



Balancing Choice and Risk

August 14, 2019

Logistics

- Phone lines are muted
- For questions or technical issues during the session, contact Lisa Gold via Chat box or lgold@us.ibm.com
- Slides are accessible for download during this webinar.
- The slide deck will be posted on Medicaid.gov, <https://www.medicaid.gov/medicaid/hcbs/training/index.html>

Introductions

CMS:

- George Failla, Deputy Division Director, Division of Long Term Services and Supports

IBM Watson Health - Health & Welfare Special Reviews Team Members:

- Alissa Halperin
- Frank Tetrick

Today's Session

- Second webinar in a series of training sessions and educational material as part of the H&W SRT contract
 - The April 3rd Webinar on Risk Assessment and Mitigation can be found here:
<https://www.medicaid.gov/medicaid/hcbs/downloads/training/risk-assessment-mitigation.pdf>
- **Balancing Choice and Risk**
 - Honoring choice and self determination
 - Assuring health and welfare of individuals

Session Objectives

- Review the dignity of risk, the importance and meaning of individual choice and self-determination.
- Discuss why it is important to balance choice and risk.
- Describe individual-specific components of balancing choice and risk.
- Describe system-specific components of balancing choice and risk.

Participant Feedback

- Feedback is important to address states' training needs.
- Please post questions or comments in the Chat box to All Participants during the session.
- Link to an evaluation survey (Survey Monkey) posted at the end of the session today.
 - Email will also be sent to all webinar participants on August 16 with the link to the survey

Ensuring Beneficiary Health and Safety in Group Homes Through State Implementation of Comprehensive Compliance Oversight

- Joint Report issued in January 2018 by Interagency Work Group including:
 - Office of Inspector General
 - Administration for Community Living
 - Office for Civil Rights
- Referenced OIG series of reviews conducted from 2012 to 2016
 - OIG found that health and safety policies and procedures were not being followed. Failure to comply with these policies and procedures left group home beneficiaries at risk of serious harm.
 - These are not isolated incidents but a systemic problem – 49 states had media reports of health and safety problems in group homes.

Interagency Work Group and CMS Next Steps

- Developed and presented four Model Practices (presented in the Joint Report) that address key components of ensuring beneficiary health and safety and that align with 1915(c) HCBS waiver requirements:
 - Incident Management and Investigation Program
 - Quality Assurance Program
 - Mortality Review Program
 - Incident Management Audit Program
- CMS concurrence to train states on the alignment of Model Practices with existing Medicaid requirements and form a **Special Reviews Team** to assist states in addressing systemic problems in state implementation of and compliance with health and welfare oversight systems

Dignity of Risk

Dignity of risk is the idea that self-determination and the right to take reasonable risks are essential for dignity and self esteem and so should not be impeded by caregivers, concerned about their responsibility to ensure health and welfare.

Dignity of Risk (Cont'd)

"Overprotection may appear on the surface to be kind, but it can be really evil. An oversupply can smother people emotionally, squeeze the life out of their hopes and expectations, and strip them of their dignity. Overprotection can keep people from becoming all they could become. Many of our best achievements came the hard way: We took risks, fell flat, suffered, picked ourselves up, and tried again"Robert Perske

Self-Determination and Individual Choice

- **What are Self-Determination and Individual Choice**
 - What does it mean to have self-determination?
 - What do we mean by informed choice?
 - How do we support choice for individuals?
 - How do we distinguish what is 'Important To' from what is 'Important For' an individual?

What Does it Mean to Have Self-Determination?

Self-Determination refers to a person's right:

- to make choices about their own life.
- to have the same rights and responsibilities as others.

It is about being in charge of your own life.

It is not necessarily the same thing as self-sufficiency or independence.

