PDPPC October 2015

(When I called in I was 36th person to join)

Present by phone:

Jennifer Smith, Candie Dalton, Margaret Proctor, Christina Ulmer, Kelly Morrison, Liz Wuest, Hanni Raley, Heather Jones, Renee Farmer, Kathy Estes, Julie Reiskin, Julie Miller, Cathey Forbes, Kevin Smith, Curt Wolff, Cheryl Vennerstrom, Craig Morrison, Diane Alvaressi, Tim Moran, Kelly Brown, Khristy Michael, Gabrielle Steckman, Mark Simon, Brent Salner, Connor MacCloud, Maria Rodriguez, Caitlin Brady, Julie Farrar, Leslie Taylor, Kari Vinopal, Grace Herbison, Kirk Miller, Mark Fenton, Pam Gonzales, Daniel Holzer, Stephanie Holsinger, Sueann Hughes, Todd Slechta, William Hann

Present in the room:

Keith Copen, Jennifer Martinez, Linda Skaflen, Bonnie Rouse, Rhyann Lubitz, David Bolin, Roberta Aceves, Alisha Singleton , Jason Smith, Linda Media, Kathy Sargent, Debbie Miller, Rebecca Sturtevant, Jeff Epp, Tiffany Rathbun, Heather Kamper, Jeff Pratt, Leah McMahon, Sharita Richmond, Natalie Armstrong, Kelly Tobin, Louise Apodaca, Linda Andre, Missy Griggs

Excused: Gerrie Frohne, Anaya Robinson

Meeting called to order and minutes were approved. The following discussion took place about the minutes: Linda S: During conversation about voting structure on page 3 paragraph starts with Caitlin and Jose and was about the 2 signature rule. Linda wanted to know if this in the right place. The answer was that this is where it was in the conversation. That meeting did not really follow the agenda

Mark Simon asked to be excused for the meeting on 9/23 which was held on a Jewish Holiday and asked that PDPPC not schedule meetings on Jewish Holidays in the future. The group agreed that this should not occur.

Top of page 3: Mark said that he did not know he was to bring item to MSB. The change is that Linda Andre said that he could do this as that was right place to change a rule.

Keith moved and David seconded approval of minutes as corrected. Motion carried unanimously.

Draft minutes for October phone meeting: Linda should we attach the actual vote to the minutes. Curt agrees good idea. John sent those minutes out a few minutes ago and will add vote when posted to the website.

Cathey Forbes re page 4 paragraph 4. Minutes said that Leslie said FEIN subject to audit and Kathy asked the question by whom: This information was not said at the meeting therefore cannot be in the minutes. Kathy also did not understand first provision –change to FMS has liability. There was a question about not having extra money for travel time. Cathey says agencies do get money for travel. Julie clarified that this discussion is just about extra travel money and agencies are not getting extra money and neither are CDASS clients to implement FLSA. Julie said that the rates for agencies and CDASS are tied together therefore CDASS cannot get extra money budgeted to comply with FLSA because the rates are tied together. Linda S moved to accept the minutes with correction of adding the vote details and Alisha seconded. The motion passed unanimously.

FLSA IMPLEMENTATION: Bonnie and Rhyann led discussion:

Rhyann thanked the group for participation in the emergency meeting. She has taken the recommendation to leadership. They have to look at waiver amendments and how to implement. The recommendation is with leadership at this time and rules still in process for 12/11 presentation to MSB.

Bonnie and Rhyann have been doing research, talking to vendors, trying to talk to other states and talking to National Resource Center for Participant Directed Services. Rhyann wanted to discuss two things today

1) Liability—Bonnie working on contract to identify any areas where changes are needed, they identified a few areas

Dropped off at 1:33 back on at 1:45 and was 39th to join. No one identified themselves during the period I was on the phone.

Discussion: Could FMS post surety bond for tax liability? If so it is no longer an issue. Mark has IRS regulations. These regs talk about agents for employers who are home care service recipients.

The Argument is that AwC already has joint employer liability. Mark is not convinced but does not think IRS would go after client in AwC. He said that the IRS has rules about innocent spouses-- if you did not know what spouse did on taxes you can have liability waived. He also said that there is no evidence about anything like a client getting in trouble for an FMS not filing taxes has happened but wanted to solve problems on front end, before they happen, not on back end.

