



Applied
Self-Direction

Respite Voucher Learning Collaborative: Introduction to Self-Direction

1/20/2022

Who are we?

- The Applied Self-Direction team works with self-direction programs to maximize the level of choice and control that people can exercise over their own services and supports
- We provide education and training to state program administrators, service coordinators, case managers, and other stakeholders across the country



Agenda

- Brief overview of self-direction (aka participant direction or consumer direction)
- Update on federal policies with possible implications for respite voucher programs
 - Cures Act & electronic visit verification
 - IRS & tax issues
 - Department of Labor & employment policies
- Discussion to inform forthcoming updates to the *Participant-Directed Respite Guidebook*
 - Please be ready to participate 😊

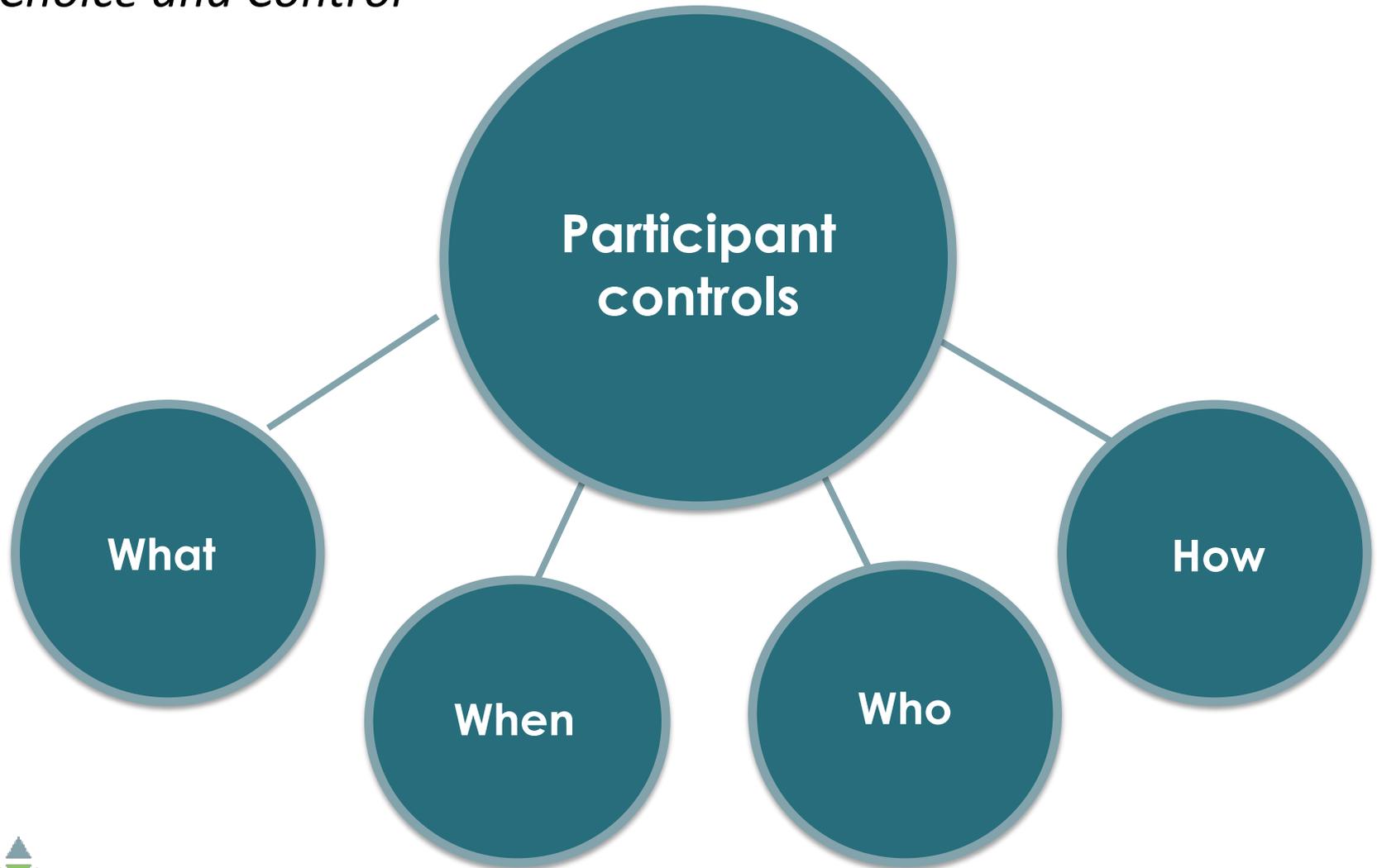


Self-Direction Overview



What is Self-Direction?

Choice and Control



Traditional Services

Self-Directed Services



Continuum of Self-Direction

Individuals share feedback and preferences with agency

Individuals have **EMPLOYER AUTHORITY** to hire, manage, and fire workers

Individuals have **EMPLOYER AUTHORITY** and can set workers' rate of pay

Individuals have **EMPLOYER and BUDGET AUTHORITY** to make flexible purchases



Participant-Directed Respite Programs

- Respite voucher programs offer person and family centered services. **The family caregiver is typically considered the ‘participant’ receiving services. The care recipient also has input into the respite provider or program used it at all possible.**
- In participant-directed respite programs **the participant has the ability to hire, train, pay, and supervise the respite provider.**
- Programs may vary in their structure, but family caregivers typically have the flexibility to **use respite when they really need it** and sometimes allow them to **hire friends and family members** who are familiar with the person with a disability.



Policy Updates



21st Century Cures Act & Electronic Visit Verification (EVV)

- EVV systems must electronically verify:
 - ❑ The type of service performed,
 - ❑ The individual receiving the service,
 - ❑ The date of the service,
 - ❑ The location of the service,
 - ❑ The individual providing the service, and
 - ❑ The time the service begins and ends.

- EVV is required required by the 21st Century Cures Act for **Medicaid** personal care services
 - ❑ If your program does not receive Medicaid funding, your program is not subject to EVV requirements
