**Participant-Directed Programs Policy Collaborative**
**DRAFT MINUTES for review & approval on 01/28/15**
**December 19, 2014**
**MS Society 900 South Broadway Suite 200 Denver, Colorado**

## Executive Summary:

There was a lot of discussion about the transition to having three Fiscal Management Service (FMS) options and two models of FMS services—and a lot of discussion about the fact that if you use Agency With Choice (AwC) and have an attendant eligible for insurance or overtime that the funds to pay for this come out of the client allocation. Several people were upset about this and HCPF will be providing the statutory authority in writing. We had an update on IHSS rule changes, expansion of CDASS into SLS and the audit. We discussed the two-attendant requirement and changed to the ASMP. Rules on overtime were also discussed and many questions about overtime and workers compensation and other employer responsibilities were answered. Some answers that could not be given will be provided in follow up.

Introductions were made. The following were present:

Present in Room

| | | |
|---|---|---|
| Alisha Singleton CoA | Jeff Epp | Linda Medina |
| Anaya Robinson | Jeff Pratt | Linda Skaflen |
| Anne Marie Mokritsky-Martin | John Barry | Liz Wuest |
| April Boehm PPL | Kari Vinopal CD | Mark Simon |
| Candie Dalton | Katherine Carol | Mary Colecchi |
| Coco Ballew CD | Keith Coppen | Matt Wuest |
| Curtis Wolff | Kelly Jepson | Rebecca Sturderant |
| David Bolin | Kelly Tobin | Rhyann Lubitz CoA |
| Gabrielle Steckman PPL | Kevin Smith | Roberta Aceves |
| Hanni Raley | Kirk Miller | Sueann Hughes |
| Jason Smith | Linda Andre | |

Present by Phone

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|---|---|---|
| Cheryl Vennerstrom MS | Grace Herbison | Margaret Proctor |
| Corrine Lindsey | Heather Jones | Maria Rodriguez |
| Daniel Holzer | Julie Farrar | Mark Fenton (PPL) |
| Darren Larson CD | Julie Reiskin | Mickey Ogg |
| Deb Bentley | Kelly Morrison | Rebecca T |
| Debbie Miller | Kendra Sitton | Renee Farmer |
| Dianne Albriggi AC$ | Leslie Taylor | |

Excused

| | |
|---|---|
| Janet Pethan IHSS | Ryan Zeiger IHSS |
| Josh Winkler | Sam Murillo |

## *Attendance and Voting:*

Linda Skaflen (hereafter Linda S) reviewed who had voting rights for this meeting. Leslie Taylor (hereafter Leslie) raised an objection to the voting structure when asked if she was a participant or with an agency.

## *Minutes*

Draft minutes were sent out by email or snail mail. There was a correction sent by email and made by John Barry (hereafter John) but this came after the minutes were sent out so will appear on the final minutes. Leslie said that she was not noted in the minutes and that her comments were not noted. John said her name was on the document he had.

Gabrielle said that she had a PPL comment: Page 9 of the minutes identify that Caitlyn had done a bunch of research and stated that PPL had an 85% satisfaction rate. There was no source but PPL is not contesting the accuracy. Gabrielle said she wanted to say that they now have a satisfaction rate of 96%. This is not a change to the minutes

With those comments the minutes were approved by majority voice vote.

## *Overtime and documentation of work hours:*

Linda Andre (hereafter Linda A) wanted to know if there were questions about documentation of work hours and overtime. She said it was a big issue for her to figure it out because she and someone she is AR for both use more than 8 hours a day of care. She figured it out and offered to help others do the same. If you use less than 40 hours a week it is not an issue. If you use less than 40 hours a week per attendant it is not an issue.

Discussion

- Is the issue 8 hours per attendant per day or 8 hours total per day? NEITHER: The issue is that overtime is due if an employee works over 40 hours a week. . Leslie said the bigger issue is which platform the client chooses and advised people to review the comparison before worrying about if there are 40 hours a week. This is only an issue in AwC model. It does not matter if they work more than 8 hours in a day—it is about 40 hours a week. Hour 41 is when overtime is due according to the Fair Labor Standards Act.

There was back and forth discussion and people talking over each other and Corrine asked if we could wait for questions before someone finishes their thought—she said we will never finish our agenda if everyone interrupts. Mary Colecchi said that the talking over each other was too difficult for someone with her disability and that she had to leave.

