

Aging and People with Disabilities

Assessing Consumer Ability to Manage Consumer Employer Responsibilities

Supporting Consumers

June 2018



Agenda

- Review of January 2018 Mandatory Webinar: Individuals Managing Consumer Employer Duties
- Assessing for ability to manage Consumer Employer Responsibilities
- Consumer-Employer Responsibilities & Indicators for Intervention
- New – Impact of new Cognition components on CEP
- Risk Assessment –Monitoring: Mitigation

Introduction

Why is this training Important?

Inability to manage Employer Responsibilities in the Homecare Worker (HCW) program may lead to increased:

- Abuse
- Exploitation
- Fraud

APD has a responsibility to create safe plans that minimize risks while supporting independence.

Review: Individuals Managing Consumer Employer Duties

Secretary of State Audit

- This is the second in a series of changes being made as a result of the October 2017 Secretary of State Audit.
- This training builds off of the January 2018 Mandatory Case Management Training available on the Case Management Tools Website

Review: Individuals Managing Consumer Employer Duties

APD-PT-17-058

APD-PT-17-058 was issued on 12/28/2017. The policy update potentially impacts any individual receiving services with a HCW.

- As much as reasonably possible, we want to support and provide the opportunity for the consumer to manage HCWs.
- However, it is the Case Manager's responsibility to ensure that the individual is receiving appropriate services and is able to manage their CEP responsibilities.

Review: *Individuals Managing Consumer Employer Duties*

APD-PT-18-023

Important change from previous training:

- This Policy Transmittal changed policy to allow eligibility when Medicaid paid services for ADL/IADL supports are not used.
 - i.e., 14-day without services no longer is a reason for closure
- Individuals who are not accessing paid caregiver supports are still eligible for:
 - Case Management services,
 - Medicaid Home Delivered Meals, and
 - K Ancillary Services.
- These consumers can access paid supports anytime during their eligibility window.

Review: Individuals Managing Consumer Employer Duties

APD-PT-18-023

Important change from previous training:

- The inability to manage employer responsibilities and not have a Consumer Employer Representative means that the person is not eligible for HCW or ICP in-home services but remains eligible for other service options.

Individuals Managing Consumer Employer Duties

- Consumer responsibilities are defined in OAR
- The underlying concepts are that the consumer is:
 - Managing the service plan to ensure their health, well-being and safety
 - Ensuring that the HCW is only providing the services and tasks that they are authorized to provide;
 - Only authorizing payment for services provided.
 - Treating their HCWs respectfully and ensuring that the workplan is free of harassment.

Mitigation Strategies

- Consumers who wish to manage the consumer employer responsibilities but have difficulties in doing so should be supported.
- If a consumer cannot manage their service plan or their consumer employer duties, we must work with the consumer to try and address the issues before taking other steps.

Mitigation Strategies

- Try the following strategies:
 - Explain the concerns to the consumer.
 - Offer a Refer to Employer Resource Connection (formerly STEPS)
 - The outcome of the referral must be documented.
 - Consider appointing a representative to manage the consumer employer duties.
 - The representative must be able to fulfill the duties and not be the paid HCW.
 - Representative must be local to verify that the HCW worked the hours.

Assessing for ability to manage Consumer Employer Responsibilities

- How do we assess for the ability to manage the Consumer Employer Responsibilities?
 - Warning Signs
 - Cognition Assessment

Consumer-Employer Responsibilities & Indicators for Intervention

- [Consumer-Employer Responsibilities & Indicators for Intervention](#) can be found on the Case Management Tools website.
- It highlights many warning signs that indicate an individual cannot manage their employer responsibilities.
- CMs should review this document and refer to as needed

Pathway: Case Management Tools/Programs/In-home/ Tools/Client Employer responsibilities/Tools/Client-Employer Responsibilities & Indicators for Intervention

Consumer-Employer Responsibilities & Indicators for Intervention

- The Consumer-Employer Responsibilities & Indicators for Intervention is laid out like this:
 - Consumer Employer Responsibilities (6 areas)
 - Consumer Employer Tasks
 - Warning Signs
 - Case Manager Intervention
 - Responsibilities for CMs