 - ❑ If your program does receive Medicaid funding, your state Medicaid agency will make you aware if your program is subject to EVV requirements



Tax and Labor Issues

- As self-direction grew throughout the 1990s and early 2000s, there was initially very little guidance on how to handle tax and labor compliance
- Internal Revenue Service (IRS) and Department of Labor (DOL) both made significant efforts to learn more about these services and develop rules for compliance
- Key landmarks:
 - **IRS Revenue Procedure 2013-39:** A complete set of federal tax filing requirements for participants in publicly funded programs who hire their own workers directly, and who use a Financial Management Services provider to process payroll
 - Consolidated a decade+ worth of previous IRS guidance
 - **Department of Labor Home Care Final Rule:** Issued to strengthen minimum wage and overtime protections for the home care workforce, including workers in self-direction



A Quick Overview of Federal Tax Requirements (1/3)

- Tax obligations are dependent on whether a worker is an employee or independent contractor under IRS rules
- Workers that provide personal care-type services for a set hourly wage on an indefinite basis are more likely to be employees
- Workers that provide intermittent services, are given less instruction on how to perform the task, and are paid a flat rate are more likely to be independent contractors
- *Note: This is not legal advice and Applied Self-Direction staff are not attorneys.*



A Quick Overview of Federal Tax Requirements (2/3)

- Employees generally have income, Medicare, and Social Security taxes withheld from their pay
 - Their employers also pay Federal and State Unemployment and the employer's share of Social Security and Medicare taxes on top of the wages paid
- At year-end, employers issue Form W-2 to each employee showing wages paid and taxes withheld
- Independent contractors generally do not have taxes withheld from their pay, and instead pay self-employment taxes on their own
- Independent contractors must be issued a [Form 1099-NEC](#) if they received \$600 or more in payments in a calendar year



A Quick Overview of Federal Tax Requirements (3/3)

- It is important to make sure workers are classified appropriately based on the task they are doing
- The IRS enforces steep penalties for misclassifying workers as independent contractors when they are truly employees
- If you're not sure, you can get a formal determination from IRS by filing [Form SS-8](#)



