From Theory to Practice: Supported Decision-Making and Financial Decisions

National Resource Center for Supported Decision-Making

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Financial Capability

- Combination of knowledge and skills to inform financial decisions and behaviors.
- Management of financial resources effectively to maintain and improve financial stability and security.

FINANCIAL COMPETENCE

- Combination of financial knowledge and judgement to independently manage one's financial resources and/or direct the management of one's financial resources by someone else.

FINANCIAL COMPETENCE

Involves high levels of direct involvement, control and choice in

- how financial resources are expended
- how financial resources are managed
- how financial resources are saved

Financial Education

Involves classroom and/or experiential learning to build financial knowledge and skills regarding core competencies

- budgeting
- managing credit and debt
- saving and asset building
- making informed financial decisions

Financial Coaching

Helping one to one and in small group settings to

- assess financial health
- set financial goals
- improve financial well-being

Low Expectations

For people with disabilities, there have been historically low expectations about financial competence.

For children, youth, and adults with disabilities, there have been limited efforts made to offer financial education and financial coaching to improve financial capability and financial outcomes.

Key Knowledge and Skills

IEP's, IPE's, and HCBS Individual Support Plans have not typically set objectives to build key knowledge and skills to improve financial capability as part of efforts to advance self-sufficiency.

Key Knowledge and Skills

- Money Management, Budgeting
- Debt Management
- Credit Management
- Public Benefits Management
- How to Secure Good Advice
- How to Connect to Resources/Programs/Services

Desired Behavior/Actions

Financial decisions are based on good information and actions driven by positive financial goals.

- **Earning Money:** Individuals work to their full potential and utilize available employer benefits and work incentives.
- **Using Money:** Individuals budget to meet their needs and attain their goals, utilize affordable financial products, and use credit wisely, including proactive debt management.
- **Saving Money:** Individuals pay themselves first, have emergency funds, and use matched savings programs and other protected savings opportunities to build assets.
- **Protecting Money:** Individuals access and use available insurance options to protect the money they have and their ability to earn more.
- **Understanding Money:** Individuals build their knowledge of money, connect to trusted entities for advice, and use available resources and supports.

New Context to Think About Financial Capability

- Workforce Innovation and Opportunity Act (WIOA)
- Achieving A Better Life Experience Act (ABLE)
- CMS Home and Community-based Settings Final Rule

WIOA (2014)

- Defines and Promotes Financial Literacy For Youth and Adults with and without Disabilities as part of Employment and Career Pathways Goal Setting
- Affirms goal of competitive integrated employment for youth and adults with disabilities as an expected outcome to advance economic sufficiency
- Limits use of 14c Subminimum Wage Certificate (Section 511)

ABLE (2014)

- Creates new options for millions of individuals with disabilities to set savings goals, open ABLE accounts and not jeopardize eligibility for public benefits

What is an ABLE Account?

- ABLE accounts:
  - Are established in the new Section 529A Qualified ABLE Programs
  - Are qualified savings accounts that receive preferred federal tax treatment
  - Enable eligible individuals to save for disability related expenses
- Assets in and distributions for qualified disability expenses will be disregarded in determining eligibility for *most* federal means-tested benefits

WHAT ARE SOME IMPORTANT REQUIREMENTS OF ABLE ACCOUNTS?

- Each eligible individual may have only one ABLE account.
- "Designated beneficiary" is the account owner (although another person such as a parent or guardian may be allowed signature authority over the account).
- Originally accounts were required to be established in the designated beneficiary's state of residence, or in a contracting state, **THIS IS NO LONGER THE CASE AS A RESULT OF A RECENT CONGRESSIONAL AMENDMENT TO THE LAW*.**
- Total annual contributions may not exceed the federal gift tax contribution, which is currently $14,000 (this will periodically be adjusted for inflation).
- Multiple individuals may make contributions to an ABLE account.
- Aggregate contributions may not exceed the state limit for 529 savings accounts, typically set at over $250,000.

WHO IS ELIGIBLE TO BE AN ABLE ACCOUNT BENEFICIARY?

To be eligible, individuals must meet two requirements:

1) Age requirement: must be disabled before age 26
2) Severity of disability:
   - Have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits (Title XVI or Title II of the Social Security Act) and are receiving those benefits,

OR

   - Submit a "disability certification" assuring that the individual holds documentation of a physician's diagnosis and signature, and confirming that the individual meets the functional disability criteria in the ABLE Act (related to the severity of disability described in Title XVI or Title II of the Social Security Act)*.

