

Participant Directed Programs Policy Collaborative Meeting
APPROVED Minutes of the August 24th, 2016 Meeting
(Approved at the September 2016 meeting)

EXECUTIVE SUMMARY: A lot of time was spent discussing issues with one FMS and transitioning to FEA which must take place before 9/1. Clients that have not been switched are allowed to move to a new FMS. We had a presentation on core indicators, and finished the attendant registry enough for the inaugural run. Two form revisions are completed and in September both the IHSS rule review and FAS subcommittees will meet. We also discussed new rules from DOL regarding sleep time for workers.

The meeting was called to order at 1:00 p.m. Introductions were made in the room and the phone. The physical meeting was at Rocky Mountain PBS on Bannock Street. Rhyann made the sad announcement that member Jeff Epp passed away. She shared information about the celebration of his life that was to be held the following weekend at his Castle Rock home.

Present in room: Alisha Singleton, Brent Salner, Cheryl Vennerstrom, David Bolin, Debbie Miller, Erica Weidenfeld, Gerrie Frohne, Jason Smith, Jennifer Martinez, John Barry, Julie Farrar, Kady Hetherington, Kate McGuire, Kathi Sargent, Kevin Smith, Kirk Miller, Linda Andre, Linda Medina, Mallory Cyr, Mark Simon, Rebecca Sturdevant, Rhyann Lubitz, Sara Horning, Sharita Richmond, Tim Thornton, Valerie Baker-E.

Present by phone: Ann Dyer, Ashley Brown, Beverly Hirsekorn, Caitlyn Brady, Conner Macleod, Curt Padilla, Darian Guy, Heather Jones, Julie Reiskin, Sivani Rasanayakam, Kathy Estes, Kelly Tobin, Kelly Brown, Kevin Biln, Leslie Taylor, Liz Wuest, Louise Apodaca, Margaret Proctor, Marsha Unruh, Matt Dotson, Ryan Zeiger, Stephanie Holsinger, and Linda Jernberg

Rhyann read the names of those who had voting rights for this meeting and there were no disagreements. Members excused included Curt Wolff, Candie Dalton, Linda Skaflen, Renee Farmer, Cathey Forbes, and Kelly Morrison

Draft minutes of July 28th were sent out: Maria Rodriguez had the following correction. On page 5 and the end of the first paragraph she was quoted and said that the last sentence does not make sense. She also said after word "have" to add the word "not" and then to delete the last four words. Linda Andre moved and Rebecca seconded approval of the minutes with Maria's comments noted and that motion carried unanimously.

OPEN FORUM ONE:

Mark Simon said that yesterday there was guidance issued on FLSA (Fair Labor Standards Act) re sleep time and he asked Rhyann to distribute to this group and others. Rhyann said she would make sure this happens (may be through Consumer Direct).

Others that had issues for open forum included:

Mark Simon, Debbie Miller, Caitlin Brady, Leslie Taylor

Leslie: Wanted to make sure that FLSA is on agenda. She also wanted to raise the question of should we amend the contract or waiver to require FMS vendors to have a fax machine in Colorado? She said that we need more accountability. She said that PPL has lost documents and is not returning calls. She also wanted everyone to understand that your FEIN number is yours for life and she felt PPL doesn't get the importance. She said she had a concern about everything being done electronically.

Mark Simon said that we need to go back to the 2014 comparison information regarding the Fiscal Management Service vendors. We need to update the document and drop some questions and add others. We need to make sure that this information is distributed to every client and should hold the

FMS vendors accountable to do so. Mark said he was VERY concerned because one FMS has 600 clients that are not in the FEA (Fiscal Employer Agent) model. Because CMS has approved the change there is no AwC (Agency with Choice) model after September 01. He asked what we can do to prevent a crisis. He also wanted to know what the notice requirements are and said there would likely be many appeals if a bunch of people just got cut off. He said we need to make sure notices are VERY clear about the ten day (or less) requirement for keeping benefits. Mark suggested we require the FMS that has not transitioned 600 people to turn names over to the other two FMS agencies so they can take over and make sure the transition is done. He said we needed to figure this out today because of the tight timeline.