A Quick Overview of Labor Requirements (1/2)

- Labor compliance requirements also depend on whether a worker is an employee or independent contractor for Fair Labor Standards Act (FLSA) purposes
 - Employees are bound by FLSA overtime and minimum wage requirements
 - Independent contractors are **not** bound by FLSA minimum wage and overtime requirements
- To make everything especially confusing, the Dept. of Labor uses a different test of employment than the IRS does
- IRS only recognizes one employer per employment relationship
- DOL can recognize one employer or multiple “joint” employers per employment relationship



A Quick Overview of Labor Requirements (2/2)

- DOL is generally not concerned with how a worker is classified for IRS purposes, i.e. whether a worker receives a Form 1099 or a W-2
- A common misconception is that any worker who receives a 1099 is automatically exempt from overtime/minimum wage requirements
 - This is not correct – tax and labor obligations are completely separate and independent of one another
- DOL focuses more on the degree of economic dependence the worker has on the employer, the length of the working relationship, and the degree of control the employer has over the work
- This fact sheet may be helpful:
<https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship>



Minimum Wage and Overtime

- Employees must be paid at least federal or state minimum wage (whichever is higher, depending on the state)
 - The hourly rate can be determined for per-diem payments by dividing the per diem rate by the hours actually worked each day
 - Must be inclusive of any employee expenses, such as mileage expenses for job-related driving
- Employees must be paid “time and a half” for each hour worked above 40 in a workweek
 - An employee whose normal wage is \$10 per hour must be paid \$15 per hour for every hour they work over 40 each week
- Minimum wage and overtime compliance is typically assessed on a per-week basis, not a per-day basis



Exemptions to Minimum Wage and Overtime Rules

- **Live-in exemption**: Employees who provide domestic services in or around an employer's home, and live with the employer permanently or on an "extended basis", are not required to be paid overtime for hours worked over 40. Must still be paid at least minimum wage.
- **Companionship exemption**: Employees whose main job requirement is to provide "fellowship and protection" to a person with a disability and who do not perform skilled medical tasks may be exempted from federal minimum wage and overtime rules
 - ❑ To qualify for the companionship exemption, the worker cannot spend any more than 20% of their workweek assisting with ADLs/IADLs
 - ❑ DOL designed this exemption with the intent that very few workers would qualify



Exemptions to Minimum Wage and Overtime Rules

- Only individuals/families who hire workers directly are allowed to use the federal live-in and/or companionship exemptions (and only if the worker qualifies!)
- If the employee is employed by a “third party”, such as an agency or other professional organization, the agency/third party must always pay minimum wage/overtime **no matter what**
- Some states have state laws prohibiting use of these exemptions, so make sure you are familiar with your state’s rules
 - Most state Department of Labor websites will have this information publicly posted



Where Can I Go To Learn More?

- Information on shared living arrangements in publicly funded programs: <https://www.dol.gov/agencies/whd/fact-sheets/79g-flsa-shared-living>
- Determining the difference between independent contractor or employee: <https://www.edola.org/wp-content/uploads/2015/10/WageHourDivisionIndContractorFactSheet.pdf>
- A compendium of DOL resources focused on workers who provide services to people with disabilities: <https://www.dol.gov/agencies/whd/direct-care/resources>



Guidebook Discussion



Discussion Questions

- What is important for the Applied Self-Direction team to understand about your respite program?
- What are the current top challenges for your respite program?
- How has your program been impacted by the pandemic?
- What are your goals for the future?



Discussion Questions

- What updates would you most like to see to the *Participant-Directed Respite Guidebook*?

- Sections include:
 - ❑ Involvement in the Program (stakeholder engagement)
 - ❑ Program Structure
 - ❑ Quality & Risk Management
 - ❑ Appendix I: Case Studies & State Examples
 - ❑ Appendix II: Building Support, Dealing with Opposition, and Dissemination of Information
 - ❑ Appendix III: Potential for Other Funding Sources





Questions?



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