What may funds from an ABLE account be used for?

- Distributions from an ABLE account may be made for "qualified disability expenses".
- "Qualified disability expenses" are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life.
- The term "qualified disability expenses" should be broadly construed to permit the inclusion of basic living expenses and should not be limited to:
  - expenses for items for which there is a medical necessity, or
  - which provide no benefits to others in addition to the benefit to the eligible individual.

Qualified disability expenses may include the following:

- Education
- Housing
- Transportation
- Employment training and support
- Assistive technology and personal support services
- Health, prevention, and wellness
- Financial management and administrative services
- Legal fees
- Expenses for oversight and monitoring
- Basic Living Expenses (NPRM)
- Funeral and burial expenses
- Any other expenses approved by the Secretary of the Treasury under regulations consistent with the purpose of the program

Distributions for non-qualified expenditures will be subject to tax consequences and may affect eligibility for federal means tested benefits.

How do ABLE account assets impact eligibility for federal benefits?

ABLE assets will be disregarded or receive favorable treatment when determining eligibility for *most* federal means-tested benefits:

- Supplemental Security Income(SSI): For SSI, only the first $100,000 in ABLE account assets will be disregarded.
  - SSI payments (monthly cash benefit) will be suspended if the beneficiary's account balance exceeds $100,000, but SSI benefits (eligibility) will not be terminated. *Funds above $100,000 will be treated as resources.*
  - Housing expenses intended to receive the same treatment as all housing costs paid by outside sources. However, new SSA instructions (POMS) will treat housing expenses as resources only if distributed in one month and held until the following month.

Impact on Federal Benefits (cont.)

Medicaid: ABLE assets are disregarded in determining Medicaid eligibility

- Medicaid benefits are NOT suspended if the ABLE account balance exceeds $100,000 (that is **only** applicable to the SSI cash benefit)
- Medicaid Payback: Any assets remaining in the ABLE account when a beneficiary dies, subject to outstanding qualified disability expenses, can be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account (the state would have to file a claim for those funds)*
- For purposes of this section, the state is considered a creditor of the ABLE account, not a beneficiary

Tax Implications

- Contributions to an ABLE account are made with post-tax dollars.
- *Federal taxation:* In general, ABLE programs are exempt from taxation. Distributions from ABLE accounts for qualified disability expenses are exempt from taxation. With certain exceptions, distributions not used for qualified disability expenses are taxable and subject to an additional 10% tax.
- *State taxation:* State tax consequences will vary. Some states provide significant tax incentives for contributions to 529 accounts and may provide similar incentives for contributions to ABLE accounts.

CMS HCBS Settings Final Rule (42CFR Part 441) (2014)

- Promotes individual choice and control in using allocated financial resources
- Promotes moving away from and out of sheltered work to opportunity for competitive integrated employment
- Promotes self determination and management of individual budgets
- Requires State Transition Plans

What do WIOA, ABLE, and CMS Final Rule have in common?

- raising expectations about individual capability
- encouraging individual knowledge and skill development
- put in place supports that improve financial decision making and performance

Supported Decision-Making

- Can help build individual knowledge and skill
- Inform and improve financial decision making
- Reduce the need for a representative payee, guardian, or individual acting with power of attorney

ABLE Accounts

- Owner is the beneficiary
- Next stage of development are tools and strategies to enhance financial competency

Learn More About ABLE

- Visit WWW.ABLENRC.ORG
- State ABLE Programs
  - Ohio
  - Tennessee
  - Nebraska
  - Florida

Approach To Financial Competency

- Financial Education
- Debit Card with features
- Power of Attorney requirements

More Information and Contact

National Resource Center for Supported Decision-Making
SupportedDecisionMaking.Org

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Quality Trust for Individuals with Disabilities
www.DCQualityTrust.org

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The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

SUPPORTED DECISION-MAKING AND FINANCIAL DECISIONS

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About

The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

EDUCATE, EQUIP, EMPOWER

Consumers and their advocates to obtain quality, affordable long-term services and supports

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Financial Exploitation - Risks and Opportunities

Fastest growing form of elder abuse

- 1 in 5 Older Americans report that they have been a victim

Significantly under-reported

Older adults are attractive targets

- Cognitive and physical impairment
- Isolation
- Availability of assets

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Impact of Financial Exploitation