One question someone brought up is if anyone is going to make us clock in and out re hours per day? Candie Dalton (hereafter Candie) said nothing has come to this group to make this policy. This conversation had happened in the past and people did not want to require it. This would make it cumbersome. Candie asked who knew the history on this. Julie Reiskin (hereafter Julie R.) said that it was discussed and rejected. Julie R. said that clients are already required to be responsible for knowing and properly billing the time and that is made clear in training. She said time

clocks would not work due to services being provided in numerous places and clients having different technology. Leslie agreed that clients are responsible and that time clocks. Candie said that the department has no intention of doing this so it is not an issue. Leslie did not agree and accused Candie of diversion. Sheryl from Morningstar wanted to say one more thing but the topic was closed.

### *IHSS*

HB 1357 was the IHSS bill that stakeholders worked with HCPF on during the 2014 session. There were two parts:

1) Programmatic changes in the program, such as allowing IHSS in community, changing oversight by health professionals, removing personal care limits, etc.
2) Move IHSS into 4 other waivers.

A small group worked on rules for the programmatic changes and the new rules had their first reading in front of MSB. Candie hopes to have the new rules effective by March. There are a couple additional issues they are working on due to stakeholder comment. One is clarifying the health maintenance definition. Candie hopes to have draft expansion plan next month. Leslie asked if HCPF considered having one person at the SEP manage IHSS and CDASS. She said having one case manager dedicated to IHSS and CDASS might reduce the confusion. Leslie said that this would make it easier to train case managers. Leslie said this could create jobs in compliance with the Executive Order of the President. Candie said the department has not considered it and does not know enough about the SEP contract to know if that is possible. Leslie asked if the Department would act on this suggestion and Candie said no.

### *FMS Update:*

Candie reported that we are at the tail end of a whirlwind of a transition of including more FMS vendors, adding a vendor for training and allowing a

choice of models. The Attendant Support Management Plan (ASMP) needed to be altered to indicate the model and vendor.

Julie Farrar (hereafter Julie F.) asked how the CDASS employees can get the information not just the employers. Julie F. recently attended a TASH conference and there was a presentation from US Department of Labor (DOL) and she will get the information to Candie. Julie F. said that the Department of Labor did not think some of our ideas would work. Someone asked if the concern was about the employer model and difference between employer of record and employment of fact? Julie F. said this was a conference around people with intellectual disabilities, but what they kept saying is if it is the same pot of money it does not matter which model you use. She did not get clarification enough to know if they understood what we were actually doing. Julie F. said that DOL did believe that if an attendant works for an agency that those hours are separate from CDASS. (This means that an attendant can work for an agency and CDASS the hours will not be put together in terms of overtime requirements. Julie F. will get contact information of the DOL presenters to Candie. Julie F. said we need to figure out how to get a firm answer. There is a delay for compliance for state entities but not necessarily for us as clients/employers. Julie F. will send the presentation to Candie and Leslie asked that it be sent to all of us. Candie will send to John who will send to the list.

Question: Is the enforcement of overtime being delayed? Answer: The US DOL announced about 4-5 weeks ago that they are doing a non-enforcement order. This means that they will not enforce the changes until July 01. From July –December 2015 they will use selective enforcement meaning they will try to focus more on education or go after only egregious abuses first. However people need to understand that the rule still goes into effect 1/1/15 so there is still a risk of private lawsuits. Julie F. said an attendant could sue for more than just back wages.

Candie said that HCPF staff are working with case managers to update PARS. They came up with a system that made it a bit easier for the case managers but a bit more complicated for HCPF staff but they are getting it done. HCPF is having weekly calls with case managers. Candie is happy to continue answering questions. All the staff at HCPF are doing as much as possible to get questions answered.

Candie said that she knew that some of the info they are sending out is hurried, but they are trying to get it out quickly and they will continue to work with the vendors.

Mark Simon (hereafter Mark) thanked Candie for getting this done. Mark said Candie did a great job getting questions answered. Mark had a couple remaining issues:

1) It would have helped to have the FMS companies answer the questions in the same way. The document should continue to be polished.
2) The information should be put on web site where it is in one place and available.
3) The complete information should be sent to all CDASS clients.
4) Some FMS companies did better than others on various questions – different companies did better or worse on different questions which is why the format is important.

Mark said he still had a question "What are my liabilities and responsibilities under the law if I chose the FEA model?" He said if it is what he thinks, he would never use the FEA model. Candie said she would continue to polish and maybe change format so you can track. Candie said in the recent weeks they added a lot to the website and put a link on the main HCPF site. Mark said it would be good to have one main page with lots of links, and all FMS agencies, others involved with consumer direction and various places within HCPF would have links to a page where everything is in one place so people do not have to hunt for different answers. He emphasized that these are significant

decisions. Candie said Mark made good points and HCPF is working with Consumer Direct (the training company) to do that. In terms of FEA liability, Candie wanted to defer to each FMS to answer and she will have them answer that question in detail in writing.