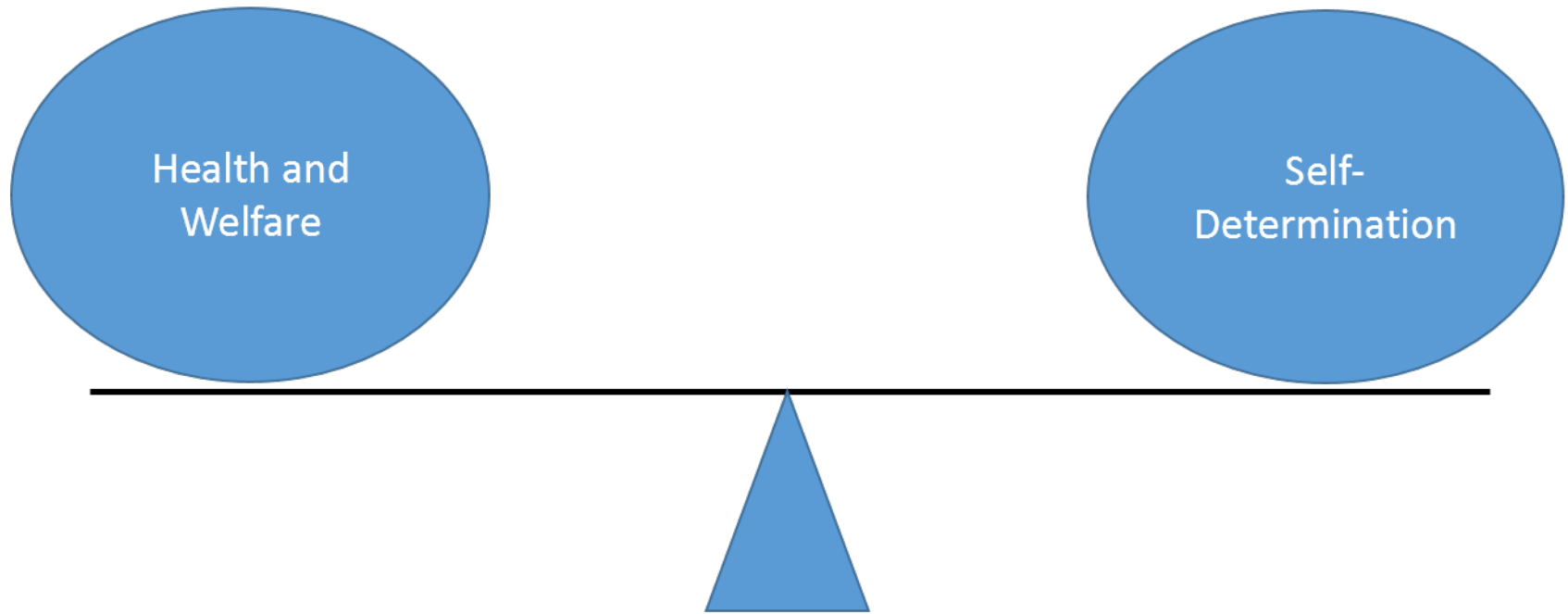
What is Individual Choice?

- Choices include:
 - Everyday decisions: going shopping at the grocery store, sleeping during the day, staying up all night, playing loud music, making a cup of tea
 - Healthcare treatment options: taking medications, refusing care or services
 - Decisions that are not recommended for anyone (smoking, eating nothing but cake for all meals of the day, etc.)
 - Decisions that are not recommended for the specific individual based on their circumstances (drinking sugary beverages all day when diabetic)
 - Decisions that are objectively dangerous to self and others (smoking in bed, having a barbeque grill inside the house)