Rhyann said the FMS vendor has sent lists to SEP (Single Entry Point) agencies with clients still not enrolled in FEA. She said about 50 have an FEIN issue that they are working out with the IRS. She said some may have issues with attendants such as getting them to return forms. She said others may be having problems with the FMS. She told the SEPs that they need to call clients to inform them of the needed transition to FEA and if the clients are having a problem with their FMS vendor the case managers should tell those clients about other vendors. Under HIPAA she cannot provide a list of names to a FMS vendor that the client has not chosen. She is talking to her supervisors daily and they are working on a plan B. They are not going to cut off someone with FEIN issue if that person is actively working with the IRS. Open enrollment is waived for clients that have not yet transitioned meaning that they can go immediately to a different FMS vendor and do not have to wait (but they still need to get referral from case manager). Rhyann said that the only people that will get an 803 are people that are refusing to make the transition, not anyone that is working in good faith.

Mark asked if we can we provide the list of clients that have not transferred to consumer direct because he felt that we cannot leave it to SEPs. He wanted to know how do we make sure clients know they must file appeal in 10 days and before the adverse action. He said we also need to address timeliness of notices. He said he assumed people would have a way to maintain benefits if someone gets the notice

once it is too late. He said he was alarmed that we have this problem less than a week before drop dead date and we have 600 people falling through a hole.

Rhyann assured the group that she is on it and working with her team to figure out a way to not have to send 803 unless the person is absolutely refusing.

Someone asked for each FMS to respond to this discussion:

- 1) PPL: Jennifer Martinez said they have had multiple outreach efforts since January through mailings, calls, and training over 1500 people on paperwork. She said they reached out to everyone who had not sent stuff in. She said these individuals are struggling and partnership will make difference.
- 2) Aces\$: Jason said they are done with all transitions and open to take new clients and will help however they can.
- 3) Morning Sun: Rebecca said the same as Jason—they are done all of their client transitions and can take new clients and ready to help.

Kady said same with consumer direct.

Leslie said that she thinks PPL Is the cause because they are losing paperwork. She has proof of this- she sent her paperwork in March and just found out recently they lost it. She reminded everyone that filing an appeal in time stops all forward motion (keeps benefits the same until the appeal is resolved). She said if there are a bunch of appeals all due to lost paperwork she thought the Office of Administrative Courts would be very unhappy with whomever is responsible.

Mark asked if PPL could contract with other FMS. He said that happened in PA when there were problems and because they are all contractors the HIPAA business agreement solved the HIPAA issue. He said that the private sector can work more quickly.

END OF PUBLIC FORUM #1:

NATIONAL CORE INDICATOR PROJECT: <http://nci-ad.org/states/CO/>

DANIELLE CULP Was introduced to discuss the National Core Indicator Project: The Power Point presentation was not sent out but John will send it with the minutes. Danielle explained that the National Core indicator project involved doing surveys of the aging and disability populations last year. They collected information from EBD (Elderly, Blind and Disabled) and BI (Brain Injury) clients on waivers. They also collected data from OAA (Older American's Act) clients and compiled information after a robust 8 week process. This was quick for any state activity. The report is on the HCPF website and is broken down both nationally and state specific. She will send out the report if someone cannot download it and has questions or makes a request. She said there is lots of data and you can call her with questions. The point of the survey is to gather feedback from clients regarding their experiences with services. She said that there are not as many rating questions as specific quality of life-related questions. They wanted to look at data that would be meaningful, measurable, year to year, etc. The interviewers had individual meetings in person with clients. Each interview lasted for 30-60 minutes.

Questions are broken into domains including but not limited to relationships, coordination, access, self directions, rights and respect, etc. They are intended to gather information and send to national folks to tell a story. This is to create a baseline because we have no data like this in our system now. This is first survey that does this and they want to do it every year to benchmark and look at trends. They sent the data to the national program and got our state specific report. We should look at it.

