



SECTION 6

Being an Employer



Consumer/
Client



Directed



Attendant/
Employee



Support



Services

In the F/EA model, you are responsible for following employment laws. The following sections provide an overview of those responsibilities:

- Recruiting
- Interviewing
- Hiring
- Training
- Scheduling
- Supervision
- Performance Issues
- Termination
- Workers' Compensation
- Unemployment Insurance

You can participate in additional online training courses to further your knowledge in these areas. If you do not have access to the internet, your Consumer Direct of Colorado (Consumer Direct/CDCO) Training Coordinator can assist you.

Recruiting Attendants

Prior to recruiting an Attendant, you must consider what tasks need to be performed. Once the tasks are determined, you then need to consider what knowledge or skills a person needs to complete the tasks. Finding the right Attendant takes time. The amount of time depends on your needs and how well

you have planned. Use all the resources available to you and consider whether you want to hire friends or family members. Using people you know can make the process easier, but it can also be tough on your relationship with that person.

Recruiting is the most important step in the hiring process. We have listed the steps for you in the order they will occur during your recruiting process. Use this as a check list or outline; it is completely up to you.

- Create a job description.
- Create a job advertisement.
- Post a job advertisement.
- Screen potential Attendants.
- Interview Attendants.
- Check references.
- Select employees.

TIPS



Remember, recruiting is an on-going activity. As long as you are directing your Attendant services, you will need to recruit Attendants, both permanent and back up.

Create a job description that really works for you

A well-written job description will help you when screening and interviewing potential Attendants. Be sure to explain the job you are offering in detail and make sure your potential Attendants are comfortable with every aspect. List the skills and experience you want your Attendants to have. Feel free to list qualities you prefer such as good physical condition or the ability to cook tasty food. It is essential to include specific requirements that will allow you to find the ideal Attendant. When identifying these requirements, you must be sure your job listing does not discriminate against possible applicants. See the section titled Avoiding Discrimination for details.

A good job description can:

- Help you to identify your needs.
- Be used as the basis for your job listing.
- Provide applicants with a list of daily physical needs.
- Help you and applicants ask careful questions during the interview.

- Provide a checklist of duties and responsibilities for your Attendants.
- Be used as an Attendant evaluation tool.
- Help solve disagreements between you and Attendants regarding their duties.

Creating a Productive Job Listing

The job description you develop becomes the foundation for your job listing. Begin by deciding how many people you would like to respond to your advertisement. The rule of thumb is less information brings more responses; more information brings fewer responses. You might think that it is better to have many people respond to your job listing. Remember, the more responses you get, the more people you have to screen and this will make your hiring process more involved. Concentrate on the ideal person you would like to respond to your listing. Identifying preferences that are important to you is a key component in writing your job description, i.e., non-smoker, allergies, etc.

The primary purpose of a job listing is to identify people who are both qualified and interested in doing what you need done. A well-written listing can help screen out people who do not fit your needs and save you time up front.

The following are examples of a job posting:

PERSONAL CARE WORKER

Nonsmoker needed to work for adult with disabilities, assist with personal care and housekeeping. Schedule is negotiable. Pay will be \$9 per hour. If interested, call (719) 555-5555 or send email to: myemail@writeme.com

In the above advertisement, a variety of people are likely to respond; however, people who do not want to work with women are not likely to respond to the second listing. Likewise, people who do not have experience working with severe disabilities or feel uncomfortable may not respond to the third posting.

PERSONAL CARE WORKER

Nonsmoker needed to work for adult female with disabilities, assist with personal care and housekeeping. Schedule is negotiable. Pay will be \$9 per hour. If interested, call (719) 555-5555 or send email to: myemail@writeme.com

PERSONAL CARE WORKER

Nonsmoker needed to work for adult with disabilities, assist with personal care and housekeeping. Hours are midnight to 8am. Schedule is not negotiable. Pay will be \$9 per hour. If interested, call (719) 555-5555 or send email to: myemail@writeme.com

Regardless of your approach, you have the final decision as to what to put in your job listings. You might want to try posting several listings with different information in each one and see what works best for you. Think about your privacy, safety, and security as you create your job listing. For your safety, never include your name or home address in the posting. Be sure to include a way to contact you by phone, voice mail, or email. Whichever way you choose to be contacted, protect your privacy as much as possible.

