

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

A Right to Person-Centered Care Planning

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April 29, 2015

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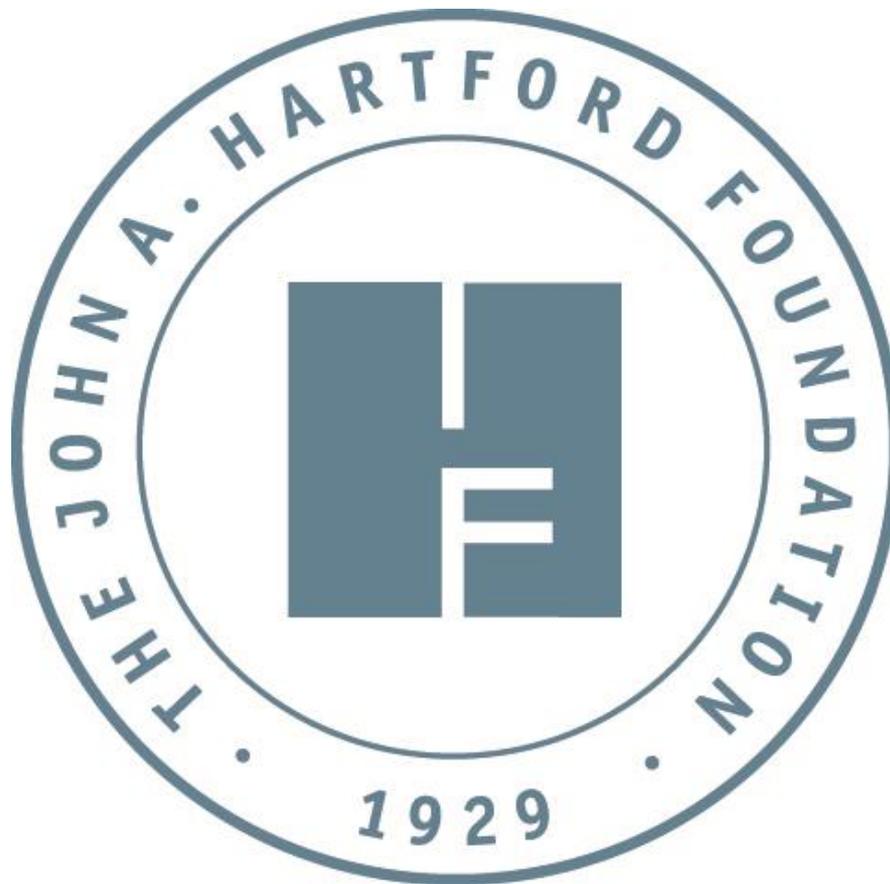
Justice in Aging is a national non-profit organization that fights senior poverty through law. We secure health and economic security for older adults of limited income and resources by preserving their access to the courts, advocating for laws that protect their rights, and training advocates around the country to serve the growing number of older Americans living in poverty.

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Webinar Logistics

- All attendees are on mute
 - For technical questions, use chat box
 - For substantive questions, use questions box
- E-mail trainings@justiceinaging.org if unable to access webinar
- Slides and recording may be found at justiceinaging.org
- We will be answering questions at the end

Our thanks to –



Goals of the Webinar

- Understand the rights to person-centered care planning created by the 2014 HCBS rule
- Identify gaps in rule where more development is needed

All too common stories...

	Service	Plan	
Service Type	Service Units	Tasks	Hours
Personal Care Services	1000 units = 25 hours	PCA assist bathing, dressing, meal prep	25/per week

1915(c) Person-Centered Planning Rules

Background

- CMS's 2008 Technical Guide for 1915(c) waivers
- CMS's May 2013 MLTSS Guidance
- 1915(c) HCBS waivers, 1915(i) HCBS state plan benefits, and 1915(k) Community First Choice

Person-Centered Planning Standards

2014 HCBS Waiver Rule

- Person-Centered **Planning Process**
- Person-Centered **Written Service Plan**
- Requirements for **Review of the Plan**

The Planning Process

- The consumer leads the person-centered planning process
- The consumer must be empowered to make informed choices

The Planning Process

The consumer leads the PCP process

- Occur at times and locations of **convenience** to Medicaid consumer
- Include **people chosen** by Medicaid consumer
- To extent consumer's representative has a role, that role is **as needed** and **defined** by LTSS consumer

The consumer leads the PCP process

Why this is important

- The consumer chooses **where**
- The consumer chooses **when**
- The consumer chooses **who**

The consumer leads the PCP process

Where more guidance is needed

- Individuals with diminished capacity
→ Participate to **maximum extent possible**
- Legal Representative → Principles of **substituted judgement** and **supported decision-making**

The consumer leads the PCP process

The Rule in Practice: Tennessee

The person-centered planning process *is directed* by the member with long-term support needs, and may include a representative whom the member has *freely chosen* and *others chosen by the member* to contribute to the process.