What were the numbers of people interviewed?

160 interviews in EBD

4 Interviews in BI, - not able to represent total population due to small sample

150 interviews with frail elderly dual eligibles

86 interviews with clients using Older Americans Act programs

86 Questions

A few of the responses in Colorado include we are below average for people able to do things outside the home they enjoy (55% in Colorado versus 62% nationally but only 6 states got this data). 88% said they could see friends and family when they wanted (87% is national average).

95% of Colorado responders said people paid to help treat them with respect compared to 83% nationally. However 54% often feel sad or depressed or lonely. We did rank high on choice and decision making.

She said there were some issues with how well populations were represented. Someone asked if we had a statistically significant sample. Danielle said that there is a lack of comparison among states across time and among programs in CO. She said this is due to limitations of new implementation. She said that there is committee (CLICK) and all populations are represented; they look at data through this committee. They discuss how to look at data and how to drill down and they are always open to suggestions. She said that 2015 was year one and they are in the field again now for year two. She said that some might get letters in far reaching areas of CO. They are working on a process to recruit peers as interviewers. They tried to do this last time but were not able to recruit. Julie provided some feedback about why no one responded (requirements on the flyer for things like drivers license that screen out peers). Julie suggested that they reach out through this committee and disability organizations. Danielle said they worked with their eligibility vendor and contractor and provided this feedback.

Mark asked again what is the client base and he was told that they interviewed 400 and she went over the breakdown again. After being told this was a statistically significant sample Mark asked how that was with an overall EBD client group of 24,000? Danielle then said that they are using minimum numbers but want to use more in future years. She said that they have a 95% confidence interval in the

sample and while they feel they need more it is a very expensive process to do the survey in person. Mark asked if they have considered doing some of this online or paper for those who can do it that way. He said that he recognized that people who have problems are more likely to respond to online surveys but said we still needed the data.

Someone from a home care agency asked for a copy and said they do surveys too.

Gerrie Frohne said she had concern about surveys in general. She said that often service recipients are people pleasing. PADCO (Parents of adults with disabilities of Colorado) did a survey on surveys and learned that when people receive a survey from any government or provider group they do not respond if the survey is mailed or online. If the interviewer is right in front of them they lie because they are afraid. There is an underlying pressure to say good things. Gerrie said that there is no trust in the system. She said that even when they get CDASS that they love, they fear if they say anything negative there will be problems. She said she would be interested to know what was spent on every possible survey. She also has concern that the people or companies chosen to do this work have favor with the state. What you get from honest individuals who do not have to respond to someone who has power over them is different. People feel co-opted and afraid. We should not pay for surveys

Leslie –ditto Gerrie and asked if they have gone into extremely poor and rural areas?

ATTENDANT REGISTRY

Kady presented where this project is now that they have incorporated feedback from our last meeting. There was a subcommittee that worked hard on this project. Mark suggests advertising to attendants on timesheets—when attendants do their timesheets something can pop up with a link offering them the opportunity to sign up.

There was a discussion about referring to clients as clients or employers or both. Apparently the subcommittee was adamant about using the term employer. Maria said she was opposed to the word

client. She said that workers are employees. The attendants work for us, not the FMS or anyone else and people not knowing this causes confusion and chaos. She said that she can emphasize this all day with her employees but if others use different words the employees are not sure who to believe.

Mark said we get into using techno speak. We know what employer means but will new clients know? He said we need to look at this from 6th grade education level. He asked if we will allow people to sign up who aren't currently employed by any FMS? The answer is YES!!

Leslie noted that in employee packets it says client and thought perhaps that could change to employer. We all agreed that all employee packets should have same language. Kady showed the landing page which gives general information.

Mark had a number of comments that he sent to Kady and she had emailed him a response to each. Some of what he wanted is not possible with the software. After discussion on a number of issues the decision was that we will implement on 9/1/16 and use it and the subcommittee can get together again after a couple months of use and then recommend tweaks. Rhyann thought maybe it should just be done in the group instead of a subcommittee since the group was getting input after the subcommittee had done a lot of work.