Rhyann is looking into the ability of FMS to post bonds but if that costs money there is no additional funding. If it costs money she would have to bring this to leadership. They are looking at all options for FMS vendors for client protection but she does not want to make promises where she cannot deliver and does not want to give anyone false hope.

Mark Fenton said PPL already has surety bond. Linda asked if anyone else has it—Mark said if FMS was insolvent and did not pay taxes state may have equal liability so state might want to protect its' own interests. Tim said everyone has bonding-- it depends on for what. He said Acces$ does have it for quarterly taxes. Morningstar does not have this for CO but does for Ohio but will get it if required.

The next question is do we need a bond for payroll? Julie says no because of how we do payroll. Mark Simon asked if PPL could lie about payroll being done to draw down funds. Rhyann they are required to have 2 payroll periods in the bank at all times. Mark says this is great but how

do we know this is really happening. Is reserve in escrow? Julie said we would know immediately if they lied because people would not be paid.

Curt says bonding for tax liability and proof of adequate reserves should be in future contracts and that these conversations should continue. He said ditto to what Mark was saying about assuring problems are solved at front end.

Tim Moran said that he understands concerns about exposure. He wanted to know "what is this based on?" Is it only for currently served clients? He said we cannot be asking for apples and providing oranges. He said it is good practice is to have several months in the bank when dealing with the state. For example, in Illinois there was no budget and Acce$ had to front payroll for 3 months with no reimbursement. He said if Acce$ had to have a bond for the whole value of the contract that would be a very different issue and a problem. That is a very different issue.

Mark said he thought there should be surety bonds for tax liability and payroll. Tim said that was impossible. He said his current clientele is 260 now but what if Acce$ gets 1000 new clients? That value is different, does he then have to get a new bond?

Mark recommended that we create a subgroup to create policy on this issue. His concern is how do we assure reserves are intact. One idea about this is to have FMS agencies add a quarterly report to contract. Bonnie pointed out that these all have to be negotiated with the vendor and they could back out of working with Colorado if they do not like the terms. She agreed that this is good time to amend the contract since they have to amend anyway to address FLSA and FEA only.

Mark said that we need information sheet provided to every client delineating what the potential liability exposure is so they can make informed choice. He said this (worksheet) could be done in the subgroup working on this issue.

Sueann asked if someone changes agency would they be able to keep the same Power of Attorney? The answer is that there is no effect on the POA if you switch FMS vendors. One can only do on first of quarter for tax purposes due to FEIN.

2) FEIN: The FEIN number is bigger issue and we need to have strategy in place for FEIN number. In talking with FMS vendors, and others and research they learned that the FEIN is associated with either the client or AR. That is in contract and rule. They are trying to figure out if you are AR for several clients all under FEA if that would be one FEIN number for all of the clients. That could be issue for overtime and travel time if they share attendants. Bonnie has emailed the National Resource Center as to how they do this or what they recommend. The questions they asked are "How would this work for people who are clients and AR?" "How would this work for people who are AR for several clients?" "Is an AR a joint employer?" For health insurance there is no liability until there are 30 employees. Once there are 30 health insurance is required. (This was later clarified to be 50 employees). If client and AR share attendants then you have to do travel time and overtime.

Linda S asked where does it say that a client cannot have their own FEIN if they have an AR? Rhyann said that her understanding is that in WI all clients hold their own FEIN. Someone brought up that there is a requirement for a notarized form in FEA. Someone asked would a notary sign off if a person could not understand documents? Several people who were notaries said that they could not sign off if they felt the person did not understand what they were signing. Others wondered how a notary would be able to ascertain comprehension.

Jennifer said that in cases where there is an AR but a client is competent and an AR is choice that clients can hold FEIN. She said the question is who should hold the FEIN if client is not capable. It was pointed out that there is a big difference between client not being competent and needing

an AR. Julie asked can a guardian hold FEIN and be an employee? Answer NO but guardian can have 3rd party hold the FEIN and that is not a conflict. In this case the 3rd party is the one who is the employer of record, but the AR still does the work just like the AR does the work now. At present this does not match what is in CDASS rule.

Linda A said she works with a person unable to manage documentation and has been AR for a long time and previous to becoming the AR knew the person for long time. This person asked Linda to serve as general POA for finances. Linda said that the previous relationship should not interfere with this right? Answer: Correct they are different things and different roles, it should not be an issue. It could only be an issue if they shared employees and there was issue re overtime and travel time. Also the person could have own FEIN number.