Candie said that the information she received is that FMS still takes on liability. The FMS takes liability to pay taxes; they have responsibility to fix it if something goes wrong. Ultimately you as a client are the employer and liable but the liability is to let the FMS know there is a problem. It is in the contract with the state that the FMS has to fix it if there is a problem.

Mark asked what happens if an FMS goes bankrupt and does not pay taxes. He said if someone has assets (knowing most Medicaid clients do not) does the person need to buy employer liability insurance? He also asked what is the responsibility of the FMS versus client for workers compensation. Will it affect rates if worker has accident? He said that he knows people are selecting FEA to avoid the need to have to pay for health insurance out of the allocation. Someone offered to get Mark more detailed information on these questions.

Maria Rodriguez (hereafter Maria) said she agreed with Marks concern. She also reminded people that not everyone has email and those who do not are failing to receive information. Candie said she would pass information on to Maria by phone. Maria said she hoped the Fund for Additional Support (FAS) would address the office expenditure problems but that was being brushed under the rug. Candie said that we decided that we would come back to FAS until after the transition. Linda A. is heading up this discussion.

Leslie asked how one can go forward with making a choice of FEA or AWC without these questions answered completely. The communications with Mark promised here are individual communications and that all participants need the information. The liability issues are enormous and people are confused. Candie said that this follow up will go to everyone.

Corrine said she has received all email and snail mail and thanked everyone for all the hard work and wished everyone a happy holiday. (She had to leave)

Someone asked "If you make no choice you stay where you are right now." The question was"Is there an "or else" if one makes no choice?" Candie said this change allows a choice in vendor and model. She wants everyone to make a choice because HCPF does not want to passively enroll clients. If a client does not make a choice the client will be in AWC with PPL as of January 01. People need to be clear that AWC now and after January 01 will be different. If a client says he or she wants to keep things "the same" the client may need to make a choice depending on the specific situation of the client. It may or may not be the same and Candie will walk through this individually with anyone who wants to, because what may change is based on individual circumstances and she does not want anyone to have unintended consequences. Linda A. said people can call her as well if they want to walk through their specific situation.

### *Authorized Representative Discussion:*

Candie has been under the assumption that there are two things that can happen:

1) Client can direct own care and doctor says they can and does so
2) Physician says you cannot direct and you have an AR.
   She recently learned that there is third group and is having trouble getting her head around it. She said she learned that there are people whose doctor said they can direct their own care but there is an AR and she is not sure if the AR is directing the care or just signing timesheets. Julie R. explained the different scenarios:

   a) Some clients cannot wait for training; they get an AR, and then never undo it even if the client learns how to self-direct.
   b) Some clients do need help and want help but the doctor has said they can self-direct but the client chooses an AR and uses the AR.

c) Some clients have cyclical disabilities (e.g. Bipolar) and they can direct at some times and not others. These clients may have an AR that will take on more responsibility when needed and back off when the client is OK.

Candie had question about if there are people that are signing payroll but not directing at all. Julie said she did not think so but some people who are AR may be supporting clients to do what they can and the client may be doing everything but the AR still knows what is going on and is overseeing in some capacity.

### *Two attendant requirements:*

A couple years ago the rule was changed to require two attendants. This was done because all clients need a backup. Candie said the transition brought out that some clients do not have two attendants. This means there is no backup. Candie said she also is concerned about people having only one person doing care because that can lead to caregiver/attendant burnout. Candie was clear that no one is getting kicked out for not having two attendants, but we need to get this fixed.

Katherine Carrol (hereafter Katherine) said that there is a capacity issue; there may be periods where people unfortunately have a lag. When working on workforce development and other issues we need to address this. We need to do more to attract people. She said that backups are not always available but natural supports are available and we should encourage people to sign up neighbors, family, etc. who can be there for a period of time. They can all be signed up as attendants on payroll so when they are asked to help in emergency it is not an imposition.

Leslie said this is also an allocation issue. If you have one attendant you are likely spending most of your allocation on the one attendant. Leslie said if you have two attendants you need to pay that second attendant. Leslie said that the allocations have to account for emergencies. She gave

an example where she shattered wrist and at times needed two attendants to work together. Leslie said that she was able to stay within allocation but others may not be able to do so.

Keith Coppen (hereafter Keith) said that the way the program is designed is that if you have a short term situation one can get short term adjustment for 30, 60 or 90 days. He said that many of the people who come to program only plan on using one person, particularly if the person is family. Keith said clients sign up a second attendant who is just there as backup; they are not being paid on a regular basis only if the first one cannot work.

