

# The Spectrum of Budget Authority

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# Agenda for Presentation

- What is budget authority?
- How to determine a budget
- Points on the budget authority spectrum
- Characteristics of points on the spectrum
- Time for Q&A

# General Principles

- Person-centered planning
  - Strengths-based
  - Based on goals and preferences of the participant
- Choice and Control
  - Participant has maximum choice of types services
  - Participant has maximum control of how services are delivered

# What is Budget Authority?

- Participant has power to manage specific funds to pay for a set of services
- May include employer authority
- May include
  - Purchase goods and services
  - Receive some of the budget in cash

# What is Employer Authority?

- Participants can do the following for their workers
  - Hire or refer for hiring
  - Supervise
  - Terminate or dismiss from the home
- Many budget authority programs also have employer authority
  - When they do, the participant employer can usually set the worker's rate of pay

# Budget and Employer Authority

- The points on the spectrum for today assume budget authority with employer authority
- Employer/budget authority mix allows for participant to set wage

# Participant Supports

- Participant can appoint a representative if unable or unwilling to fulfill responsibilities
- Information and Assistance
  - ❑ Helps with person-centered assessment
  - ❑ Supports development and implementation of spending/service plan
  - ❑ May support and monitor carrying out of employer responsibilities
  - ❑ Monitors spending (with FMS) and participant outcomes

# Participant Supports: Financial Management Service (FMS)

- Manages payroll
  - Processes timesheets
  - Processes withholding and employer taxes
- Manages unemployment and workers' compensation
- Pays for non-employee costs
  - Goods and services
  - Cash advances, if permitted
- Reports spending to participant, I&A agency, and the State



# A Word on FMS Models

## Fiscal/Employer Agent (F/EA)

- Use when participant is common law employer
- Usually, F/EA role is limited to “employer agent” and administrative duties, rather than being an employer of participant’s workers

## Agency with Choice

- Serves a co-employer with participant
- May interview and screen employee separately
- Is almost always a joint employer for FLSA
- Is usually common law employer for IRS, WC, ACA

# FMS Implications: Taxes

- Each of these points on the spectrum discussed today likely to result in:
  - Participant or participant's representative as the common law employer
- Participant = Common Law Employer → use F/EA model of FMS
  - Federal Rev. Proc. 2013-39 outlines federal tax approach
  - State income tax approach is individual or aggregate filing
- If Agency with Choice, agency responsible for tax filing and payment as employer

# FMS Implications: Workers' Compensation and Unemployment

- If participant is common law employer:
  - The state may not require the “household employer” to hold a workers’ compensation policy
    - If the state does, usually the individual employer will be required to hold it
  - Individual state unemployment accounts required
- If using Agency with Choice, usually agency would hold workers’ compensation policy and unemployment account

# FMS Implications: ACA

- If participant is common law employer, as is likely at these points on the spectrum:
  - Employer health insurance mandate of ACA will not apply
- If using Agency with Choice with agency as common law employer:
  - Employer health insurance mandate of ACA *will* apply, if agency qualifies under the ACA rules and workers qualify

# FMS Implications: FLSA

- These points on the spectrum can be implemented with a high degree of participant control and a low degree of third party control of the employment relationship
- Many of these points on the spectrum could be implemented such that a third party is unlikely to be a joint employer
- If worker duties align, companionship and live-in exemptions could be used under the Home Care Rule

# Determining the Amount of the Budget

- Individual functional assessment
  - Medical, social, and behavioral needs are identified using a standardized assessment instrument.
  - Assessed needs may be expressed dollars or units.
- Historical costs
  - Retrieve & analyze for a previous time period.
- Combination of individual assessment and historical costs
- Prospective method
  - A specific budget amount uniquely assigned to each individual representing the amount of services that may be authorized.