TIPS



However you decide to handle recruiting, respond quickly to people who have contacted you about the job. Good candidates could be hired by another employer if you do not respond to them in a timely manner.

Where to Post your Job Ads

Colleges, Universities and Hospitals can be good places to post a listing. Students often look for part time and full time work to gain experience, college credits and a source of income. Contact your local College or University Career Centers for more information on how to post a job listing.

Friends, family, neighbors, other employees, and area businesses can be good “word-of-mouth” resources. Let personal contacts know you are looking for an Attendant but make it clear you will do the screening and hiring. Agencies that help people find jobs, such as Colorado Workforce Centers, can be good business resources. Other resources might include job service centers and vocational rehabilitation offices. Some of these businesses will have a place where you can post a job listing; be sure to ask if this is an option. You may also want to talk to other CDASS Clients for suggestions of individuals who might be interested in picking up some additional hours. Other CDASS Clients may also know of people who might suit your needs. There are also job boards facilitated by FMS providers that may be a good source for finding Attendants.

TIPS



Consumer Direct hosts the CDASS Attendant Directory, which is a great tool for finding Attendants. You can access the directory by going to consumerdirectco.com and clicking on Directory. Contact Consumer Direct for assistance.

Local publications can be a free or a reduced cost resource. Local newspapers are usually less expensive than citywide newspapers and your listing will reach people in your specific area. If there is a cost, you may be charged by the word or line; therefore, make your listings concise with key words to describe your needs. Call a publication that you think might be helpful and ask for the classified department. Be sure to place your ad in the “Help Wanted” section. Current Clients have found that local newspapers are the best places to find Attendants in large urban areas.

Bulletin boards in high traffic areas, such as supermarkets, are good places to post job listings. This seems to be especially true in small towns where resources are limited. Other high traffic areas may include drug stores, coffee shops, laundromats, places of worship, and community centers. Many community groups have newsletters in which you can post listings. Contact your local community center for more information.

Internet recruiting is another option. Some suggestions are care.com, local nursing school programs, the CDASS Attendant registry on Consumer Direct’s website, or you can contact CDCO for additional suggestions.

Attendants may not be with you forever, so stay on top of your recruiting skills and practices. You may have to be ready to recruit on very short notice. After posting

a listing, be ready to respond to people who contact you. Have the job description close at hand. Perhaps you might want a copy at your computer or placed by your phone.

TIPS



Always use caution; remain in control of the situation. You may want to consider having a friend or relative with you during the interview.

Screening Potential Attendants

Screening potential Attendants will assist you in finding the right people to meet your needs. It will also save you time and make the recruiting process a little easier for you. Not all applicants will meet your needs and these individuals will need to be taken off your list. You will need to call applicants on the telephone and ask them a few questions and get a feel for their personality.



Here are some guidelines for telephone screening:

Act quickly:

- Call people back as soon as possible. Remember, good people find jobs quickly.

Be Pleasant:

- This is common sense, but it bears repeating. Be friendly and pleasant on the phone.

Provide some basic information about the job:

- Describe your basic needs for the people you screen.
- Let the applicant know the number of hours they would need to work, the schedule, and the hourly rate range they could earn.

Be Organized:

- Take notes and document all phone contact with the name and phone numbers of the applicant you spoke with.

Ask a Few Questions of the applicant:

- Why are you interested in this kind of work?
- What experience or training do you have?
- Do you smoke?
- If lifting and transferring are essential functions of this job, is there any reason you would not be able to do those tasks?
- Occasionally, I might need you to work more hours than your normal schedule. Can you do that?