CDASS FORMS:

Rhyann shared that she made the changes we had requested on two important CDASS forms.

- 1) Task worksheet Accompanying, positioning and mobility were added as tasks under health maintenance.
- 2) Management plan, not abbreviated but full one—changes we have discussed a couple times are included –support needed for communication, page 2 and page three tallies hours on right side and bottom of page. Combined payment to family signature lines, also page 6-7 included FLSA info with budgeting. Plan and task sheets were made consistent.

Leslie said that we may need to make accommodations re sleep overtime for some clients because sleep time must be paid per new ruling called Perez. Sibanni suggested adding in part three attendant directory website as online option for where we find attendants. Everyone thought that was a great idea and it will be added. There were no other edits or changes. These forms will be made permanent and published. It is important that no one alters these forms.

FLSA PANEL WITH FMS AGENCIES: FMS AGENCIES WERE ASKED TO BE PREPARED TO ANSWER QUESTIONS:

- 1) Leslie: given the new ruling under Perez if someone in need of overnight care there are documents that are important. She said that workers have to be paid if someone spends night. The ruling says an overnight shift must have sleep time and be paid for it—this will impact allocations negatively or positively.
- 2) Question—what is difference between working a shift and spending a night? If someone needs caregiver that usually does not live there but needs to be there for a temporary problem the worker would shift from wages set for sleep time to wage for task such as health maintenance. This may affect those who are more disabled or elderly and not using relative who is exempt from this. Leslie used herself as example, she does not have relative caregiver at all. There have been times she has had flare and needed help and caregiver had to stay over during flare up for extra care. It was pointed out that sleep time can be paid at a lower rate than when they do the actual care (but not lower minimum wage). However, sleep time has to be paid for. This is beyond the rules about overtime for people working more than 40 hour week or 12 hour day.

Kady said Leslie is correct about sleep time per a Department of Labor chart.

Mark said that DOL made it complicated! The workers do not have to live with you but have to spend majority of time in your house and it may be exempt. In this case they have to get 5 hours of uninterrupted sleep and own sleep space. He said that the way the rule is written makes it hard to make blanket statements and everyone needs to rely on dept of labor guidance. Guidance is more expansive than just this issue. We may want to break into pieces.

Kady said they will create some educational documents next month.

Leslie: DOL also recommend that vacation time, sick time and holiday pay be paid and failure to do so is discriminating against employees. The workers might be able to get paid time off. We have never provided for any of that. We need to get clarification from CMS because they have prohibited this in the past.

Julie Farrar –this is an unfunded mandate. When we put allocations together we need to consider this, we need to deal with it. We can move forward on this instead of saying it is not fair. It is not fair but we have to deal with it. She said she gets nervous when she hears it is unfair that people have to be paid holiday time or sleep time. She said that our attendants do more for us than they would ever do with an agency. We have to plan for emergencies and all of these issues. If we do not do this we are not good employers.

Leslie said that the point is you cannot be unfair or discriminatory and agreed with Julie that we must do this for our workers.

Sara Horning said that we have to do the same things now as when we were in the pilot program. If we do not budget for emergencies we are not being fair to employees. Someone pointed out that these FLSA and DOL rules are new and different from the pilot.

Rhyann said that Consumer Direct is our training and operations vendor and encourages people to go to them when they need information on any issue. She said it is a great resource and if someone has an individual case situation they need to work with Consumer Direct.

IHSS Rule Review:

There will be a rule review and meeting with IHSS subcommittee. There are many changes needed for example: we need to add client rights to the rule.

FAS (fund for additional support) SUBCOMMITTEE MEETING SCHEDULED:

The first meeting is September 19th. Contact Rhyann for details. More people are needed.

MORNING STAR IS NOW MORNING SUN:

Rebecca said when they made the company they did not know there was a Morningstar investment company so they needed to change the name. Rather than fight goliath they changed their name.