Someone asked the question if HCPF is identifying clients who only have one attendant and if so, what are we doing? Candie said that she got data on how many people are in this group and will determine how to follow up. Candie said she is OK giving a timeline with a guideline but not willing to do a hard and fast deadline because everyone has different circumstances. Candie said it is a fairly small number.

Someone asked if this will be looked at regularly and Candie said YES.

Julie R asked "Do you need to have two working or just two on payroll?" Answer—just on payroll

Maria said she was concerned about having to have two people but she is not given the means to do that.

Linda S asked if it was correct that you do not have to pay the attendant but you have to have a backup available to pay if the regular attendant is not available. Candie said that is correct.

Anne-Marie Mokritsky-Martin (hereafter Anne-Marie) said that the allocation is based on need and we have so many hours on each category. She said that if she has an attendant that choses health insurance then she would not be able to pay for care she needs because the insurance would take away from care allocation.

Maria said other things are taken out of allocations like overtime—not just health insurance. She said that it is not only people in the home that cost us money. Maria said that we have expenses for advertising, office equipment, postage, etc. If allocations only based on the 15 minutes someone washes dishes or 20 minutes for a shower then they are not realistic.

Leslie Taylor said that Maria and Anne-Marie are correct about allocations. Leslie said no matter what you say about going to a case manager for additional funds, some people have had to go head to head with case manager and had to go to Office of Administrative Courts to get extra care. That is the length we have to go. She said she could not go to her case manager if she wanted to. Leslie said that the issue is that more and more of her allocation money is being removed without restoring it. Leslie said it is duty of HCPF to provide for the needs of people with disabilities.

Linda S. said ACA requires insurance for people that work 30 hours a week. She said that a backup that not work consistently for 30 hours a week would not require insurance. Another attendant may require insurance.

Leslie said there may be two attendants who may be over or under 30 hours a week. She said not a penny of allocation money should be used for payment of insurance premiums because she said that is the duty of the FMS. Leslie said that PPL is getting $109 a month just to process payroll. They are taking a 10.75% cut off of our allocations but only using $109. Where is the remainder? Leslie said that needs to be restored directly or be used to pay for insurance separately. It should be separate and apart from allocations. Leslie said that allocations and insurance should be separate and not connected.

Anne-Marie said some people might need to have attendants more than 30 hours. Anne Marie said that her allocation is fine but if she has to pay insurance then it will not cover her needs.

Linda Skaflen said she agreed with Anne-Marie –she was just saying that not all might not need insurance and was just trying to clarify it regarding the backup discussion.

Someone said that the backup attendant could be waiting for a long time before they get hours and they will move on and not be available when the client needs a backup, so clients are on constant lookout for 2nd attendant.

Someone said that we were asked by PPL if we had specific attendants to offer insurance to and we had to ask attendants if they wanted insurance. There is nothing on paper to say insurance is offered. There should be something on paper to confirm if attendant wanted insurance or not. Gabrielle said that they mailed out information to attendants to see if they had other coverage. Jeff asked if PPL will double back with client and PPL said yes if they employee asks for insurance.

Keith asked about this situation: A caregiver that has worked 35 hours a week for a long time and gets insurance. Then caregiver is out for 30-60 or more days. Now there is a backup caregiver working 35 hours a week. Does that person get insurance. PPL said that each FMS will determine eligibility for insurance differently as there are different ways that they do it. You can ask each FMS that question.

Leslie asked again who will pay for insurance if employee wants insurance. She said that if it comes out of the allocation it reduces what the allocation was meant for in terms of hours and services. Answer-it will come out of the allocation

Debbie Miller asked a question CANDIE PLEASE FILL IN QUESTION.

Anaya Robinson (hereafter Anaya) said she thought that ACA had exemption for small business owners. Most CDASS employers would fall into that category. Answer: The FMS is not a small business so under AwC they do not qualify and insurance is required but under FEA the employer is the client so all qualify as a small employer exempt under the ACA.

Katherine said she shares concerns and she has to negotiate and choose for her daughter between finding good staff and meeting her needs. Like any change there are both good and unintended consequences. If we offer insurance we get good people but have much less to pay wages and get fewer hours. If we do not offer insurance, we may have attendants move on to other jobs.

Keith asked—can we offer choice to caregiver and tell them if they do not want health insurance you can pay more per hour. Answer YES because the issue is total compensation. Businesses do this all of the time. The health insurance is part of the compensation package and it is normal to have lower wages if benefits are paid.

Anne Marie asked what regulatory authority there is that allows HCPF to require PWD to pay for the insurance out of their allocation that was set for specific health care needs. Candie did not have the citation in her head but will get it and provide to group.