Other questions you may want to consider asking:

- Are you at least 18 years of age?
- What hours are you available?
- What days can you work?
- Do you like and/or are you allergic to animals? (If you have animals)
- Are there any reasons you would not be able to travel to my neighborhood?
- Do you have a valid driver's license? (If driving is a part of the work)

- Do you have experience providing household services?
- Do you mind assisting in bathing, toileting, and dressing?
- There might be some heavy lifting involved in this job. Do you have any limitations or restrictions regarding lifting?

If at the end of your telephone screening you think you would like to interview this person face to face, you can make those arrangements while you still have the person on the phone. If you are not sure, you can politely end the conversation by saying “Thank you for your time. I will be making my final selections by (date) and will notify my top choices on that day to set up another interview. Thank you again. Good-bye.”

Warning Signs

- Applicant asks inappropriate questions during screening process i.e. address, medications, medical history, benefits
- Unexplained gaps in employment
- Reluctance to provide professional references
- Inconsistencies in prior job responsibilities and employer information

What if you don't want to interview someone?

You are not obligated to interview anyone. Let each person know you are taking names and phone numbers and will call them back if you decide to interview them. You may find that you would like to interview someone later even though your initial reaction was not to. Taking everyone's name and address will insure you can get back in touch with people if you change your mind.

Interviewing Techniques

Have every person you are seriously considering give you a resume. People may seem great in a conversation, letter or e-mail message, but you need more specific information about them before setting up an interview. A resume gives written record of the person's experience, interests, qualifications, and references. What you discover on their resume may give you a different perspective about the applicant. You may also want to keep a list of former Attendants and people you liked but did not hire. They might make good back-up Attendants and might someday become your regular Attendants.

Once you have finished pre-screening and reviewed the resume, if you like the applicant set up an interview. Take time to plan your interview. Interviews should be face-to-face meetings. Remember, the interview is when you and the applicant see if the situation will work for both of you. Do not hire anyone without interviewing them first. Most importantly, hold the interview when you are well rested and where you are least likely to be interrupted.

TIPS



If an applicant asks you for your home address during an interview, do not give it to them. Once the applicant is hired, you can disclose the exact address of the workplace.

Guidelines for Interviewing Face to Face:

Be Safe

- Hold the interview in a location that is safe for you. Your local church, apartment building, coffee shop, or community library may have rooms available for you to conduct interviews if you do not want to use your home.
- You can invite a friend or family member to sit in. In addition to safety concerns, having a second person is a good idea because that person may notice things during the interview that you do not.

Setting the Tone of the Interview

- First impressions are important. Convey a sense that you are a capable individual able to direct your own care.
- If you have a friend present, make sure it is clear that you are the interviewer.
- Think about the location of the interview. If you choose to have the interview in your home, think about the location of the interview. The living room is a better choice than the bedroom, which can convey an image of dependence.
- Wear clothes that convey confidence. Do not wear sleepwear.
- Sit facing the applicant so that you can observe eye contact and body language.
- Eliminate distractions. Turn the TV and radio off. Make sure pets and children will not interrupt.

What if You are Nervous?

- Recognize that it is natural to feel nervous when interviewing.
- The prospective Attendant is probably nervous too.
- Breathing deeply is the quickest way to relieve anxiety.
- Being prepared for the interview will also lower your anxiety level.
- Having a friend or family member with you may help calm your nerves.

Be Prepared Before the Interview, Make Sure You Have:

- A job description.
- A checklist (if you are using one) of duties for the shift(s) you are hiring.
- Information about your disability.
- Information about special equipment you use.
- A list of the interview questions you will ask (see list of suggested questions we have included in this guide).

Planning the Interview Questions

- Decide ahead of time what questions you will ask and write them down.
- Frame your interview questions to give you the information you need. At the very least you want someone who is trustworthy, reliable and responsible. Ask questions that will give you that information.
- By using the same list of questions for each applicant you will be able to compare their responses more easily.

When the Applicant Arrives:

- Take a good look at them. Do they look neat, clean, and presentable?
- Do they seem comfortable around you?
- Do you feel comfortable around them? Find out as much as you can about them.
- Make the applicant feel comfortable. You can ask, "Did you have any trouble finding the location?"
- Explain your disability to the applicant, but only to the point where you are still comfortable. You do not have to tell the applicant everything about you.

