

Financial Management Services (FMS): Facilitating the Use of Individual-directed Support Services



Presented to:

AOA Nursing Home Diversion Program Grantees

Presented by:


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I. What are Some Challenges/Issues Related to Using Self-directed Services?


- Managing the employer-related tasks associated with self-directed services can be a challenge for individuals and their representatives.
- Initially, state program agencies and individuals/representatives tried to reduce the employer-related burden by classifying home-based service workers as independent contractors.
- However, the IRS has determined, in general, that home-based workers (e.g., support service workers) are employees and not independent contractors (see FY 2001 IRS National Taxpayer Advocate Report and IRS Notice 2003-70).
- Under IRS common law rules, anyone who performs services for an entity is the entity's employee if the entity can control what will be done and how it will be done even if the entity gives the employee freedom of action. What matters is that the entity has the right to direct and control the details of how the services are provided and the outcomes (IRS Publication 15A, 2008).
- Some of the challenges/issues related to using self-directed services can be addressed through the provision of self-directed supports.

I. What are Self-directed Supports?

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- Self-directed supports assist elders and individuals with disabilities and their representatives in using self-directed services and also can provide protections and safeguards for both participants/representatives and state program agencies.
 - Two types of self-directed supports are:
 - Information and Assistance (I & A) in Support of Self Direction
 - Financial Management Services (FMS)

I. *What are Self-directed Supports?*

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- **I & A Supports** - assist individuals in managing their self-directed support services (i.e., assistance with developing and implementing a service plan and budget, accessing services and workers).
 - **Financial Management Services (FMS)** – are provided to (a) prepare and distribute payroll and address Federal, state and local employment tax, labor, and workers' compensation insurance rules and other requirements that apply when the individual functions as the employer of his/her workers; (b) make financial transactions on behalf of the individual; and (c) generate reports for individuals and state program agencies. In some models, FMS can act as a neutral “bank” for the management of individuals' public benefit funds.
 - This presentation will focus on Financial Management Services (FMS) and their advantages and limitations when used by individuals/representatives (including caregivers) receiving AoA grant funds.

II. What Are Financial Management Services (FMS)?

- The Centers for Medicare and Medicaid (CMS) defines **Financial Management Services (FMS)** as a:

Service/function that assists participants and/or their representatives to:

- Manage and direct the disbursement of public funds contained in the individual-directed budget;
- Facilitate the completion of some employer-related tasks related to self-directed home and community-based service worker as an agent of or co-employer with the individual/representative-employer. Employer tasks include but are not limited to: processing payroll, withholding Federal, state and local taxes and making tax payments to the appropriate tax authorities, brokering and processing the payment for workers' compensation and other available insurances; and
- Perform fiscal accounting, make invoice payments for approved goods and services and generate expenditure reports to the individual/representative and state authorities.

II. What Are Financial Management Services (FMS)? (continued)

- In general, functions related to FMS include, but not limited to:

Employer Authority

- Assisting the individuals to verify workers' citizenship status
- Collecting and processing worker timesheets
- Processing payroll including managing Federal, state and local employment –related taxes and insurance

Budget Authority

- Establishing and maintaining separate accounts for self-directed budgets
- Receiving, disbursing and tracking funds for payment of self-directed services under an agreement with Medicaid or operating agency and any balances
- Processing and paying invoices for approved goods and services
- Preparing and distributing periodic fiscal reports to state/local program agencies and individuals/representatives

Additional Functions/Activities

- Executing and maintaining Medicaid provider agreements under written agreement with Medicaid agency

