

DEPARTMENT OF DEVELOPMENTAL SERVICES

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December 21, 2018

TO: REGIONAL CENTER EXECUTIVE DIRECTORS

SUBJECT: FINANCIAL MANAGEMENT SERVICES

Participants in the Self-Determination Program (SDP) will get support from a person or business to help them pay for services they need. This person or business is called a Financial Management Services provider. The purpose of this correspondence is to explain the roles and requirements for a Financial Management Services provider in the SDP.

What is a Financial Management Services provider?

A Financial Management Services, or FMS, provider plays a key role in supporting people who choose to get their regional center services through the SDP. Everyone in SDP must use an FMS provider to help:

- manage the individual budget and pay for services, including paying employees;
- assist with hiring employees;
- make sure providers are qualified to deliver services; and,
- help providers get a criminal background check, if needed.

The exact duties of the FMS depend on how a participant chooses to arrange for their services. See "Types of Financial Management Services" below for more details.

Why is an FMS required?

State law [Welfare & Institutions Code §4685.8(d)(3)(E)] requires that participants in the SDP use an FMS. An FMS provides support in many ways including, but not limited to, paying service providers, ensuring providers are qualified, ensuring all employer-related labor and tax laws are followed and reporting to the participant and regional center to help inform the budget. The FMS does not control the budget; the FMS supports participants in paying for the services they choose.

"Building Partnerships, Supporting Choices"

Types of FMS

Depending on how services are arranged by a participant, more than one of the models below may be used. For example, a participant may need to buy a device that helps them communicate. They may also need to hire an assistant to help support them at their job. In this example, the FMS would process the payment for the communication device as a “Bill Payer” while also assisting the participant in their role as either a sole or co-employer for the job assistant.

- **FMS as Bill Payer:** (also known as the Fiscal Agent model)
A participant may choose this model of FMS provider when goods or services are purchased from a business. The FMS providing services in this capacity writes checks and pays for goods and services listed in the IPP. No employer/employee relationship exists between the FMS, the service provider, or the participant. The business is responsible to provide the items or workers and the FMS provider writes the check for the goods or services provided. The business maintains the employer/employee relationship with any workers and therefore is responsible for all applicable employment laws and taxes and to obtain appropriate insurances (i.e., worker’s compensation).
- **Participant and FMS as Co-Employer:**
A participant may choose this model if they want to share some of the employer roles and responsibilities with an FMS. While the FMS provider in this model is the employer of record, the participant maintains the ability to hire and terminate employees with input from the FMS provider. The FMS provider maintains the primary employer liability and required insurances. The FMS also assists by verifying provider qualifications and processing payroll.
- **Participant as Sole Employer:** (also known as the Fiscal/Employer Agent)
A participant may choose this model if they want to be the direct employer of those providing services. The FMS providing services in this model assists the participant to abide by all applicable employment laws, verifies provider qualifications and processes payroll. The participant is required to obtain any necessary insurances related to employment (i.e., worker’s compensation).

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Selecting a Financial Management Services Provider

All FMS providers are required to be vendored by a regional center (see enclosure for FMS provider requirements.) The regional center will identify FMS providers available in their area. The cost for FMS services are negotiated between the participant and the FMS provider, but may not exceed the maximum rates posted on the Department of Developmental Services' website at: <https://www.dds.ca.gov/SDP/docs/FMSRates.pdf>. The costs for these services are paid from the participant's individual budget; however, the individual budget cannot be increased to cover the cost of the FMS.

If there are any questions regarding this information, please contact sdp@dds.ca.gov.

Sincerely,

Original signed by:

JIM KNIGHT
Assistant Deputy Director
Community Services Division

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cc: Regional Center Administrators
Regional Center Chief Counselors
Regional Center Community Services Directors
Association of Regional Center Agencies
State Council on Developmental Disabilities

Enclosure

Financial Management Services Provider Requirements

In order to provide Financial Management Services (FMS), an FMS provider must:

1. Be vendored by a regional center in accordance with general vendorization processes and requirements. Separate vendorization is not required in each regional center catchment area for FMS providers. However, when the FMS provides services in a catchment area other than the vendoring regional center, the FMS provider must submit to the user regional center copies of the vendorization documents approved by the vendoring regional center.
2. Meet the applicable requirements in Sections 58884, 58886, and 58887 of Title 17 of the California Code of Regulations (see below).
3. File a bond with the vendoring regional center, issued by a surety company to the State of California as principal, in an amount that is no less than 20 percent of the total of all individual budgets for participants served by the FMS. The bond shall be reviewed and/or renewed annually or more frequently as necessary to ensure that the minimum threshold is maintained. This requirement only applies if the total of all individual budgets for participants served by the FMS during a state fiscal year is expected to be five hundred thousand dollars (\$500,000) or more.
4. Invoice and receive payments from regional centers no more than two times per month, on regularly scheduled dates each month.
5. Make purchases/submit invoices for only those services and supports identified in the participant's individual program plan and individual budget.
6. Provide monthly statements to the participant and regional center that include:
 - a. The amount of funds allocated by budget category;
 - b. The amount spent in the previous 30 days; and,
 - c. The amount of funds remaining in the individual budget.
7. When applicable, assist in verifying that service providers meet requirements (e.g., license, certification, education, experience) for the service they will provide.
8. Verify individuals providing direct personal care to the participant obtain a background check and receive clearance prior to providing services.
9. Verify that providers are not "Excluded Individuals", defined as those that have been placed on either the U.S. Department of Health and Human Services Office of Inspectors' General (OIG) List of Excluded Individuals/Entities or the Department of Health Care Services (DHCS) Medi-Cal Suspended and Ineligible Provider List of persons, or individuals and entities that have been convicted of a criminal offense related to involvement in any program under Medicare, Medicaid or the Title XX services program, or meet the criteria included in Title 17, Section 54311(a)(6).
10. Verify the completion of the assessment process to ensure that services are provided in settings that meet the Home and Community-Based Services' settings requirements. This applies to services provided in settings:
 - a. That are designed primarily or exclusively for the provision of services to people with developmental disabilities, or
 - b. Where individuals with developmental disabilities are grouped or clustered for the purpose of providing services.

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Financial Management Services Provider Requirements (continued)

11. Comply with all vendor requirements outlined in Section 54327 of Title 17, including reporting to the regional center any special incidents, as defined in this section that the FMS has knowledge of or that has been reported to the FMS by the participant, a service provider, or other person.
12. Agree to accept a monthly rate for each participant that does not exceed the rate schedule published on the Department's website at:
<https://www.dds.ca.gov/SDP/docs/FMSRates.pdf>.

Title 17, California Code of Regulations Applicable to Financial Management Service Providers in the Self-Determination Program

§58884. Definitions

(2) Co-Employer means the adult consumer or family member who manages employees that provide specified Participant-Directed Services and who works with the Financial Management Service Co-Employer. The Co-Employer makes recommendations to the Financial Management Services Co-Employer on who to hire to perform a specified Participant-Directed Service.

(3) Employer means the adult consumer or family member who hires and engages an employee or procures an entity to perform a specified Participant-Directed Service.

(4) Financial Management Service Co-Employer (FMS Co-Employer) means a vendored entity that functions with the Co-Employer to hire an employee pursuant to the Co-Employer's recommendation and pays the employee to perform the Participant-Directed Services.

(5) Financial Management Service Fiscal/Employer Agent (FMS F/EA) means the vendored entity that functions as the adult consumer's agent or family member's agent in performing payroll duties according to IRS regulations, processing payments for the reimbursement of goods and services, and performing other employer responsibilities that are required by federal and state law. Under this arrangement, the adult consumer or family member is the employer.

§58886. General Requirements for Participant-Directed Services

(b) When an adult consumer or family member makes the decision to use Participant-Directed Services, the regional center shall:

(1) Provide information regarding their responsibilities and functions as either the Employer or Co-Employer;

(2) Provide information about the requirements regarding the use of an FMS Co-Employer or FMS F/EA;

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Financial Management Services Provider Requirements (continued)

(3) Assist the adult consumer or family member to identify and choose an FMS Co-Employer or FMS F/EA as follows:

(A) An adult consumer or family member who chooses to be the Employer as described in Section 58884(a)(3) shall make use of a FMS F/EA vendor pursuant to Section 58884(a)(5);

(B) An adult consumer or family member who chooses to be a Co-Employer as described in Section 58884(a)(2) shall make use of a FMS Co-Employer pursuant to Section 58884(a)(4); and,

(C) Neither the adult consumer nor the family member shall be the FMS Co-Employer nor the FMS F/EA.

