



Consumer/  
Client



Directed



Attendant/  
Employee



Support



Services

In CDASS, a Client is the Employer of Record within the Fiscal/Employer Agent (F/EA) model. In CDASS, the FMS Provider functions as your Fiscal/Employer Agent (F/EA).

### **Fiscal/Employer Agent (F/EA)**

The FMS Provider performs payroll and administrative functions for self-directing individuals. Just like a regular payroll provider, a FMS provider makes sure Attendants get paid on time and that taxes are handled correctly. The FMS provider establishes a Federal Employee Identification Number (FEIN) on behalf of the Client or AR. The Client's selected FMS Provider also processes paperwork, performs payroll related functions, and budget tracking on behalf of the Client.

The F/EA model provides Clients with flexibility, control, and responsibility. The Client is both the Managing Employer and the Employer of Record. The Client recruits, interviews, hires, trains, schedules, and when necessary, terminates his/her Attendants. Consumer Direct Colorado assists the Clients to develop an ASMP in order to secure the desired services and become an effective employer of his/her Attendants.

Exempt relationships – In the F/EA model, your chosen FMS provider will assist with establishing you (the Client or AR) as an employer with the IRS and State of Colorado. This means you will be assigned your own Federal Employer Identification Number (FEIN) so that you are the Employer of Record. The FEIN is established in the name of the Client or AR who has control over managing services.

In IRS Publication 15, The IRS has designated some familial relationships as exempt from certain taxes. This only applies if you have an Attendant who is related to the FEIN holder in one of the following manners. If one of the relationships is present, the Attendant and your allocation are exempt from FICA (Social Security and Medicare), FUTA (Federal Unemployment) and SUTA (State Unemployment) taxes.

The following relationships exempt the FEIN holder from associated taxes:

<b>Relationship to EIN Holder</b>	<b>FICA</b>	<b>FUTA</b>	<b>SUTA</b>
Child employed by Parent	Exempt (18 – 21 years of age)	Exempt (18 – 21 years of age)	Exempt (18 – 20 years of age)
Parent employed by Adult Child	Exempt	Exempt	Not Exempt
Spouse employed by Spouse	Exempt	Exempt	Exempt
Adoptive and/or Stepparent employed by Adult Child	Exempt	Exempt	Not Exempt

Client Liability – In CDASS, you assume some liability because you perform employer-related functions. The FMS provider also assumes liability. You and your FMS provider work together to minimize risk.

FMS Provider Liability – FMS Providers operate under Section 3504 of the Internal Revenue Code, which requires them to take on joint federal tax liability with every Client they serve. In contrast, regular payroll providers do not share their Client’s tax liabilities. The FMS is financially responsible for making sure each Client’s tax payments, filing, and reporting is done correctly. Required F/EA federal tax procedures and responsibilities are set forth in IRA Revenue Procedure 2013-39. If a FMS Provider makes a tax mistake, they are liable for the mistake. This protects the CDASS Clients from personal financial risk.

In the F/EA model, you are considered a small employer (less than 50 employees) per the Affordable Care Act, and therefore are not required to offer your Attendants health insurance.

## **Being an Employer under Colorado Law and the Fair Labor Standards Act (FSLA)**

The U.S. Federal government amended the Fair Labor Standards Act (FLSA) to allow Attendants to be eligible for minimum wage and overtime requirements. Colorado Law requires compensation for Attendants who exceed twelve (12) hours in a single day, and FLSA requires compensation for working over forty (40) hours in a single week.

Attendants who work for more than one Client on the same day are required to be compensated for their travel time from one Client's home to another Client's home to perform services. CDASS Clients/ARs may not be aware they are employing an Attendant who is working for other individuals which could negatively affect their allocations due to unforeseen travel time and overtime costs.

If an AR is the employer of record for two or more Clients, and those Clients share Attendants, the AR needs to monitor the Attendants' schedules carefully to avoid unnecessary overtime and travel time expenses. In CDASS, there is no method to reimburse for overtime costs incurred between two clients. This could lead to problems with the labor board if not monitored closely.