Consumer-Employer Responsibilities & Indicators for Intervention

Locate, Screen, Hire

Warning Signs:

- Plan has been approved but consumer has not hired a HCW
- When there is a loss of HCW there are long gaps in replacing
- Consumer relies on Case Manager to find HCWs
- Complex consumer hires just enough HCWs to meet emergency needs but does not have a consistent plan
- Need to exceed weekly cap due to not hiring enough workers

Consumer-Employer Responsibilities & Indicators for Intervention

Locate, Screen, Hire

CM Interventions:

- Assist consumer with accessing the Registry via web or paper copy (please remember to personalize the list)
- Give the consumer the Registry & Referral System brochure (SDS 355E) that provides step-by-step information on obtaining a list
- Refer to Employer Resource Connection (formerly STEPS)

Consumer-Employer Responsibilities & Indicators for Intervention

Locate, Screen, Hire

CM Interventions (continued):

- Follow up with the consumer after the information has been given to ask about progress
- Ask if additional information is needed
 - E.g., Are you having trouble using the registry?
 - Are you having difficulty reaching HCWs or finding an available HCW
- Offer referral to Employer Resource Connection

Consumer-Employer Responsibilities & Indicators for Intervention

Locate, Screen, Hire

CM Interventions (continued):

- Provide copy of the Employer's Guide (DHS 9046)
- Help consumer identify natural supports who could assist with the process
- Remind consumer that use of agency may be an option, if available in local area, until a HCW is hired

Consumer-Employer Responsibilities & Indicators for Intervention

- Other **Critical** Warning Signs
 - HCW controls access to the consumer or dominates conversation
 - Consumer cannot verify how often the HCW is providing support
 - Consumer routinely hires individuals who cannot pass the criminal background check
 - HCW's are frequently ending employment relationship with client due to difficulty working with client

Consumer-Employer Responsibilities & Indicators for Intervention

- Other **Critical** Warning Signs
 - Consumer says they are uncomfortable performing employer duties.
 - The home does not look clean
 - Frequent ER or hospitalization (review pre-manage)
 - HCW is frail and you wonder how they are performing the tasks

New Cognition Criteria

- A good indication that a person may lack the ability to perform the Consumer Employer Responsibilities is loss of cognitive ability.
- Without good mental functioning anyone can become more vulnerable to abuse and exploitation.
- A person that was capable a year or two ago may no longer be able to manage the employer responsibilities.

New Cognition Criteria (continued)

- If any component of Cognition is assessed as Substantial or Full Assist a **Consumer Employer Representative** is **required** when employing a HCW and may be needed with a IHCA.
 - Substantial Assist=Daily Need
 - Full Assist=Consumer cannot be left alone.
- If a consumer meets the criteria, the due process outlined in APD-PT-17-058 must be implemented as soon as possible.

New Cognition Criteria (continued)

Can the Individual manage the Employer Responsibilities based on Cognition

	Self-Preservation	Decision-Making	Make Self Understood	Behavior
Full Assist (around the clock assist– can't be left alone)	*No	*No	*No	*No
Substantial Assist (daily assistance)	*No	*No	*No	*No
Minimal Assist (once a month assistance)	Maybe	Maybe	Maybe	Maybe
Independent (Less than once a month assist)	Maybe	Maybe	Maybe	Maybe

*Local Manager may approve exceptions if convinced individual can manage employer responsibilities. **Note: Due to the higher risk, exceptions approved for substantial or full assist in cognition**

areas must be monitored directly each month.

New Cognition Criteria (continued)

- This policy must be applied to any consumer that meets the criteria when there is:
 - A new assessment:
 - A reassessment; or
 - Concerns raised that question the consumer's cognitive ability

New Cognition Criteria (continued)

- Local Management can approve an exception to this policy only if they can verify and document that the individual can safely and appropriately manage the Consumer Employer Responsibilities.
- A summary of the justification and approval should be documented in the ORACCESS narrative.
- Due to the increased risk, exceptions approved for consumers to be their own consumer employer must be monitored in-person each month.