Participant Feedback

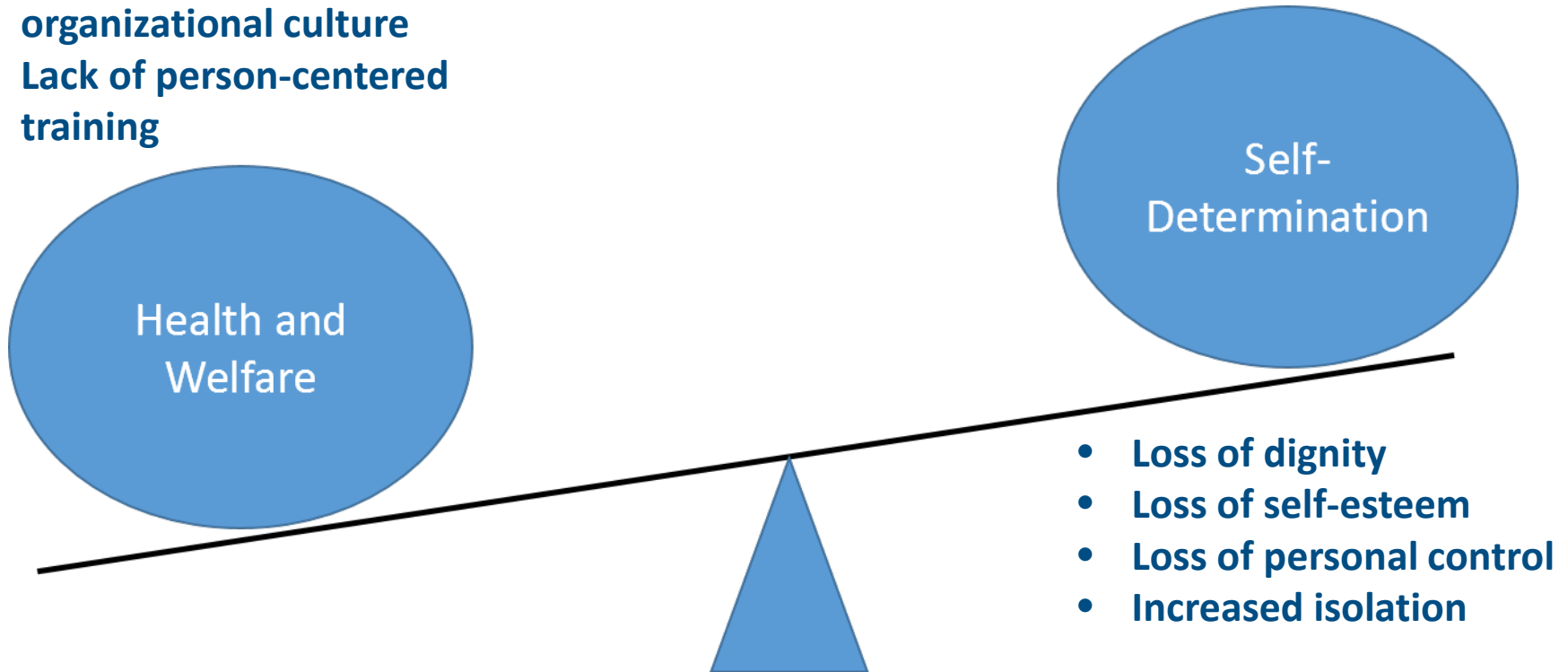
- As we review these important concepts of Self-Determination and Individual Choices, we are interested in your thoughts and ideas:
 - Are there other examples of choice you wish to share?
- Please share your comments or questions in the Chat box during this segment.