**Example 1:** An individual is the AR for two Clients, David and Sandy. David and Sandy live in different towns but share an Attendant between them. The AR schedules the Attendant to work for David twenty (20) hours a week and for Sandy thirty (30) hours a week. Because the AR is the employer of record for both Clients, the Attendant will need to be paid ten (10) hours of overtime for that week, because, in fact, the Attendant worked fifty (50) hours a week for the same employer of record (the AR). Paying overtime negatively affects the allocation of both Clients.

In the above example, the Attendant would also need to be paid for travel time between David and Sandy's homes if the work was performed on the same calendar day, further negatively affecting both Clients' allocations.

It is the AR's responsibility to ensure that Attendants are scheduled to avoid overtime or travel time expenses when an Attendant has multiple Clients.

In the following example, there is no overtime or paid travel time requirement:

**Example 2:** Betty and Susy are best friends who are both on CDASS and live in the same neighborhood. Both women are their own employers of record. Betty and Susy share the same Attendant, Carol, during the week. Carol is working twenty-five (25) hours for Betty and twenty-five (25) hours for Susy. Carol completes Betty's care in the morning and then drives to Susy's for the afternoon shift. Because both women (Betty and Susy) are their own employers of record, there are no overtime or travel time requirements for either woman to pay to Carol under the FE/A model. This is just like Carol working at Target for twenty-five (25) hours in a week and also working for Walmart twenty-five (25) hours in a week.



**F/EA Model Frequently Asked Questions Information**  
**Created by Consumer Direct Colorado and approved by the**  
**Colorado Department of Health Care Policy and Financing (HCPF)**  
**December 2015**

Regardless of the service option; agency-based, In Home Support Services (IHSS) or Consumer Directed Attendant Support Services (CDASS), minimizing risk is a joint effort between the client or Authorized Representative and providers. The Fiscal Employer Agent (F/EA) Model Information sheet has been created to highlight the features and responsibilities associated with the CDASS model. It is intended to assist clients and Authorized Representatives to understand the protections in place and potential liability.

Additionally, the Department of Health Care Policy and Financing (HCPF) has put requirements in place as part of the FMS Provider contracts to ensure they are operating within industry standards.

Likewise, clients and Authorized Representatives have the responsibility to follow CDASS rules, FMS Provider policies and procedures, and employment regulations. These are put in place to provide protection to the client or Authorized Representative, attendants, the FMS providers, and the State of Colorado.

The following Frequently Asked Questions have been compiled to assist clients and Authorized Representatives.

**1. Q: What happens if the FMS Provider inappropriately files payroll taxes?**

**A:** Upon appointment as your fiscal agent, the FMS Provider assumes responsibility for properly filing employer and attendant related payroll taxes with the IRS and State of Colorado. Filing is based on the information submitted by the attendant on their W-4 and exempt relationship status, if applicable. In the event there is an issue with the filing or penalties, the FMS Provider assumes responsibility.

Also, the National Resource Center for Participant-Directed Services has published the following related to this topic:

*As a participant-employer who uses a Fiscal/Employer Agent (F/EA), what is my status at the IRS?*

The IRS has a special tax classification designated specifically for self-directing individuals who hire workers and use an F/EA. The IRS officially classifies these individuals as “Home Care Service Recipients”, a special type of household employer. The Internal Revenue Manual, which instructs IRS agents on how to enforce tax regulations, has detailed instructions in place for Home Care Service Recipients. The Manual directs IRS agents to handle participants’ tax matters with the greatest possible sensitivity. The Manual also makes clear to IRS agents that an F/EA is responsible for handling wages and taxes related to Home Care Service Recipients, and the F/EA should be the only point of contact about tax issues related to participants’ program activity.

In the event of a tax problem related to participation in a self-direction program, the IRS has stated publicly that they would go after the F/EA, not the participant, for any taxes and penalties due. The IRS internal databases also reflect this position, as the IRS has reported that upon establishment as a Home Care Service Recipient in the IRS systems, the participant-employer’s individual filing requirements and opportunity to get notices, liens, and levies from the IRS are *removed* and instead those filing requirements and opportunities for notices, liens and levies are connected to the Fiscal/Employer Agent who has submitted an IRS Form 2678, *Employer Appointment of Agent* on the participant-employer’s behalf.