III. *Types of Financial Management Service (FMS) Entities*

Type of Self-directed Support	Operating Entity	Worker's Employer	Responsibilities
Fiscal Conduit (FMS)	Government or Vendor	Individual or representative unless agency-based services used.	Disburses public funds via cash or voucher payments to individuals/representatives and performs other related duties.
Government Fiscal/Employer Agent (F/EA) (FMS)	State/County (IRC §3504 and IRS Rev. Proc. 80-4, 1980-1 C.B. 581 and as modified by IRS Proposed Notice 2003-70)	Individual or representative unless agency-based services used.	Acts as <i>employer agent</i> performing all that is required of an employer for wages paid on his/her behalf & all that is required of a payer for back-up withholding. Receives, disburses and tracks public funds, manages payroll & related taxes & insurances, processes & pays vendors for approved goods & services, may brokers workers' compensation & other insurances, process workers' background checks, generate reports, as applicable. May choose to delegate agent tasks to a reporting or subagent per IRS <i>Proposed Notice 2003-70</i> .
Vendor Fiscal/Employer Agent (F/EA) (FMS)	Vendor (IRC §3504 and IRS Rev. Proc. 70-6, 1970-1 C.B. 420)	Individual or representative unless agency-based services used.	Same as Government Employer Agent described above except as vendor in accordance with IRS Rev. Proc. 70-6. A vendor F/EA may delegate tasks to a reporting agent per IRS Form 2678 (May 2007 version forward).
Agency with Choice (FMS)	Agency (e.g., CIL, Home Health, AAA or social service)	Joint-employer arrangement-Agency or its subcontracting agency (e.g., CIL, Home Health Agency, AAA or social service agency) and individual or representative	Joint-employer model. Agency is primary employer for human resource, payroll & Medicaid provider requirements. Individual/representative is "managing employer" for selecting/referring worker for hire, participating in training & setting terms & conditions of work, supervising worker activities & discharging worker from work site. The agency may provide array of supportive services.

IV. What Are The Various Models of Financial Management Services (FMS)?

- Financial Management Services (FMS) is CMS' umbrella term for fiscal supports. Fiscal supports FMS models recognized by CMS include:
 - Government Fiscal/Employer Agent
 - Vendor Fiscal/Employer Agent
 - Agency with Choice Provider
- A 2001 Inventory of individual-directed Service Programs found the most popular FMS model at the time was Vendor F/EA followed by Agency with Choice and Government F/EA. Since IRS now allows Government F/EAs to delegate agent tasks to a reporting agent or subagent, this model has gained in popularity with states since 2003.
- Two other FMS models used by states include:
 - Fiscal Conduit
 - Public Authority/Workforce Council

V. What Is A Government Fiscal/Employer Agent?

- Under the **Government Fiscal/Employer Agent** model, a state or local government entity may apply for and receive approval from the IRS to be an **employer agent** on behalf of individuals/representatives performing all that is required of an employer for wages paid on their behalf and all that is required of the payer for requirements of back-up withholding, as applicable. It receives, disburses and tracks public funds on behalf of individuals; assists with completing participant enrollment and worker employment forms; and conducts criminal background checks of prospective workers; and verify workers' citizenship status. It also prepares and distributes workers' payroll including withholding, filing and depositing of Federal and state income tax withholding and employment taxes and locality taxes and may process and pay vendor invoices for approved goods and services; generate reports for state program agencies, Information & Assistance (I & A) providers and individuals/ representatives; and broker workers' compensation and other insurance, as required.
- A Government F/EA may or may not choose to delegate employer agent tasks to a reporting or subagent per *IRS Proposed Notice 2003-70*.

VI. *What are the Advantages and Challenges of the Government F/EA Model?*

■ Advantages

- Provides individuals/representatives with a high level of choice and control (including being the common law employer of the service workers they hire directly) while providing supports to reduce the employer-related burden and protections and safeguards (personal and programmatic) for individuals and state program agencies.
- Allows a government entity to provide employer-related supports to individuals/representatives as an F/EA without being considered the common law employer of individuals' workers.
- Currently, there is clear written guidance from the IRS for Government F/EAs to file and pay all Federal income tax withholding and Medicare and Social Security (FICA) taxes and Federal unemployment taxes in the aggregate (terrific paperwork burden reduction feature).

VI. *What are the Advantages and Challenges of the Government F/EA Model?* (continued)

■ Challenges

- If a state implements the Government F/EA model, it can only claim administrative matching Medicaid funds because freedom of choice of provider (F/EA) is limited under this model.
- If a reporting or subagent is not used, a state program agency may not have the resources and knowledge necessary to perform as a Government F/EA.
- Government F/EAs can provide an array of fiscal supports and skills training to individuals and their representatives but should not provide employer-related supports directly to workers other than the payroll function to avoid being considered a co-employer.
- Government F/EAs must develop policies and procedures to monitor its performance and any reporting or subagent it may delegate tasks to under an administrative contract.
- Currently, Government F/EAs can only process payroll for individuals receiving public funds (no private or combination of private and public funds can be managed) according to IRS.