Seeking Balance

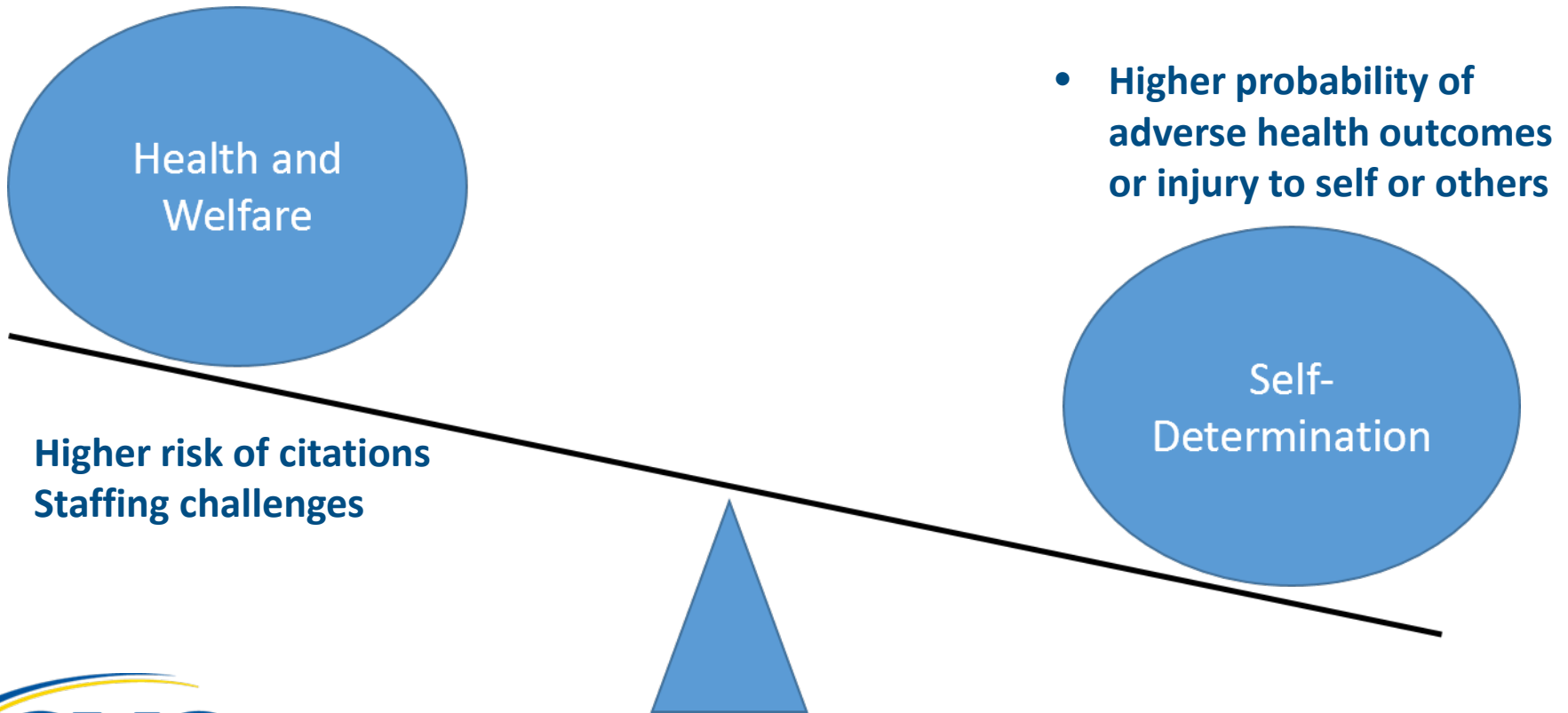


Health and Welfare Imbalance

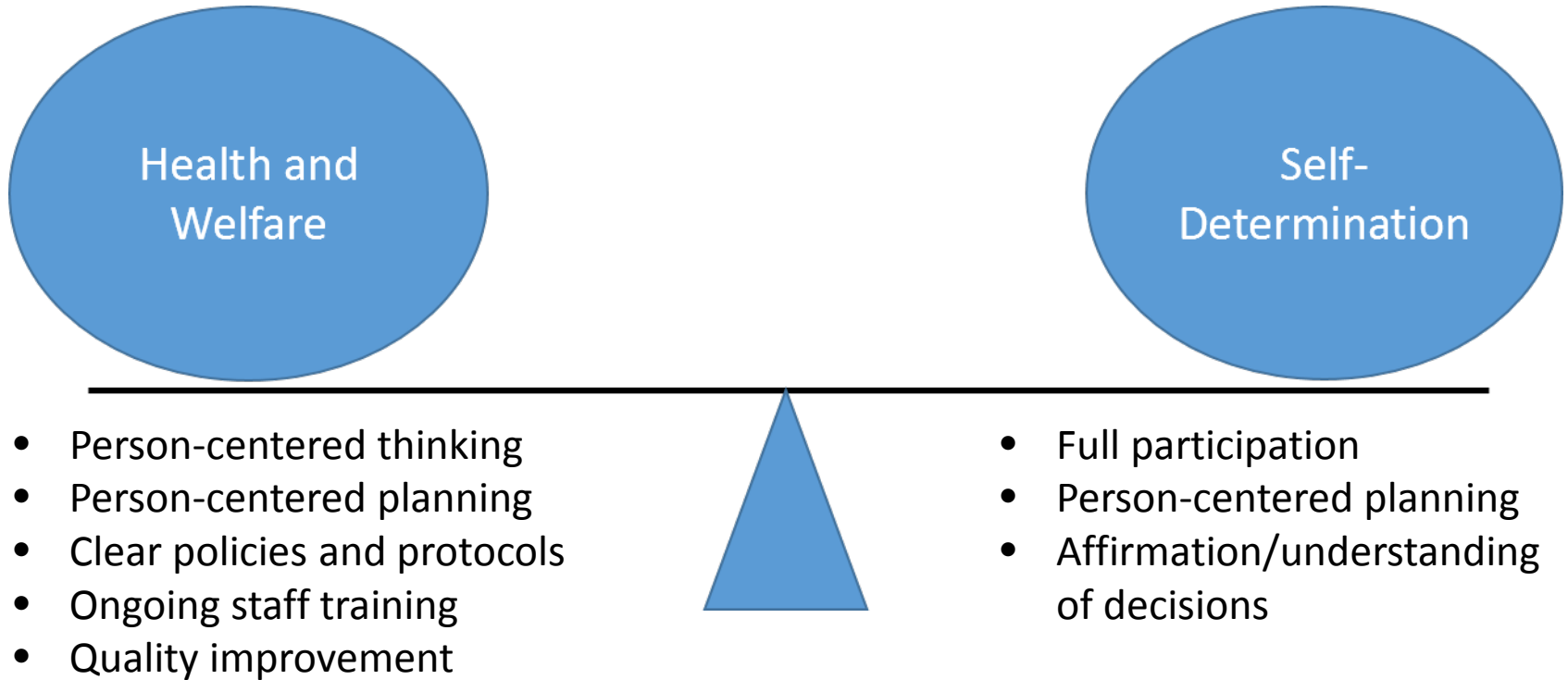
- New provider
- Past citations
- Overly risk-adverse organizational culture
- Lack of person-centered training



Self-Determination Imbalance



Finding Balance



Why It's Important to Balance Choice and Risk

- Everyone has a right to self-determination, to live their life to the fullest.
- Dignity and autonomy demand a balance.
- It's possible to honor choices and mitigate risks.
- Federal law and regulations require a balance.

Federal Regulations/Guidance: 1915(c)

42 CFR 441.725 – Person-Centered Service Planning

- Requires that the planning process:
 - (a)(2) allows the individual to direct the process and make informed choices and decisions;
 - (a)(6) Offers choices to the individual regarding the services and supports the individual receives and from whom.
- Requires that the Person-Centered Service Plan (PCSP) reflect choices, goals and desired outcomes of the individual, how those will be met, and
 - (b)(6) "Reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed."

42 CFR 441.725 – Person-Centered Service Planning (Cont'd)

Further requiring in 441.725(b)(13) that modifications to the PCSP be documented so as to:

- (i) Identify a specific and individualized assessed need.
- (ii) Document the positive interventions and supports used prior to any modifications to the PCSP.
- (iii) Document less intrusive methods of meeting the need that have been tried but did not work.
- (iv) Include a clear description of the condition that is directly proportionate to the specific assessed need.

42 CFR 441.725 – Person-Centered Service Planning (Cont'd)

- (v) Include a regular collection and review of data to measure the ongoing effectiveness of the modification.
- (vi) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- (vii) Include informed consent of the individual; and
- (viii) Include an assurance that the interventions and supports will cause no harm to the individual."

Health and Welfare Assurance and Four Sub Assurances

The state demonstrates that it has designed and implemented an effective system for assuring waiver participant health and welfare.

1. The State demonstrates on an ongoing basis that it identifies, addresses and seeks to prevent instances of abuse, neglect, exploitation and unexplained death.
2. The State demonstrates that an incident management system is in place that effectively resolves those incidents and prevents further similar incidents to the extent possible.
3. The state policies and procedures for the use or prohibition of restrictive interventions (including restraints and seclusion) are followed.
4. The state establishes overall health care standards and monitors those standards based on the responsibility of the service provider as stated in the approved waiver.

