Training of Providers and Consumers
- Back-up Planning
- Oversight of Direct Service Workers and Consumers
- Fiscal Agent
- Supports Brokerage
Choice of Representative

• Consumer can delegate employer authority to representative or surrogate

• Can change surrogate at any time
  – Haw. RFP, p. 149
MCO Must Support Self-Direction

- MCO must ensure that the consumer “can move across the continuum of decision-making depending on his/her needs and circumstances, and shall support the Member in his/her decision regarding the level of consumer/participant direction chosen”
  - N.M. Contract, p. 48

- Consumer can “choose to undertake self-direction at any time”
  - Haw. RFP, p. 153
Available Services Vary from State to State

**FL:** Attendant Care, Companion Care, Personal Care, Homemaker Services, Intermittent and Skilled Nursing

**TN:** Attendant Care, Companion Care, Personal Care, Homemaker Service, In-Home Respite,

**HI:** Attendant Care, Personal Assistance, Respite Care
Optional or Mandatory Training for Consumers

• MCO will train consumers, as requested, in subjects related to self-direction

versus

• Consumer must participate in a training program prior to participating in self-direction
  – Haw. RFP, p. 153
MCO Staff Must Be Trained on Self-Direction

• MCO must give all applicable staff basic training on self-direction

• MCO must ensure adequate number of case managers are “trained extensively” in self-direction option
  – Fla. Contract, Atch. II, Exh. 5, p. 20-21
MCO Must Assist Consumer in Finding and Hiring Workers

• Case managers responsible for “assisting enrollees as needed with finding and hiring direct service workers”
Consumer Choice in Hiring Providers

• Right to hire anyone “including, but not limited to, neighbors, family members, or friends”
  – Fla. Atch. II, Exh. 5, p. 22

• MCO must not require hiring providers from MCO’s network, or otherwise restrict choice of workers
  – Fla. Atch. II, Exh. 5, p. 22
Consumer Control Within Budget

• “Based upon the member’s assessed needs . . . This combined total dollar value shall . . . shall be discussed and shared with the member . . . The member shall have the flexibility to negotiate provider rates within the allocated budget”
  — Haw. RFP, p. 149
Consumer Responsibilities as Employer of Providers

- Finding,
- Selecting,
- Scheduling,
- Supervising,
- Evaluating, and
- Discharging providers;
- Determining provider duties,
- Instructing and training providers, and
- Verifying time worked
  - Haw. RFP, p. 147-48

- Choice,
- Assignment,
- Training,
- Evaluation, and
- Supervision of workers
  - Wis. Contract, p. 122
Back-up Planning to Address Emergencies

• Consumer “is responsible for . . . Developing and implementing as needed a back-up plan to address instances when a scheduled worker is not available or fails to show up as scheduled”
  – Tenn. Contract, p. 162-63

• MCO “shall reassess the adequacy of the member’s back-up plan for consumer direction on at least an annual basis” or as needed
  – Tenn. Contract, p. 150
When Can MCO Deny or Terminate Self-Direction?

- “A care coordinator has determined that the health, safety and welfare of the member would be in jeopardy” if the consumer does not have a representative, and the consumer does not appoint a representative
  - Tenn. Contract, p. 169

- The MCO may involuntarily withdraw a consumer from self-direction if it “the member’s decisions or actions constitute unreasonable risk such that the member’s needs can no longer be safely and effectively met”
  - Tenn. Contract, p. 169
Consumer Right to Appeal
Termination or Denial

• “Denial of a member’s request to participate in consumer direction or the termination of a member’s participation in consumer direction gives rise to due process including the right to fair hearing”
  
  — Tenn. Contract, p. 162
When Can a Consumer Stop Self-Direction?

• Consumers “may elect to participate in or withdraw from consumer direction of eligible CHOICES HCBS at any time, service by service, without affecting their enrollment”
  – Tenn. Contract, p. 162

• Consumer must provide 10-day advance notice of intent to terminate participation in self-direction “to the extent possible”
  – Tenn. Contract, p. 162
Questions?

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