VII. What Is A Vendor Fiscal/Employer Agent?

- Under the **Vendor Fiscal/Employer Agent (F/EA)** model, a private or public vendor entity may apply for and be approved by the IRS to act as an **employer agent** on behalf of individuals/representatives and perform similar tasks as a Government F/EA.
- In accordance with IRS Form 2678, *Payer Appointment of Agent* (May 2007 version of Form forward), a Vendor F/EA may delegate agent tasks to a reporting agent.
- However, using reporting agents has caused some problems in some states due to reporting agents' lack of knowledge and experience related IRS' and state tax agencies' F/EA and household employer tax filing and depositing requirements.
- It should be noted that a reporting agent has no liability for any unfulfilled federal tax obligations, including penalties and interest, in the eyes of the IRS. So it is important for Vendor F/EAs to have effective contracts with reporting agents they use that hold them accountable for any unfulfilled federal tax obligations and be able to monitor their performance effectively. The same applies to Government F/EAs that choose to use a reporting agent.

VIII. What are the Advantages and Challenges of the Vendor F/EA Model?

■ **Advantages**

- Provides individuals/representatives with a high level of choice and control (including being the common law employer of the workers they hire directly) while providing supports to reduce the employer-related burden for individuals and representatives and assuring states of fiscal and program accountability.
- Allows a vendor entity to provide employer-related supports to individuals/representatives as an F/EA without being considered the common law employer of individuals' workers.
- Allows states to purchase F/EA services at a competitive price from entities that have knowledge and experience operating as F/EAs.
- Allows states to offer freedom of choice of F/EA provider and receive service matching Medicaid funds (although less is more).

VIII. What Are The Advantages And Challenges of the Vendor F/EA Model? (continued)

■ Challenges

- States need to have the knowledge necessary to recruit and select/certify Vendor F/EAs and to monitor their performance effectively.
- Vendor F/EAs can provide an array of fiscal supports and skills training to individuals/representatives but not to workers, except for payroll, without being considered a co-employer.
- Some pending issues with IRS regarding Vendor F/EAs filing and paying FUTA and issues with state tax, and workers' compensation insurance agency staff regarding the role and responsibilities of a Vendor F/EA versus a traditional service provider continue to be a challenge for some Vendor F/EAs.
- Offering freedom of choice of Vendor F/EA provider can be a resource challenge for states. But, restricting choice of provider may be less costly for a state even without the receipt of Medicaid service matching funds.
- Currently, Vendor F/EAs can only process payroll for individuals receiving public funds (no private or combination funds) per IRS.

IX. What Is An Agency With Choice Provider?

- Under the *Agency with Choice* model, a variety of types of agencies (e.g., centers for independent living, social service agencies, home health and area agencies for the aging or developmental disabilities, and organizations developed specifically to fulfill the role), provide services to individuals in a self-directed manner. The agency and the individual/representative enter into a **co-employer arrangement** (e.g., agency typically is the **primary employer** for human resources, payroll, and Medicaid provider requirements and individual /representative acts as the **secondary** or **managing employer** for recruiting/selecting workers and referring them to the agency for hire, participating in training workers and determining the terms and conditions of work, supervising workers' activities and discharging them from the work site). The agency also may provide employer supports such as establishing and maintaining a worker registry, assisting with/providing emergency back-up staff, providing individual/family and worker training and providing worker management supports when requested by the individual/representative.

X. What Are The Advantages And Challenges of the Agency with Choice Model?

■ Advantages

- Agency with Choice FMS option is beneficial for individuals and their representatives who may not want to be the common law employer of their workers and want to receive a range of individual-directed support while having choice and control over the services received and the individuals who provide them.
- Since Agency with Choice - FMS is a co-employer model, the agency can provide worker-related assistance (i.e., worker referrals to individuals/representatives for regular and emergency-back up workers, and worker training at their request).
- Since Agency with Choice-FMS is a co-employer model, it can provide services and supports directly to individuals' workers, at their request.
- Can be used by individuals/representatives who pay for services with private or a combination of private and public funds.