Service Plan Assurance and Two of the Sub Assurances

The state demonstrates it has designed and implemented an effective system for reviewing the adequacy of service plans for waiver participants.

1. Service plans address all members' assessed needs (including health and safety risk factors) and personal goals, either by the provision of waiver services or through other means.
2. Participants are afforded choice between/among waiver services and providers.

Risk Assessment and Mitigation

1915(c) Waiver Application Requirement

- Specify
 - how potential risks to the participant are assessed during the service plan development process and
 - how strategies to mitigate risk are incorporated into the service plan subject to participant needs and preferences.
- In addition, describe how the service plan development process addresses backup plans and the arrangements that are used for backup.

Balancing Choice and Risk: 3 Individual Components

1. Identify and document choices and risks during initial assessment and reassessment.
2. Develop person-centered service plan that includes individualized strategies to honor choices and address each risk.
3. Regularly revisit choice and risk discussion, analyze data (e.g. critical incident management system), monitor individual risks and modify plans as needed.

Individual Component 1: Assessment to Identify Choices and Risks

- **Identifying Choices and Risks:** To facilitate balancing choice and risk, the initial assessment should gather information about:
 1. The individual's choices
 2. The individual's capacity to make decisions around those choices
 3. Risks presented by the individual's needs, goals, preferences, choices and/or presented by the environments in which they will exercise those choices
 4. Prior mitigation approaches used and their efficacy
 5. Adverse outcomes previously experienced related to the risks identified

Individual Component 1: Assessment to Identify Choices and Risks (Cont'd)

- **What are the individual's interests and their impact on self-determination and individual choice?**
 - Should include both areas with and without risk
 - Should be a comprehensive list that is a dynamic and fluid, not static and fixed
- **What is the individual's capacity to make decisions in the areas identified above?**
 - Important element for determining whether the individual can understand the implications, potential consequences, etc. of the risks

Individual Component 1: Assessment to Identify Choices and Risks (Cont'd)

- **What are the risks presented by the individual's needs, goals, preferences, and choices?**
 - Gather information on the following types of risks
 - Physical health
 - Behavioral health
 - Personal safety, safety of others
 - Financial
 - Environmental

Individual Component 1: Assessment to Identify Choices and Risks (Cont'd)

- **What (if any) prior mitigation approaches have been used and what is/was their efficacy?**
 - Identify what pieces were/are in place to mitigate the risks identified as well as past strategies and the efficacy of these different efforts.
- **What (if any) are the adverse outcomes previously experienced related to the risks identified?**
 - Understanding what has previously occurred will help in understanding the likelihood of harm from the risk(s) and will help in measuring the weight and scope of the potential harm from the risk(s).

Individual Component 1: Example A

- Choice = Meal Prep - The individual wants to cook independently and whenever she wants.
- Assessment should:
 - Identify the details of the individual's choice. (Specific thoughts and ideas about cooking her meals – food interests/frequency of meals)
 - Determine the risks to the individual related to the choice of independent, unrestricted meal preparation whenever she wants and the associated legal restrictions, if any. (Familiarity with use of oven/stove burners/other appliances/utensils/dietary restrictions due to existing health factors)
 - Capture what, if any prior mitigation approaches have been used and what is/was their efficacy.
 - Discover what, if any adverse outcomes have been previously experienced related to the individual's preparing meals independently.

Individual Component 1: Example B

- Choice = The individual wants to independently navigate the community
- Assessment should:
 - Identify the details of the individual's choice. (What is the extent of the navigation – where/how often/what if any resources are required)
 - Determine the risks to the individual related to the choice of independently moving about the community. (Risk of being stranded, vulnerability to harm/exploitation, complexity associated with using needed resources)
 - Capture what, if any prior mitigation approaches have been used related to independent navigation, and what is/was their efficacy, and
 - Discover what, if any adverse outcomes have been previously experienced related to independent navigation.