PUBLIC FORUM 2:

Unfinished item FEA transition

Heather from Mesa County said that they still have 30 clients not transitioned. She said that the case managers have been outreaching to clients. She said only 5 clients are not making effort. She said PPL wanted to have an open house on 8/31 and she got a message today (8/24) asking that the SEP guarantee at least 10 clients show up. Heather said that this is one day before the deadline and should not matter how many clients show up. She said was concerned that this was a minimum requirement and should have been done at beginning of month not last day of month.

Jennifer said PPL was still pursuing all avenues of reaching out. She said they know all SEPS contacted clients and they are looking for every opportunity to connect and wanted to talk to Heather offline.

Leslie wanted to know if all FMS companies had a fax IN Colorado so COLORADO staff could get and process paperwork.

PPL—electronic fax goes to email system and they can fax from computer. The actual fax goes to Arizona.

Aces\$-has a fax machine in Colorado office and if you call you get a live person in Denver.

Morning Sun- has a fax in Colorado office and also receives faxes through emails.

Leslie felt that the transition issue may be due to problems with PPL. She said 600 is an enormous amount and maybe this has to do with the vendor. She asked what the process to move to another vendor is. Kady explained that we have regular open enrollment periods where clients can change FMS companies. However, any client that has not transitioned to FEA can transfer to a new FMS now. Jason reminded the group that to transfer one needs to contact their case manager.

Leslie asked how does a client know if they are transitioned. She thought she had done so months ago and recently PPL said they had not completed it. Leslie pointed out that with PPL she does not get confirmations. Sara said she would talk to Leslie about how to do this from client perspective.

OTHER PUBLIC FORUM ISSUES:

Debbie Miller: The PPL faxing is out of control and really a problem. She started transitioning to PPL last year and it took 6 months. She said that her faxes always get lost repeatedly. She also said that she needs clarification on taxes and how this is supposed to work. She said PPL is still taking taxes out, but not Social Security and Medicare and she wants this done. She has faxed 4 times and she calls and they say they do not have paperwork. She then goes to Jennifer who says it is fixed but she never knows if something is really resolved because the same problems keep popping up. She said she cannot get in touch with them and then they do not leave good messages. They call back when you are not home and do not leave anything useful in the message, you call back and cannot talk to anyone. It should not take

from September to March to accomplish a transition. Faxing at PPL is a huge problem and someone needs to take responsibility.

Several people ditto her comments.

Mark asked are FMS agencies accepting HCPF designation of representative form. If he is an advocate but not AR and sends an executed designation of representation will you accept it? Mark said that some HCPF contractors sometimes refuse to use the HCPF form which is a huge hassle.

Jennifer/PPL: She will work with Rhyann and Mallory and make sure it has all of the same stuff

Rhyann said clearly this is just to discuss the client with another person, not to make decisions or act as AR.

Caitlin reported that she had her HCBS interview last week. At the end the person hands her a bunch of papers, the last one is information on CDASS. The person says "we have to give you this information but we do not recommend using CDASS." Rhyann asked if it felt as if the information was specific to Caitlin or general and Caitlin said it felt general, like a canned speech that is always given.

Leslie said she needs a new manual with all the right numbers and Consumer Director will send to her and anyone upon request. The manual is online.

John Barry: We are still looking for room because the MS Society is not going to work. There was a discussion about Jefferson County Government Building. John will follow up. Julie said government partnership may work because they have the best technologies. There was a suggestion to use call in only but people felt that was OK on occasion but not every month.

John reiterated the criteria that include accessible location, reasonable with public transportation, will allow recurring meeting, adequate technology for phone use and parking.

Kirk asked about the Colorado History Museum. While there is a budget for this meeting and we can pay rent if we have to this is too expensive.

Someone mentioned the Lakewood Cultural Center—might work but no one was sure about sound system.

Everyone was reminded if they have a problem with their FMS, the FMS may not be able to respond at the meeting due to confidentiality but people should let Mallory know so they can track and trouble shoot.

The meeting ended at 4:00 pm.

Respectfully submitted
Julie Reiskin