Harm to the Older Adult

- Emotional effects – depression, fear, withdrawal
- Loss of dignity
- Loss of personal funds and/or property – items of value
- Loss of current housing (e.g. discharged from a LTC facility due to nonpayment)
- Pain and suffering
- Lost of trust and damaged relationships
- Physical and medical issues

Cost

- A 2010 study estimated the annual financial loss by victims of financial abuse to be at least $2.9 billion. An increase of 12% from a 2008 estimate of $2.6 billion.*
- Medicare, Medicaid, Social Security benefits, pensions, hospitalizations, fines/corrective action, legal fees

*

Metlife Study of Elder Financial Abuse (2011)

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Types of Financial Exploitation

Occasion/ Opportunity

Perpetrator wants what the victim has

- Scams
- Theft/Robbery

Metlife Study of Elder Financial Abuse (2011)

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Desperation

- Perpetrator so desperate for money they will do anything
- Often family or friends
- Many family members are dependent on the elder (e.g. housing)

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Predation/ Occupation

- Trust is developed specifically to exploit elder in the future
- Often a new "friend," romantic interest or
- Trusted professional

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Preventing Financial Exploitation – Strategies for Supported Decision-Making

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Watch for Warning Signs

- Unpaid bills
- Sudden changes in spending or savings
- Frequent or expensive gifts to family members, friends, caregivers
- Pressure from a family member/friend to sign documents immediately
- Changes beneficiaries
- Not having the needed items or supplies – food, clothing
- Discharge notice issued from a long-term care facility
- for non-payment
- Possessions disappear
- Fear, agitation, or changes in behavior – especially around a particular person
- Relative, caregiver, or friend isolates the older adult, keeping them from having visitors or phone calls

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Create a Plan

- Review finances and pay bills together with the individual on a regular basis, i.e. weekly or bi-weekly
- Agree together how much money will be kept in any one account and what it will be used for
  - 80% of income will be available for paying bills and living expenses; 20% the individual can do with it whatever they want
- Talk to the individual frequently about how to respond to requests for money, i.e. scams or friends or family members that ask for money
- Protect personal information – do not give out personal information like your Social Security or bank account numbers

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Create a Plan (cont)

- Set up advance care planning to document the elder's wishes –
  - Health care proxy or agent
  - POLST/MOLST
  - Estate planning
- Know his/her friends and caregivers
- Sign up for Do Not Call lists
- ….other

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Be Proactive

- Set up alerts with financial institutions to be notified if there is suspicious activity or suspected fraud
- Appoint only a trusted individual as your agent under a power of attorney. Require them to report to a 3rd party
- Avoid appointing paid caregivers as agents under power of attorney
- Share concerns with trusted individuals and with the older adult

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Congregate Living

If living in a congregate setting, such as a nursing home, assisted living facility, or personal care home

- Become educated about, and understand, the rights and responsibilities of the resident, any family member, any legal representative, and the facility around keeping personal property safe, responding to concerns about theft or exploitation
- Review your records, including financial records, on a regular basis
- Keep an inventory of belongings, and update it regularly. Have a copy placed in the resident's chart.
- Lock up money or valuables that the individual wants to keep with him/her when not being used
- Be observant of new friends or family members suddenly appearing on the scene
- Label all the resident's belongings
- Report any concerns immediately

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Know Your Rights

Nursing home residents:

- Manage finances
- Access records
- Be informed
- Discharge protections

Assisted living or personal care homes:

- Requirements are different for each state.
- All states require that residents be protected from abuse, neglect, and exploitation.

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Facility Responsibilities

PREVENT

- Staffing
- Person Centered Care
- Facility Policies and Procedures
- Strong Leadership
- Communication

ACT

- Stop the abuse
- Support the victim
- Report
- Investigate
- Remedy

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Report Suspicions

- Law Enforcement
- Office of Attorney General
- Adult Protective Services
- Long-Term Care Ombudsman Program
- Protection & Advocacy Agency
- Long-term care facility administrators or staff (if applicable)

Understand abuse reporting requirements in your state – who is required to report, and to whom – law enforcement, APS, state licensing agency?

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Resources

- Consumer Financial Protection Bureau
  www.consumerfinance.gov/older-americans/
- National Consumer Voice for Quality Long-Term Care
  www.theconsumervoice.org
- National LTC Ombudsman Resource Center
  www.ltcombudsman.org
- National Adult Protective Services Association
  www.napsa-now.org
- National Center on Elder Abuse
  www.ncea.aoa.gov
- National Committee for the Prevention of Elder Abuse
  www.preventelderabuse.org

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