# Determining the Budget: Individual Functional Assessment

- Individual assessed to need a certain level of HCBS services
  - Often measured in hours
- Each hour has a cost (e.g., Medicaid rate for the personal care is \$20/hour)
- Budget is number of hours per time period x hourly rate.
- Hourly rate may be discounted to reflect real wages
  - Support services costs may be also discounted from budget calculations
  - Support services costs may be covered from agency “cost savings”
- Cost of other services, PERS for example, may be included in determining the budget

# Determining the Budget: Meet Frieda

- 42 year old divorced woman, no children
- Moderate cerebral palsy which limits mobility and fine motor functions
- Sustained a brain injury from a fall in her 30s
- Average to high intelligence but may process information slowly from the TBI
- Friendly and outgoing with a strong friendship network
- Lives independently and current goal is employment
  - Involved with Vocational Rehabilitation for employment goals





# Determining Frieda's Budget: Individual Functional Assessment

- Frieda currently gets 85 hours/month of personal care services
- The Medicaid rate for personal care is \$20/hour
- Direct value is \$1,700/month

# Determining Frieda's Budget: Individual Functional Assessment

## ■ BUT

- ❑ Prevailing wage for direct care work is \$12/hour
- ❑ Employer costs (FICA, Unemployment, Workers' Comp) are projected at 15% of wage
- ❑ Total hourly cost is \$13.80 { $\$12 + (15\% \text{ of } \$12 = \$1.80)$  }
- ❑ 85 hours x \$13.80 = \$1,173
- ❑ This is what Frieda can budget

## ■ Also

- ❑ FMS costs \$100/month
  - ❑ I&A Agency costs \$250/month
- ## ■ Total cost to State \$1,523/month

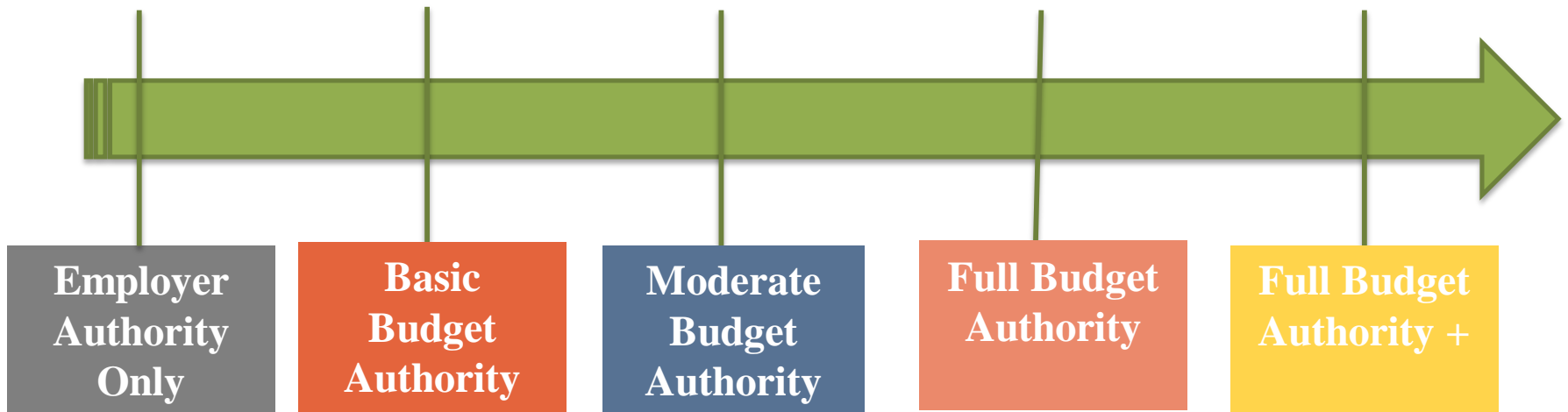
# Determining the Budget: Prospective Budget

- Participants needs assessed
- Value of services required to meet need becomes the budget
  - Budget may include self-directed and non-self-directed components

# Determining Frieda's Budget

- Frieda needs assistance in:
  - Dressing
  - Bathing
  - Mobility
  - Meal preparation
- The annual cost of services to meet her needs is \$18,276
- The cost of FMS and I&A services is \$4,200
- Frieda can budget \$14,076 per year or \$1,173/month

# Points on the Spectrum



# Full Budget Authority +

- Service allocated in dollars
- Allocations either annual or may accrue from month to month
- Participant hires, supervises, terminates
- Participant sets wages
  - State may set parameters but participant has real discretion
- Participant may purchase goods and services
  - G & S must relate to management or treatment of disability
  - Need determined by the person-centered plan
  - No “allowables list” but state may approve purchases
- Cash advances allowed
  - For unpredictable services such as unplanned transportation