X. What Are The Advantages And Challenges of the Agency with Choice Model?

(continued)

■ **Challenges**

- Agency with Choice providers who do not implement the philosophies of self determination and self direction effectively are just traditional agency providers.
- This model may not ideal for the receipt and distribution of individuals' individual budget funds due to a potential conflict of interest of being both a "provider of direct care services" and an "a funds manager" and the concern about "service steering."
- Some Agency with Choice providers have expressed concerns about potential liability, actual or perceived with the model including labor law compliance when individuals/representatives are allowed to establish the rate of pay for their workers.
- States need to establish Medicaid standards for Agency with Choice providers and develop and implement certification/operations monitoring procedures to make sure providers are offering choice and control effectively to individuals/representatives and consistently across the state and target populations.

XI. What is a Fiscal Conduit?

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- Some individuals/representatives have expressed a wish to manage all aspects of their individual-directed supports, including payroll for the workers their hire directly.
 - This option can be implemented with Older American Act and state general funds and in conjunction with Medicaid 1115 waiver or state plan services under section 1915(j) of the DRA of 2005.
 - The primary function of a ***Fiscal Conduit*** is to receive and disburse individuals' individual budget funds in cash or through the use of vouchers and tracking receipts, disbursements and any balances.
 - Usually, public funds are deposited in a separate bank account established by the individual/representative.
 - Often a Fiscal Conduit provides employer/payroll skills training, test individuals'/representatives' knowledge as a condition of using the Fiscal Conduit, and periodically monitor Fiscal Conduit performance to ensure program/fiscal accountability.

XII. What Are The Advantages And Challenges of the Fiscal Conduit Model?

■ **Advantages**

- Provides individuals and representatives the highest level of choice and control over their services and the individuals who provide them.

■ **Challenges**

- Provides individuals and representatives with few participant-directed supports.
- The model cannot be used in conjunction with Medicaid 1915 (c) waiver or regular Medicaid state plan services (non 1915(j)).
- States have to develop and implement monitoring tools and procedures to determine the Fiscal Conduit and individuals/representatives are effectively performing the required task in compliance with federal and state labor, tax, workers' compensation insurance and program rules and regulations.

XIII. What is a Public Authority (PA) /Workforce Council (WC)

- The PA/WC model is implemented using a multiple employer arrangement with independent or quasi-governmental entities, state or local community-based service programs or human service departments and individuals/representatives, often in conjunction with the implementation of collective bargaining.
- The individual/representative is the employer for recruitment, training, supervision and discharge of workers.
- The state/county program agency may serve as employer for managing payroll and related employment taxes.
- The PA/WC is an independent or quasi-governmental entity that serves as employer for collective bargaining purposes and, in some cases, have performed the payroll task.
- PA/WC also may maintain a worker registry, offer worker and individual/family training and emergency back-up services.

XIV. What are the Options and Limitations Related to the Use of FMS When Using AoA Funds?

- Individuals and representatives often use AoA grant funds, in addition to private funds, to pay for needed home and community-based (HCB) services.
- When this occurs, a Government or Vendor F/EA cannot provide FMS services to these individuals/representatives because currently F/EAs are not allowed manage private or a combination of private and public funds according to the IRS.

XIV. What are the Options and Limitations Related to the Use of FMS When Using AoA Funds? (continued)

- Thus, individuals and representatives using AoA grant and private funds to pay for needed HCB services have two options for obtaining assistance with managing payroll for the home and community-based service workers they recruit and/or hire directly.
 - Use a local accountant to prepare the workers' payroll and file and pay of federal and state employment taxes; or
 - Purchase direct care services through an Agency with Choice FMS provider.

XIV. What are the Options and Limitations Related to the Use of FMS When Using AoA Funds? (continued)

- **Use a local accountant to prepare the workers' payroll and file and pay of federal and state employment taxes**
 - Must use the IRS Schedule H to file federal employment-related taxes for household employees including support service workers and pay federal employment based on IRS payment schedule (See IRS Publication 926, Household Employer Guide).
 - File and pay state employment taxes based on State Department of Revenue and Unemployment Tax rules.
 - Individual/representative-employers must be aware of workers' compensation insurance requirements for workers in their state.
 - Challenge for state/local program administrators is monitoring if individuals are performing the payroll and federal and state tax filing and payment tasks correctly.