During the Interview:

- Describe the job requirements in detail.
- Ask work-related questions that need more than a "Yes" or "No" answer.
- Tell the person what you expect in an employee.

- Tell the person about the work schedule.
- Be frank and clear about duties that might make a person uncomfortable.
- Notice not only what the person says, but also how they say it.
- Let the person ask lots of questions and then reply with honest answers.
- Give the person general information about wages, benefits, and the workings of CDASS.
- Take notes. These will be a useful reference when you are reviewing the candidates you've interviewed.

Following are Some Other Useful Interview Questions You Can Use:

- What did you like most about your last job?
- What did you like least about your last job?
- Why did you leave your last job?
- Why are you interested in this job and what makes you a good candidate?
- Tell me about a past job where you had to make a tough decision. What were the circumstances? How did it turn out?
- Tell me about a past job where you made a big mistake. What was the situation and how did it turn out?

Avoiding Discrimination Questions

You can have strong feelings about the characteristics such as age, gender, or race; however, federal labor law prohibits you from discriminating. Be sure your job descriptions and other hiring materials reflect this nondiscrimination policy.

It Can Be Discriminatory to Ask:

- About children, number of, names, ages, child care arrangements or marital status.
- General questions about disabilities or physical conditions which do not relate to applicants fitness to perform job.
- About being single, married, divorced, separated, widowed.
- Questions concerning pregnancy, birth control, children, or future childbearing plans.
- Direct or indirect questions which would indicate an applicant's ancestry, national origin, race or color.
- Any questions that, if answered, would reveal religious affiliation, denomination, customs, holidays observed, or name of minister.
- Questions about age, except to ask if the person is of legal age to work (18).

Narrowing your Candidates

As you near the end of the interview, ask the person if they are interested in the job. If the person seems like someone you would likely hire, ask for their references. Do not make your decision immediately but tell the person you will call them after you have checked their references. Generally, you will want to interview more than one person before making your decision.

Checking References

Checking references can give you important information. Some examples of information you might get from checking references are: whether the person is difficult to work with, work ethic, character, and reliability.

Here are some questions you should ask references:

- How long have you known the applicant?
- What are their strengths and limitations?
- How do they handle stress?
- Do you think they are honest?
- Do you think they are reliable?
- How well do they get along with others?

Who are good references? They are usually people who know your applicant as an employee. They know the person's work performance and habits. If your applicant has no prior caregiving experience, then other sources of reference are previous employers, teachers and former co-workers. Try to avoid family members or friends as references. They will not know about the applicant's work habits and they are likely to tell you only the good things. When talking to a reference, explain the work the person will be doing. Remember to trust your initial instincts. Refer back to the notes you made to yourself during the interviews so you will not forget the impression each person made on you.

You may not get many answers from references. Some people do not want to say anything bad about another person or are unable to respond based on company policy. If a reference does not give you much information, be thankful for what you do get and move on. You cannot know why a reference gives you little information or if the lack of information means something bad. Remember, reference checks are just a way to get information you can use to decide about hiring someone.

If the reference is a former employer, ask the following questions:

- Were they dependable?
- Were they able to work independently?
- How often were they absent without notice?
- What was it like to supervise them?
- Can they handle doing a wide range of tasks?
- Why did they leave the job?
- Would you rehire them? If not, why?

Selecting your Attendant

Now that you have narrowed the larger group of possible Attendants, you get to select the best possible people to work with you. Lay all your papers out in front of you so you can see all your questions and answers. In making your choice, think about these questions:

- What important skills and experience does each person have?
- What is your feeling or intuition about each person, based on the interview and reference checks?
- What useful information did you get from each person's references?
- Can you see yourself working with this person in your home?

Some qualities are hard to assess in people. Think about how comfortable you would feel giving directions or corrections to each candidate. This is very important if you are going to hire a friend or relative. How will you feel spending a lot of time with the person? The lifestyle of an employee may bother you, but will it have anything to do with the quality of their work? Remember that safety, reliability and quality work are the most important features for an employee to have.