Participant Feedback (Cont'd)

- As we review these elements of assessing choices and risks, we are interested in your thoughts and ideas:
 - Are there other elements of balancing choice and risk captured in your state assessment processes?
- Please share your comments or questions in the Chat box during this segment

Individual Component 2: Planning for Choices and Risks

- **Person-centered service planning discussion should include:**
 - The choice that raises concerns, including:
 - why the choice is important to the individual,
 - what potential risks
 - What are the benefits to the individual
 - What are the alternatives to the chosen activity were discussed.

Individual Component 2: Planning for Choices and Risks (Cont'd)

- **PCSP must reflect how the needs, goals, preferences, choices and risks that were identified during the assessment process will be addressed**
 - Must expressly articulate the individual's choices
 - And, where risks are identified, include risk mitigation strategies
 - Outline how the efficacy of these approaches will be measured
 - Detail when this element of the plan will be reviewed, revisited, and revised, if needed

Individual Component 2: Planning for Choices and Risks (Cont'd)

- **How to specifically include risk mitigation strategies for each risk identified?**
 - Affirm choice decisions with agreement on risk mitigation
 - Reflect a willingness for trial, testing, and temporary responses that will be revisited, reviewed, and revised, if necessary
 - Adopt a holistic approach containing:
 - Care management elements
 - Personal care/staff task adjustments
 - Specific training, policies, and protocols, necessary to implement the plan
 - Family/natural supports
 - Behavioral approaches
 - Covered Items and Services
 - Technological tools

Individual Component 2: Example A

- Choice = Meal Prep - The individual wants to cook independently and whenever she wants.
 - Person-Centered Planning process includes
 - Discussion of risks: e.g. – risk of injury, food safety concerns, fire safety concerns
 - Review of alternatives to independent, unrestricted meal preparation – e.g. joint meal prep, providing pre-prepared meals
 - Affirmation of individual’s choices/informed consent: that she wants to prepare meals on her own, whenever she wants
 - Agreement on risk mitigation: food safety training, meal prep/cooking training, assessment of individual’s ability to apply information from the training, installation of fire extinguishers and training in how to use fire extinguishers, limits on time of day at first to ensure staff are present in the home during independent meal prep, installation of additional smoke detectors, etc.
 - Staff role in reminders or ongoing education
 - Outline when and how the balance will be revisited, analyzed, monitored, and modified

Individual Component 2: Example B

- Choice = Navigating the Community - The individual wants to travel out into and around their community independently and whenever they want.
 - Person-Centered Planning process includes
 - Discussion of risks: e.g. – risk of injury, physical safety/exploitation concerns, risk of non-compliance with meal schedule or nutritional intake requirements, risk of non-compliance with medication schedule, disruption to other scheduled services, etc.
 - Review of alternatives to independent navigation of community – e.g. joint outings with friends, staff supervised community navigation
 - Affirmation of individual’s choices/informed consent: that they want to navigate on their own, whenever they want
 - Agreement on risk mitigation: travel safety training, neighborhood familiarity training, assessment of individual’s ability to apply information from the training, training on use of phone if running late or get lost, limits on time of day for independent travel at first to ensure staff are available if needed, etc.
 - Staff role in reminders or ongoing education
 - Outline when and how the balance will be revisited, analyzed, monitored, and modified

Participant Feedback

- As we review these elements of person-centered service planning to address choices and risks, we are interested in your thoughts and ideas:
 - Are there other elements of balancing choice and risk captured in your state service planning processes?
- Please share your comments or questions in the Chat box during this segment

Individual Component 3: Revisit, Analyze, Monitor, and Modify

- **In order to ensure balance is sustained, it is essential to**
 - Regularly revisit choice and risk discussion/decisions made
 - Analyze data (e.g. assessment tool; critical incident management system)
 - Monitor individual risks
 - Modify plans as needed

Individual Component 3: Revisit, Analyze, Monitor, and Modify (Cont'd)

- **Reviewing experience, outcomes, and the individual's satisfaction/quality of life regularly ensures that the right balance will be or has been achieved.**
 - Compromises reached may have been agreed upon on a trial basis.
 - “Least Restrictive Approaches” chosen may be too restrictive.
 - Risk level, likelihood, etc. may have changed with time or new circumstances.