*(The National Resource Center for Participant-Directed Services uses F/EA to identify the Fiscal Management Service.)*

**2. Q: What happens if the FMS Provider is unable to process and/or pay attendant payroll?**

**A:** Each FMS Provider was required to submit a Business Continuity plan to HCPF. In the event of technical issues, emergencies, natural disasters or similar, the plan details how the FMS Provider will respond.

Prior to contracting with the FMS Providers, HCPF required the FMS Providers to demonstrate they were financially solvent. Additionally, FMS Providers are subject to an annual review by HCPF.

Having three FMS Providers available provides additional assurances. In the event one FMS Provider's contract is terminated or the FMS Provider becomes financially insolvent, HCPF will work with clients and/or Authorized Representatives and the remaining FMS Providers to ensure attendant payroll is processed and paid. The timing of payment is dependent on the timely completion of attendant paperwork and timesheet submittal.

Also, the National Resource Center for Participant-Directed Services has published the following related to this topic:

*What happens if my Fiscal/Employer Agent (FMS provider) goes out of business and there are unpaid taxes? Would I be liable then?*

The IRS has stated publicly that they would go after the funding source, that is, the Medicaid program, for unpaid taxes. If a Fiscal/Employer Agent in a Medicaid-funded program went out of business with unpaid taxes, the IRS policy would be to recover the amount due from the state Medicaid program, **NOT** from participants.

### **3. Q: What happens if an attendant is injured?**

**A:** The FMS Providers ensure worker's compensation insurance is in place in the event an attendant is injured when "clocked in" and working with a client. Each FMS provider has a process for reporting a work place injury.

It is important to note that clients and Authorized Representatives play a key role and have a responsibility for creating a safe work environment. See Question #4 for additional information on worker's compensation insurance.

### **4. Q: What insurances are FMS Providers required to have?**

**A:** Key insurance contract requirements related to CDASS FMS Providers include:

Insurance	Contract Language
<p>Worker’s Compensation Insurance – The FMS Providers ensure Worker’s Compensation Insurance is in place in the event an attendant is injured when “clocked in” and working with a client. Each FMS provider has a process for reporting a work place injury.</p>	<p>Contract language states – FMS Contract Amendment NO. 03 - page 2</p> <p>F. Exhibit A, Statement of Work, Section 2</p> <p>2.6.2. The Contractor shall provide required worker’s compensation insurance for Attendants and process worker’s compensation claims.</p> <p>2.6.6.2. For worker’s compensation, the Contractor shall:</p> <p>2.6.6.2.1. Maintain and track worker’s compensation policies for all clients.</p>
<p>General liability</p>	<p>Contract language states – page 11</p> <p>13. Insurance B. ii. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability within minimum limits as follows:</p> <ul style="list-style-type: none"> <li>a. \$1,000,000 each occurrence;</li> <li>b. \$1,000,000 general aggregate;</li> <li>c. \$1,000,000 products and completed operations aggregate; and</li> <li>d. \$50,000 any one fine.</li> </ul> <p>If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other documentation satisfactory to Contractor showing compliance with this provision.</p>
<p>Protected Health Information Insurance</p>	<p>Contract language states – page 11</p> <p>iii. Protected Health Insurance</p> <p>Liability insurance covering all loss of Protected Health</p>

Insurance	Contract Language
	<p>Information data and claims based upon alleged violations of privacy rights through improper use or disclosure of Protected Health Information with minimum limits as follows:</p> <ul style="list-style-type: none"> <li>a. \$1,000,000 each occurrence; and</li> <li>b. \$2,000,000 general aggregate</li> </ul>
Crime Insurance	<p>Contract language states – page 12</p> <p>v. Crime Insurance</p> <p>Crime insurance including Employee Dishonesty coverage with minimum limits as follows:</p> <ul style="list-style-type: none"> <li>a. \$1,000,000 each occurrence; and</li> <li>b. \$1,000,000 general aggregate</li> </ul>

**5. Q: How do FMS Providers demonstrate they have the required insurance?**

**A:** Contract holders with the state must provide copies of insurance certificates, similar to providing proof of car insurance, to HCPF. Below is the specific contract requirement related to proof of insurance.