Question—can you have more than one FEIN number? If client is also AR do they hold two FEIN numbers or one—they will only issue ONE FEIN per SSN?

There was a discussion again about notaries. Linda S –a notary does not document if someone understands, it is just about if the person is the same person. Someone else said a notary will not testify that a person has signed a document if they do not understand what they are signing. Someone from Montrose said she was one and that Notaries are supposed to ask if they understand the consequence of what they are signing. Pam from PPL—said notaries are supposed to verify that someone understands what is happening

Curt said that we are trying to solve a problem that might be a fraction of percent of people.

Christina asked if you have FEIN in business is this a conflict?

Bonnie said that a consumer direction FEIN is different than existing FEIN or LLC. If you already have FEIN the FMS should be able to help you get a new FEIN for HCBS services.

Someone asked what if someone is FEIN holder and they can no longer be AR—are there issues with person still having FEIN number in their name? We will face this issue.

Mark—are we indicating that if you are client in program and FEA that you get FEIN that you have to have FEIN issued to you individually -not your business? He said does this mean that one cannot create a Sub S corp. or LLC and have that be holder for FEIN? Bonnie said it is her understanding that FEIN for this has to be individual not business because it is specific type of FEIN. Mark Fenton said this is IRS rule. Mark Simon wants to know why and also asked if you could use the FEIN of a trust. The answer is yes you can use it under a trust. Mark said you can set up a trust for $126. Rhyann is looking into this further with the National Resource Center to determine who can hold FEIN and how it can be held.

Mark said we need guidance from IRS and the request for guidance should come from Department.

2:32 dropped off

2:38 called back 37 on the line

Discussion about the FEIN and more than one attendant:

Do we know how many people are sharing attendants with AR? Julie suggested that going forward we stop allowing people to be an AR and share attendants so we do not have this problem. Rhyann is trying to figure out how many people this really affects to determine if we need systemic solution or individual. She is having a hard time getting information as Colorado is actually further ahead than most other states in figuring this out.

Question: In WI if all clients hold FEIN number does this mean they are not allowing clients that cannot sign notarized statement to be in program? At 2:54 I lost signal for the duration of the meeting.

Subcommittee Meeting Report: Grace Herbison

Grace made a couple announcements about IHSS. She said the IHSS subcommittee met and discussed implementation of the change to allow clients without an AR, who are unable to self-direct without assistance, to be able to receive necessary support form an IHSS agency. Grace said no changes have been implemented to IHSS yet because we have not received approval from CMS, but the subcommittee was able to discuss how the changes might be implemented if we receive CMS approval. There are still a lot of issues to work through, so the group plans to meet again on November 12th. Grace also said the issues that were identified by the Office of Legal Legislative Services that she had mentioned at the September PDPPC meeting have been resolved and there will be no need for an IHSS rule revision. Linda Skaflen: Did the subcommittee address only current waivers that allow IHSS, or did it include the expansion? It just addressed current. Questions regarding how to allow those requiring an AR to participate and nurse oversight. HCPF budget staff is attending the next PDPPC meeting to discuss the expansion cost estimates that have been completed. .

Attendant Protocol Draft Rhyann Lubitz

Rhyann reviewed two attendant protocol. This protocol provides action steps for case managers and FMS vendors on what they should do when a client has one employed attendant. This protocol was reviewed, comments provided regarding ensuring appeal rights are clear. State auditors are not yet enforcing the rule requiring 2 attendants. Everyone must have 2 cleared employees, but they do not need to use both. 2nd is backup if 1st does not show up.

Julie Farrar: Need to have more options for personalized situations.

PPL: Should the 1st Notice (of lack of follow through) be sent by FMS or CM? Rhyann stated FMS should be contacting the client.

Additional comments are to be given to Rhyann outside of this meeting

CDASS and SLS Update Roberta Aceves –CDASS in HCBS-SLS was not discussed due to running out of time.

FMS Annual Reviews Bonnie Rouse:

Bonnie requested stakeholders email her regarding any suggestions they have regarding the FMS Annual Review.

Public Comment Items

Christina Ulmer: Provided information regarding the client driven attendant registry she is managing. Those who would like information or to sign up for the list of potential CDASS attendants, please contact Christina at

Mark Simon –how 2 signature rule was handled