Individual Component 3: Example A

- Choice = Meal Prep - The individual wants to cook independently and whenever she wants.
 - Revisit, Analyze, Monitor, and Modify
 - In the timeframe outlined in the PCSP or sooner, as circumstances dictate
 - Review any real or perceived adverse incidents or events in which the risks materialized
 - Revisit alternatives to independent, unrestricted meal prep – e.g. group cooking opportunities
 - Re-affirm the individual’s choices/informed consent or revise choice
 - Modify or reconfirm the agreement on risk mitigation: approved trainings may have been completed, the individual may have demonstrated skills that demonstrate reasons for decreased or dismissed risk
 - Revise, if necessary, staff role in reminders or ongoing education
 - Specify new plan for revisiting, analyzing, monitoring, or modifying balance of choice and risk

Individual Component 3: Example B

- Choice = Navigating the Community - The individual wants to travel out into and around their community independently and whenever they want.
 - Revisit, Analyze, Monitor, and Modify
 - In the timeframe outlined in the PCSP or sooner, as circumstances dictate
 - Review any real or perceived adverse incidents or events in which the risks materialized
 - Revisit alternatives to independent, unrestricted navigation of community – e.g. group outings
 - Re-affirm the individual's choices/informed consent or revise choice
 - Modify or reconfirm the agreement on risk mitigation: approved trainings may have been completed, the individual may have demonstrated skills that demonstrate reasons for decreasing or dismissing the risk
 - Revise, if necessary, staff role in reminders or ongoing education
 - Specify new plan for revisiting, analyzing, monitoring, or modifying balance of choice and risk

Participant Feedback

- As we review these elements of revisiting, analyzing, monitoring, and modifying person-centered service planning to address choices and risks, we are interested in your thoughts and ideas:
 - Are there other actions your state takes or that you would recommend?
- Please share your comments or questions in the Chat box during this segment.

Balancing Choice and Risk: 3 Systemic Components

1. Ensure tools, policies and practices reflect concepts of and processes to achieve balance.
2. Conduct ongoing staff training and education.
3. Conduct ongoing system-wide quality improvement.

Systemic Component 1: Tools, Policies, Practices, and Processes

Ensure tools, policies, and practices reflect concepts of and processes to achieve the balance we've discussed.

- Assessment tools and processes should be designed to gather information and facilitate the discussion described above.
- PCSP templates and requirements must reflect the elements to operationalize the balancing discussed and agreed upon.

Systemic Component 2: Ongoing Training and Education

It is critical to conduct staff training and provide ongoing training and education around the philosophy of and policies around balancing choice and risk.

- Training should take into consideration that different philosophies, professions, cultures come with different perspectives about choice and risk.
- Level setting and re-training are important.

Systemic Component 3: Monitor and Conduct Quality Improvement

Conducting ongoing quality improvement is a key to ensuring that your policies and practices are being implemented as designed with the ultimate goal of providing quality services to HCBS participants.

- Review trainings, policies, procedures, tools, etc. to ensure they are effectuating the balance approach/philosophy adopted.
- Review success of mitigation strategies incorporated under the policies and procedures so the state is clear on the efficacy of the approach

Systemic Component and Waiver Assurances

Returning to the obligations to balance choice and risk:

- The process of implementing these systemic components facilitates satisfaction of the Health and Welfare and Service Plan assurances discussed at the outset of this presentation.

Participant Feedback

We are interested in your thoughts and ideas about the systemic components to achieving balance.

Are there other activities undertaken by your state to ensure systemic adoption and implementation of balancing choice and risk?

- Please share your comments or questions in the Chat box.

QUESTIONS?

THANK YOU

Please let us know how we did today:

- **Immediate Feedback** – Follow this Survey Monkey link now to provide immediate feedback

<https://www.surveymonkey.com/r/J3DWV9L>

- **Feedback at a Later Date:** Email will also be sent to all participants on August 16 with the link to the survey if you are unable to complete this survey now