# Full Budget Authority + Implications

- Allowed by CMS 1915(k) and 1915(j) authorities and 1115(a) demonstrations
  - Cash advances are not permitted in 1915(i) programs
- Allows participant maximum control over their care
- Allows purchase of goods and services which may decrease need for personal care
- Allows for cash for unpredictable needs which may lower demand for other services (e.g., Medicaid transportation)

# Full Budget Authority + Example – Wages

- Frieda is assessed to require \$1,173/month for services or \$14,706/year
- She hires 2 workers
  - Pays her primary worker \$12/hour for 60 hours/month
  - Pays her back-up worker \$10/hours 10 hours/month
  - Including “employer taxes” @ 15%, her total wage costs are \$943



# Full Budget Authority + Example – Non Wages

- $\$1,173 - \$943 = \$170$  left to spend
- She pays \$30/month for her Y membership since swimming helps her mobility
- She puts aside \$50/month for unexpected costs, like hiring agency help if her workers are sick
- She pays \$45/month toward the purchase of a replacement ramp to her home
- She takes \$45/month in cash for transportation for her and her worker

# Full Budget Authority

- Individual budget authority
- Includes hiring and goods and services
- Does not include cash advance

# Full Budget Authority Implications

- Allowed by CMS 1915(c), 1915(i), 1915(k), 1915(j) and 1115 Medicaid authorities
- Lack of cash option may limit access to services that are cash only or cannot be planned for in advance

# Full Budget Authority Example

- Same as Full Budget Authority+ except no cash advance which limits her transportation
- Reallocates the \$45 month to increased worker time
- Disadvantages
  - Relies more heavily on Medicaid transportation and special services bus
  - Uses extra worker time for shopping since it is difficult for her to get to the store

# Moderate Budget Authority

- Budget can be used to hire staff only
  - No cash or goods and non-employee services
- Participant can hire, supervise, set wages
- Workers can carry out any task for participant within the full scope of their service plan
- Often monthly allocations in with a “use-it-or-lose-it” approach

# Moderate Budget Authority Implications

- Allowable under Medicaid 1915(c), 1915(i), 1915(k), 1915(j), and 1115 authorities
- Participant continues to have considerable authority over worker tasks
- May be the simplest approach administratively
  - Amenable to an individual functional assessment approach to budget determination
- Participants may end up substituting worker hours for services that might have been replaced by a purchased good or service
  - E.g., needing increased meal prep time instead of purchasing a microwave

# Moderate Budget Authority Example

- Frieda can spend her \$1,173/month budget on staff only
- Now has an extra \$170 from fully flexible budget to spend on workers
- Hires neighbor as a third worker 12 hours per month @ \$12.50/hour since he is essentially on-call to perform *ad hoc* tasks such as filling in for workers who are sick or doing her shopping
- Disadvantages
  - ❑ Transportation remains a problem
  - ❑ Needed home adaptations more difficult to acquire
  - ❑ Unspent funds not available after allocation period

# Basic Budget Authority

## The Pewter Standard

- Budget divided into service categories
  - E.g., personal care, respite care, community support
- Authority to hire staff
- Participants may have authority to hire, supervise, terminate and set wages for workers within specific categories
  - E.g., respite
- Allocation system may value one category higher than another
  - E.g., categorical budget for community support may assume a higher worker skill level than for respite
- Workers generally can work across categories



# Basic Budget Authority Implications

- Allowable by CMS rules
- Allows individual to set the rate of pay
- Limits choice and control compared to other points on the spectrum, but much more choice and control than employer authority only
- May require increased monitoring of participant spending
- Participant may direct only some categories
  - E.g., only respite

# Basic Budget Authority Example

- Frieda's \$1,173 budget is divided
  - \$600 for personal care
  - \$373 for community support
  - \$200 for respite
- Frieda only has control over her respite and personal care budget lines
  - Personal Care
    - Hires 1 primary worker for 30 hours/month @ \$13/hour
    - Hires a secondary worker, Fred, for 13 hours/month @ \$10/hour
  - Hires Fred as her respite worker for 17 hours/month at \$10/hour
  - Remember the 15% employer taxes make her worker cost \$14.95 and \$11.50/hour
- Agency manages her community supports

# Questions?



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