XIV. What are the Options and Limitations Related to the Use of FMS When Using AoA Funds? (continued)

- Purchase direct care services through an Agency with Choice FMS provider
 - Agency with Choice provider should allow the individual/representative to recruit and refer his/her worker in for hire and assignment back to the individual/representative without significant barriers.
 - Agency with Choice provider should allow the individual/representative to participate in worker training, establish the tasks to be performed and when/how; determine their wage rate, supervise worker activities; and discharge the worker from the home (work site) when appropriate.
 - Agency with Choice providers should not require a minimum number of hours to be purchased.

XV. FMS-Related Questions from AoA Grantees

- Can individuals/representatives obtain workers' compensation coverage under their homeowner's and renter's insurance?
 - It varies by state. Some states have this option available and some do not. Also some that do have it do not allow persons with disabilities to access the option available (i.e., New Hampshire). Individuals/representatives need to check the requirement for workers' compensation insurance in their state for support service workers who are hired by household employers (specifically look for any domestic service and casual employee exemptions).
 - A risk of providing WC under homeowner's policies is losing their homeowner's policy as a result of filing a workers' compensation insurance claim.
 - The National Council for Compensation Insurance eliminated companions and personal care workers who provide ADLs and nursing services from their domestic service codes (0908 and 0913) effective 10/1/05 and moved these workers to the industry home health –homemaker code 8835.

XV. FMS-Related Questions from AoA Grantees (continued)

- If an individual/representative could use a F/EA, if there was an interruption in the individual receiving services, should the F/EA fee be paid for that month.
 - Depends on the state. Some states do not pay, some pay a “maintenance portion of the fee and some pay the who fee during an interruption in services. There are pros and cons to all three approaches.
- Are other states expanding existing fiscal intermediary contracts for self-directed programs?
 - So far this has not been popular with FIs (state MMIS vendors) since its more than just processing provider payments. To my knowledge I do not know of any.

XV. FMS-Related Questions from AoA Grantees (continued)

- How large a benefit package is expected for other states' programs and what is the size of the payment to the fiscal intermediary?
 - CMS has asked that the term “fiscal intermediary” only be used for the entity that manages the state’s MMIS. The FMS term is Fiscal/Employer Agent or F/EA.
 - Budgets for AoA funds tend to be small, however, Medicaid funded-budgets can be significant especially for the developmental disability population.
 - F/EAs vary from \$45 PM/PM up with an average around \$75 PM/PM. They vary depending on the functions the F/EA is required to perform. Agency with Choice rates can vary from \$12 per hour up.

XV. FMS-Related Questions from AoA Grantees (continued)

- How are services being structured within a benefit package that is considerably smaller than that which is associated with a larger HCBS waiver?
 - It appears that individuals/representatives are identifying services that are needed and targeting a discrete number to the funds available. In some cases individuals/representatives are combining AoA funds with private funds to obtain needed services.
- What are the fiscal intermediary services?
 - See information provided earlier in the presentation.

XV. FMS-Related Questions from AoA Grantees (continued)

- How does the state structure the flow of funds for the program payment of the fiscal intermediary?
 - Related to Medicaid-funds, F/EAs either have an administrative contract, Medicaid provider agreement or both executed with the state. Agency with Choice providers routinely have a Medicaid provider agreement executed with the state. Funds are distributed to these entities based on claims filed with the Medicaid program.
 - Related to AoA funds, the state grantee entity that receives the AoA grant funds often contracts with a AAA to administer these funds. Then the AAA distributes grant funds to the individuals/representatives directly (based on an award) or distribute funds based on invoices and documentation received from the individual/representative.

XV. FMS-Related Questions from AoA Grantees (continued)

- CMS would like to see the F/EA fee established and paid separately from the costs of providing direct care services and most states do this.
- Most Agency with Choice providers are paid an hourly rate that include both the direct care and FMS related costs. However, some states unbundle these costs into a direct care rate and an Agency with Choice fee.