Insurance	Contract Language
Insurance Certificates	<p>Contract language states – page 12 C. Certificates</p> <p>Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) business days of the Effective Date of this Contract. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any subcontract, Contractor and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.</p>

**6. Q: What happens if a FMS Provider’s insurance is cancelled?**

**A:** Contract language indicates the FMS Provider must notify HCPF.

<b>Insurance</b>	<b>Contract Language</b>
Insurance Cancellations	Contract language states – page 12 B. viii. Cancellation  The above insurance policies shall include provision preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Contractor’s receipt of such notice.

**7. Q: Is it possible that an attendant is exempt from Federal Income Taxes?**

**A:** Per IRS 2014-7 an attendant could be exempt if the requirements of IRS 2014-7 are met. <https://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>.

If an attendant believes they meet this exemption, they may notify the FMS provider. The attendant should check with the FMS provider regarding their process for 2014-7.

It is important to note that attendants should seek advice from a tax professional if they have questions.

**8. Q: How is a family member’s social security and possible eligibility for unemployment impacted?**

**A:** Per IRS Publication 15, <https://www.irs.gov/publications/p15>, if an attendant is in one of the following relationships with the FEIN holder, the attendant is exempt from the employee’s portion of Federal Insurance Contributions Act (FICA or Social Security and Medicare) and the employer or budget is exempt from the employer’s portion of FICA and Federal Unemployment Tax Act (FUTA) and State Unemployment Tax (SUTA).

<b>Relationship to EIN Holder:</b>	<b>FICA</b>	<b>FUTA</b>	<b>SUTA</b>
Child employed by Parent	Exempt (18 – 21 years of age)	Exempt (18 – 21 years of age)	Exempt (18-20 years of age)
Parent employed by Adult Child	Exempt	Exempt	Not Exempt
Spouse employed by Spouse	Exempt	Exempt	Exempt
Adoptive and/or Stepparent employed by Adult Child	Exempt	Exempt	Not Exempt

Per the IRS, the attendant or employer cannot opt out of these exemptions. It is true that the attendant would not be earning social security credits and since the employer is exempt from paying into FUTA and SUTA, the attendant could not collect unemployment. The attendant should check with the FMS provider regarding their process for identifying family relationships.

It is important to note that attendants should seek advice from a tax professional if they have questions.

Publication 15 applies to all businesses and isn't specific to the Home Care Service Recipient (HCSR), which is the designation the IRS has given to an EIN holder in an F/EA situation.

### **Questions from FMS Questionnaire – Original: 12/2014; Updated 11/2015**

**9. Q: If I choose Fiscal Employer Agent (FE/A) and something happens after the 6-month period (Jan-June 2015), such as an illness, what does the FMS consider a substantial period of time for hospitalization (for example) after which they will consider the member a financial risk and say to the member that they will not carry the as a client? In such cases, would a CDASS member be dropped from CDASS?**

**A:** There is no financial risk to the FMS if the client becomes ill. The FMS vendor cannot terminate services to a CDASS client. Additionally, a CDASS client can only be terminated in accordance with 10 CCR 2505-10 Sections 8.510.12 and 8.510.13.

**10. Q: In the FE/A model, as far as attendants are concerned, if a CDASS member ended up in the hospital for an extended period of time, and the CDASS member loses their employees, could the CDASS member go to Consumer Direct for help finding new employees when they get back home, or is the CDASS member on their own in such cases? In other words, what support is available?**

**UPDATE (Oct.2016):** Consumer Direct hosts an Attendant Directory on their website as a tool to help connect potential Attendants with Clients. You can access this directory at <http://consumerdirectco.com/> and click on “Directory”

**11. Q: What liability does a client have when being an employer?**

**A:** Clients face the same liabilities that any other employer will face. Details can be found on the IRS website at [www.irs.gov](http://www.irs.gov).