Mark asked what is preventing us from hiring people for only 6 months at a time so they are not eligible for insurance. Answer nothing but that is a lot of work. Mark also asked who picks the level of insurance. Candie said there should be discussion between the attendant and client but client can say that if the attendant wants a higher level the attendant can be told they have to pay for that personally (not out of the allocation). Candie said prices vary significantly among vendors and she understands that this will be decision point for clients.

Maria asked what effect FEA will have on workers compensation. Candie will respond in writing.

Leslie said FMS is employer and they should pay insurance. She said it is as simple as the group insurance that state employees receive. She said the FMS is employer period. Candie said this has been raised and that Anne Marie asked for regulatory citation and Candie will provide it. Leslie

said the question about why FMS is not taking this on was not asked and John said it was noted.

Debbie asked if it was true that if your employer offers insurance and you do not take it, then you cannot get it elsewhere. Answer: This is NOT true. But if you do not take employer offered insurance and you get coverage from the marketplace you will lose the subsidy. If you already have insurance like Medicaid or another job you can refuse insurance without a problem. If you are getting a subsidy and you are offered insurance and you deny it your subsidy goes away immediately.

### *Update on CDASS Audit:*

A Senator had requested that the CDASS program be audited. This has been discussed in past meetings and is recorded in the minutes. Candie said that there is not much update to give. They are still doing audit. The client interviews have been done and they are reviewing records. They are asking questions to make sure they understand consumer direction in general. They are hoping to wrap up record review after the New Year. They have been in touch with PPL for data and they have asked Candie for data. The only questions they have asked other than basic about the programs have been

a) Allocation development,
b) Relationship between ULTC 100.2, and service plan.
c) They asked about timesheets and time in and time out -- Candie sent them info showing many states do not require time in and time out. The auditor did not have opinion one way or another.

The auditors hope to finish by May or June.

Leslie said they audited the department in 2012. Candie said they had never audited CDASS specifically. Candie explained that the audit Leslie was referring to was the overall agency HCPF audit, not about CDASS. Candie was thanked for her work defending the CDASS program.

## *SLS Task Group:*

Roberta said goal was to have CDASS in SLS by July 2015. The task group was formed to help with policy recommendations. Today they had their fourth meeting. The group has reviewed the rules, waiver and made recommendations. There is one more meeting. They went through most of rules today and 1/5 is fifth meeting and they will finalize recommendation report. Then there will be 30 day public review process. Roberta suggested that she bring recommendation to us before it went to comment. She wanted to confirm that PDPPC said that we wanted to see final report before it went to the department. **The members confirmed yes that is what we wanted. We needed to see exactly what goes to the department and public comment may create changes.**

## *PDPPC forum:*

- Jeff: The draft ASMP is more detailed on tasks. Is there an expectation that peer trainers will go into more details. Candie said that she needs to verify that this is most ASMP form as it was changed.
- Someone asked if case managers need to provide task worksheet to clients after they complete it. She hears it is not happening. Candie said YES they need to give clients the task worksheet before and after completion and Candie will address this.
- Gabrielle: Colorado Minimum Wage changes from $8 to $8.25 on January 01,
- Linda A: Is form with new models for new clients only or do existing clients have to update their ASMP. Candie said good question and wanted input from PDPPC. New clients definitely have to do it. Candie said she is not inclined to have existing clients redo it but wants to make it available but was open to feedback. People thought existing clients should update it they are affected by it (meaning they are using AWC and paying insurance or expect to have overtime obligations). **Discussion –is there a need to**

**make sure client comprehends and can manage due to all the changes. The decision was to make it available as a tool but not require anyone to do it again.**

- Katherine C. We need to get into 21st century –there should be some on line forums, U-tube on how to do specific things. Candie said they are looking at doing three four video vignettes about the different options. This will like animated videos they have about the affordable care act. They have funding to do 3-6 videos. Leslie said people should remember about rural people without internet access. There are people new to notion of cell phones. Maria agrees. There needs to be a person at the SEP to tell people what the videos will do. Linda A. said the FAS will help with access to technology.
- Survey of FMS will be done to help people with enrollment and understanding satisfaction with the different FMS companies.
- Someone said we should also do outreach to others like Craig and other hospitals, Candie said that was a great idea.
- Maria said it was important to do outreach and contact agencies but the proof if in the pudding but you need to affect the people who are to benefit from this program then the program will not work.
- The meetings will resume to the fourth Wednesday of the month next year

Respectfully submitted

Julie Reiskin with help from Linda Skaflen and Candie Dalton