The Planning Process

Informed choices and decisions

- Provide necessary **information** and **support** to ensure:
 - LTSS consumers **direct** the process
 - Are enabled to make **informed choices**
- Offer **informed choices** regarding services, supports, and providers
- Record **alternative HCB-settings** considered

Informed Choices and Decisions

Why this is important

- Consumers need →
 - Leadership and decision-making skills
 - Information to make choices
- Care manager & other PCP staff need →
 - Competency-based training in person-centered principles
 - Expertise in scope of HCBS waiver services

Informed Choices and Decisions

Where more guidance is needed

- Training in person-centered principles →
 - LTSS Consumers
 - Leadership, administrative and PCP staff
- Choices must be real →
 - Lists and lists of providers, none of whom can staff the consumer's need
 - A “choice” of one option is not a choice

Informed Choices and Decisions

The Rule in Practice: Wisconsin

Consumer education services are designed to help:

- develop **self-advocacy skills**
- support **self-determination**
- exercise **civil rights**
- acquire skills to exercise **control over support services**

The Written Service Plan

- Plan must reflect need and preferences
- Plan must include paid and unpaid services and supports
- Plan must be finalized and agreed to

The Written Service Plan

Plan must reflect need and preferences

- Reflect consumer's strengths and preferences
- Include identified goals and desired outcomes
- Reflect clinical and support needs of consumer identified through assessment of functional need

Plan must reflect need and preferences

Why this is important

Written Plan =

Preferences/Goals + Identified Need

Plan must reflect need and preferences

Where more guidance is needed

- Person centered functional needs instruments
- Face-to-face assessments using person centered processes
- Strategies to ensure goals and desired outcomes are being met

Plan must reflect need and preferences

The Rule in Practice: Minnesota

MnChoices Assessment Tool

- Includes **Quality of Life** domain
- Uses **open-ended questions**
- Uses **directed questions**

The Written Service Plan

Plan must include paid and unpaid services and supports

- Reflect services and supports (**paid** and **unpaid**)
- Include the providers, including **natural supports**
- **Natural supports** = unpaid supports that are provided **voluntarily**

Plan must include paid and unpaid services and supports

Why this is important

- 2009: **\$450 billion** worth of unpaid caregivers
- Rule is clear that natural supports are **voluntary** and **cannot be compelled**
- Focuses attention on **caregiver assessments**

Plan must include paid and unpaid services and supports

Where more guidance is needed

- If natural supports are compelled → Access to Medicaid fair hearing protections
- Caregiver assessment → where caregivers are relied upon to implement service plan

Plan must include paid and unpaid services and supports

The Rule in Practice

- Minnesota: Uses a **Caregiver Questionnaire**
- Tennessee: Care coordinator must conduct a **caregiver assessment**

The Written Service Plan

Plan must be finalized and agreed to

- Informed consent of LTSS consumer in writing
- Signed by providers responsible for implementation
- **Keeping in mind:** Medicaid due process and fair hearing requirements apply to all Medicaid services.

Plan must be finalized and agreed to

Why this is important

- Service plans may include action **adverse** to the LTSS consumer's rights triggering fair hearing rights
- Written consent must be consistent with **Constitutional** due process rights

Plan must be finalized and agreed to

Where more guidance is needed

- CMS should make fair hearing rights explicit in the context of person-centered planning and written service plans

Plan must be finalized and agreed to

The Rule in Practice

- New Jersey: Consumer may **sign plan** and **explicitly disagree** with services in the plan
- Wisconsin: **Appealable** actions include **certain aspects** of written service plan

The Review Process

The PCP Service Plan is reviewable

- At least every 12 months
- When the individual's circumstances or needs change significantly
- At the request of the individual

The PCP Service Plan is reviewable

Why this is important

- LTSS consumer needs change → Plan needs to change in expedited manner
- LTSS consumers know best when a plan is not meeting needs
- Access to process for plan revisions need to be simple

The PCP Service Plan is reviewable

Where more guidance is needed

- LTSS consumer needs change → Plan needs to change in expedited manner
- LTSS consumers know best when a plan is not meeting needs
- Access to process for plan revisions need to be simple

The PCP Service Plan is reviewable

The Rule in Practice: New Jersey

- Access to **back-up** care manager **after hours**
- Policy to forward after-hours contact to care manager
- Access to **registered nurse** who can **review** and **authorize** services after-hours

Additional Resources:

- “A Right to Person Centered Care Planning”
at www.JusticeinAging.org
- “Q&A: Person Centered Planning Changes”
at www.healthlaw.org

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Questions?

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