(c) The Employer or Co-Employer duties and authority over workers include, but are not limited to, the following:

(1) Recruits workers;

(2) Verifies worker qualifications;

(3) Specifies additional worker qualifications based on consumer needs and preferences;

(4) Determines worker duties;

(5) Schedules workers;

(6) Orients and instructs workers in duties;

(7) Supervises workers;

(8) Evaluates worker performance; and,

(9) Verifies time worked by employees and approves timesheets.

(d) The Employer or Co-Employer has the following additional responsibilities:

(1) The adult consumer or family member in the capacity as an Employer pursuant to

(b)(3)(A) above, has independent authority to:

(A) Hire workers; and,

(B) Terminate workers.

(2) The adult consumer or family member in the capacity as Co-Employer pursuant to (b)(3)(B) above, has authority to make recommendations to the FMS Co-Employer for hiring and terminating workers.

(e) The regional center shall vendor the Employer and Co-Employer in accordance with vendor requirements contained in California Code of Regulations, Title 17, Sections 54310 and 54326.

§58887. Service Components for Participant-Directed Services

(a) The FMS F/EA, pursuant to (b) below, and the FMS Co-Employer, pursuant to (c) below, shall be vendored to provide the following services to support the adult consumer or family member with the employment of workers to carry out authorized Participant-Directed Services:

(1) Collect and process timesheets of workers providing Participant-Directed Services;

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Financial Management Services Provider Requirements (continued)

- (2) Assist the family member or adult consumer in verifying the worker's eligibility for employment as evidenced by a copy of the social security number or any document pursuant to California Code of Regulations, Title 17, Section 50604(d)(3), if individual worker is used;
 - (3) Process payroll, withholding, filing and payment of applicable federal, state and local employment related taxes and insurance for authorized Participant-Directed Services;
 - (4) Track, prepare and distribute monthly expenditure reports to the Employer or Co-Employer and the regional center;
 - (5) Maintain all source documentation related to the authorized service(s) and expenditures;
 - (6) Maintain a separate accounting of funds used for each adult consumer or family member Participant-Directed Service; and,
 - (7) Ensure payments do not exceed the amounts and rates authorized by the regional center subject to the limits of California Code of Regulations, Title 17, Section 58888.
- (b) FMS F/EA–Service Code 490.
- (1) A regional center shall classify an applicant as an FMS F/EA if the applicant meets vendor requirements described in California Code of Regulations, Title 17, Sections 54310 and 54326, and demonstrates the ability, skills, and knowledge to carry out both the responsibilities in (a) above and the following additional requirements of an FMS F/EA to assist an adult consumer or family member functioning as an Employer:
 - (A) For the purposes of processing payroll, apply for and obtain authorization under Section 3504 of the Internal Revenue Code to be an agent for each adult consumer or family member that the FMS F/EA represents;
 - (B) During the period from when the FMS F/EA makes application to the Secretary of the Internal Revenue Service (IRS) until receiving IRS approval, the FMS F/EA shall be responsible for applicable federal, state and local employment-related taxes and insurance; and,
 - (C) Process payments for reimbursements to entities providing goods and services in accordance with applicable IRS regulations.
 - (2) The FMS F/EA may process payroll for services provided by individual workers, and reimbursements for services provided by other entities.
- (c) FMS Co-Employer–Service Code 491.
- (1) A regional center shall classify an applicant as an FMS Co-Employer if the applicant meets vendorization requirements described in California Code of Regulations, Title 17, Section 54310 and demonstrates the ability, skills, and knowledge to carry out both the responsibilities in (a) above and the following additional requirements specific to assisting an adult consumer or family member functioning as a Co-Employer:
 - (A) Hiring of individual employees who have been selected by the adult consumer or family member to provide Participant-Directed Services;

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Financial Management Services Provider Requirements (continued)

(B) Providing other employer-related supports to the Co-Employer as specified in the consumer's IPP.

(2) The FMS Co-Employer shall process payroll for services provided by the employees.

(d) The FMS Co-Employer and the FMS F/EA shall submit billings/invoices to the regional center for reimbursement for expenditures for authorized Participant-Directed Services and meet the requirements of California Code of Regulations, Title 17, Section 50604.

(e) The FMS Co-Employer and the FMS F/EA shall reimburse the worker(s) who provide(s) the authorized Participant-Directed Service(s).