**12. Q: If I choose the F/EA model, how do I get a Tax/Employer ID Number (EIN)?**

**A:** The FMS vendor will assist clients/ARs in obtaining the EIN.

**UPDATE (Nov. 2015):** The following forms are required to be completed by the client or AR and returned to the FMS Provider to appoint the FMS as the agent. The FMS provider will then assist with obtaining the Federal Employer Identification Number (FEIN) and the State of Colorado unemployment and withholding accounts.

- IRS Form SS-4: Application for Employer Identification Number – Form SS-4 is used to obtain the EIN
- IRS Form 2678: Employer/Payroll Appointment of Agent – Form 2678 authorizes the FMS Provider to act as the agent with the IRS
- IRS Form 8821: Tax Information Authorization – Form 8821 indicates the type of taxes and corresponding forms the Agent may file on behalf of the client or AR
- Colorado DR 0145: Colorado Department of Revenue – Form DR 0145 authorizes the FMS Provider to act as the agent with the State of Colorado

- Colorado UITL-100: Application for Unemployment Insurance Account and Determination of Employer Liability – Form UITL-100 is used to register the FEIN holder with the Department of Labor and Employment and create an unemployment account.
- Colorado CR 0100AP – Colorado Sales Tax Withholding Account Application – Form CR 0100 is used to apply for a tax withholding account with the Colorado Department of Revenue

It is important to note that the IRS assigns clients a Home Care Service Recipient (HCSR) designation when the FMS provider applies for a Federal Employer Identification Number (FEIN). This designation indicates the client is an employer receiving Medicaid funds and the FEIN is for the purpose of filing employer related payroll taxes. The FEIN assignment is not a business that will earn a profit or recognize a loss.

### **13. Q: Who can hold the EIN, the client or the AR?**

**A:** The EIN should be held by whoever is directing and managing the services. In most cases this will be the client. In cases where an AR is directing and managing the services, the AR should hold the FEIN.

**UPDATE (Nov. 2015):** Per the National Resource Center for Participant-Directed Services: In self-direction programs, the individual receiving services is usually registered as the employer. But when the individual receiving services cannot perform employer duties or prefers not to do them, he/she can authorize a representative to serve as the employer and make employer decisions on his/her behalf.

A best practice is to register the person who is actually performing the majority of employer duties as the employer. Employer duties include:

- Hiring and firing workers
- Training workers
- Managing and scheduling workers
- Deciding how much workers are paid

**14. Q: If I change vendors do my attendants need to complete new employment applications?**

**A:** If you use FE/A, you are considered the Employer of Record and therefore your attendants work directly for you regardless of which vendor you use as your fiscal agent. There might be additional paperwork to enroll with the new vendor, but a new employment application is not required.

**UPDATE (Nov 2015):** New paperwork is required. Contact the FMS provider for the specific paperwork.

**15. Q: For each model, who is responsible for hiring, dismissing, supervising, and training attendants?**

**UPDATE (Nov 2015):** The previous answer referred to the FMS Employer Models in CDASS, which is no longer applicable.

**A:** In the FE/A model, just like in the AwC model, the client or AR has the sole responsibility for day to day management of attendants. This includes; interviewing, hiring, training, and scheduling, supervising and terminating attendants. As an employer, the client or AR is responsible for ensuring employment laws are followed, such as using proper interview techniques or creating a harassment free workplace. For additional information see the Being an Employer section of the CDASS manual. <http://consumerdirectco.com/forms>

**16. Q: In either model will the client need to purchase employer liability insurance?**

**A:** No. The FMS will carry the liability insurance.

**UPDATE (Nov 2015):** See #4 above

# SUMMARY



## **Section 4: Fiscal/Employer Agent (F/EA) Service Model**

- In the F/EA model;
  - The FMS provider establishes a Federal Employer Identification Number (FEIN) making you the legal employer of record.
  - You have control and responsibility of all aspects of employing Attendants, including hiring and firing.
- The FMS provider is responsible in for:
  - Processing Attendant paperwork.
  - Processing payroll.
  - Filing Attendant and employer related taxes.
  - Ensuring Worker's Compensation is in place.
  - You are responsible for ensuring you follow employment laws, such as not discriminating and following wage and hour laws.