Risk Assessment – Monitoring

- What if the person loses eligibility for a HCW or the Independent Choices Program (ICP) because:
 - They cannot manage their employer responsibilities,
 - They do not have a Consumer Employer Representative, **and**
 - They refuse other options?
- The person can remain eligible for Medicaid Long-Term Services and Supports (MLTSS) by receiving Case Management services.
 - A key component of Case Management Services is Direct and Indirect contacts, and risk mitigation.

Risk Assessment – Monitoring

- Reasons to perform Direct Contacts with Consumers
 - Providing Case Management services creates opportunities to check in with the consumer and see how they are managing without services.
 - It allows you to explore options, even options that the consumer may have rejected in the past.
 - With regular contact, you may be in a position to help before a crisis occurs.

Risk Assessment – Monitoring: Mitigation

What if the HCW they have is a relative/spouse? Do I really need to end the HCW services if the consumer cannot manage the employer responsibilities, and does not have a employer Representative?

- Yes you must. A paid care provider can never be a representative, officially or unofficially.
- They should never be your primary contact with the consumer.
- Allowing paid providers to overstep their role violates CFRs related to conflict of interest.
- There are also risks for the consumer. Even the best person may be tempted when their survival or livelihood is threatened or they may become burned out faster since they are likely to be with the person even more than other HCWs.

Risk Assessment – Monitoring: Mitigation

- In 2015 for individuals living outside a licensed care setting:
 - 44% of the accused persons for substantiated allegations were an intimate partner of the victim,
 - 26% were a family member of the victim.
 - Physical abuse was the most prevalent abuse type substantiated.
 - 46% of the victims of financial exploitation were abused by a family member, which includes spouses, children, nieces, siblings and other relatives.

Risk Assessment – Monitoring: Mitigation

Because we have a duty and responsibility to keep the people we serve safe, we **must** end the HCW or ICP services when the Consumer cannot manage the Employer Responsibilities and does not have a Consumer Employer Representative.

Risk Assessment – Monitoring: Mitigation

The amount of risk in subsequent monitoring schedules will vary.

Example #1: SPL 13. Consumer receives Home Delivered Meals and Case Management and has lots of natural supports.

- Likely low risk.
- Minimal Monitoring schedule of 1 direct and 2 indirect contacts a quarter.

Risk Assessment – Monitoring: Mitigation

The amount of risk in subsequent monitoring schedules will vary.

Example #2: SPL 3 due to cognition. Consumer has no natural supports.

- Likely high risk. Direct monitoring must occur monthly or maybe even more often to ensure that the consume is safe.
- High level of risk-mitigating actions needed.

Risk Mitigation Activities

Risk Mitigation activities for individuals unable to manage their Consumer Employer responsibilities could include:

- Exploring and offering options such as home care agency services or residential settings.
- Performing more frequent contacts
- Referral to Long Term Care Community Nursing.
- Coordination with health system, Coordinated Care Organizations (CCO) to assure medical needs are met.

Risk Mitigation Activities

- Contacting ADRC or researching website to exhaust all community programs that may be available.
- Staffing locally or with Central Office to brainstorm options.
- Referral to Adult Protective Services if self-neglect (consumer does not understand the consequences of the choices they are making).
- Reaching out to potential relatives or other individuals that may be able and willing to act as the Consumer Employer representative.

CEP Representatives

- Potential Consumer Employer Representatives need to be able to manage the employer responsibilities.
- APD/AAA may deny a requested consumer employer representative if the proposed rep does not:
 - Have the ability to manage the responsibilities;
 - Is too far away;
 - We have concerns about abuse, exploitation or fraud
- The rep may need support to be successful.
 - The Employer Resource Connection program is available to support Consumer Employer Representatives.

Conclusion

APD has a responsibility to create safe plans that minimize risks while supporting independence.

By being aware of the warning signs and providing Case Management Services including Direct and Indirect contacts along with risk monitoring and supportive actions we can reduce the possibility of:

- Abuse
- Exploitation, and
- Waste.

Questions?

- Mat Rapoza (503) 945-6985
- Ben Sherman (503) 602-3471
- Christine Maciel (541) 471-3830
- Lisa Bouchell (503) 269-4771
- Darwin Frankenhoff (503) 947-5162
- Bob Weir (971) 600-7876
- Sandy Abrams *for OPI* (503) 947-2391