CDASS has only a few requirements for Attendants.

- Must be 18 years old.
- Must complete a criminal background check and Board of Nursing background check on all Attendants and the Attendant must pass both checks to be employable.
- You must follow all state and federal laws and regulations regarding hiring Attendant.

Making the Job Offer

Once you have completed the recruiting and interviewing process and have determined the appropriate candidate for the job there are a few additional things that you might want to consider:

When you decide to hire an Attendant, you can:

- Hire them on a trial basis for a mutually agreed period of time.
- Hire them as a back-up Attendant.
- Hire them as a permanent Attendant.

When you decide to make a job offer to an Attendant, be sure you address the following:

- Essential elements in the job description.
- Terms of employment.
- Your guidelines for Attendants.
- The role of Consumer Direct and your selected FMS provider.
- Pay and benefits.
- Starting date and time along with the work schedule.
- Phone numbers for the Attendant and yourself in case of a change in plans or an emergency.

There is no standard process for setting rates of pay for your Attendants. However, there are some items to consider when deciding a rate of pay.

- What is your total budget?
- How many hours of support do you need?
- What is this Attendant's level of experience?
- What type of tasks will this Attendant perform?
- What is the living wage or average wage in the area where you live?

Also:

- Wages must be between Colorado State Minimum wage and the Medicaid Maximum wage.
- Consider budgeting for periodic raises to motivate Attendants.

Hiring

You must assist your Attendant with completing the paperwork. It is you and your Attendant's responsibility to ensure the paperwork is completed accurately and timely. Your Attendant is not allowed to start working until the FMS provider has provided notice that the Attendant is cleared to work. One of the most common delays in an Attendant starting to work is incomplete paperwork.

HIRING



As a part of the hiring process, each Attendant you select must complete employment paperwork provided by the FMS provider. Your FMS provider is available to assist you in understanding the paperwork and the process required to complete the paperwork.

Each FMS provider has required employment paperwork that must be completed. The following forms are required for every Attendant. The FMS provider may have other required forms and will provide you with instructions on how to complete each form and how submit the employment paperwork.

- Criminal Background and Board of Nursing Checks,
- OIG Check,
- I-9 Form,
- W-4 Form.



The Board of Nursing check is also run automatically. This does not affect most Attendants. The Board of Nursing check tells us if the Attendant's license or certification has been suspended or revoked as a health professional by the Colorado Board of Nursing. If the check reveals that their license or certification has been suspended or revoked, denied, or if they represent themselves as a licensed medical professional when employed, by state law they will not be able to work under CDASS.

NOTE



Per CDASS Rules and Regulations, a Nursing or CNA license is not required to provide CDASS services. However, if an individual has had a Nursing or CNA license suspended, revoked or denied they are not eligible to provide services under CDASS.

Criminal Background Check



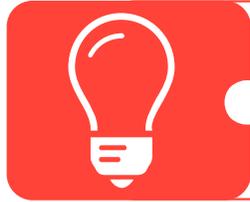
The CDASS program requires that all Attendants pass a two-part check of their background and qualifications prior to beginning work. The FMS provider will perform the checks as part of their role and communicate any issues with you. If an Attendant has non-Criminal Barrier Crimes, the FMS will discuss your options with you as to whether or not the Attendant can be hired.

Attendants shall not be approved or utilized for employment if ever convicted of:

- Abduction,
- Any violent felony crime (including but not limited to rape, sexual assault, homicide, felonious physical assault or felonious battery),
- Child/adult abuse or neglect,
- Crimes that involve the exploitation of a child or an incapacitated adult,
- Felony involving an act of domestic violence,
- Felony arson,
- Felony or misdemeanor crime against a child or incapacitated adult that causes harm,
- Felony drug related offenses (within the last 10 years),
- Felony DUI (within the last 10 years),
- Hate crimes,
- Healthcare fraud,
- Kidnapping,
- Murder/homicide,
- Neglect or abuse by a caregiver,
- Pornography crimes involving children or incapacitated adults, including, but not limited to, use of minors in filming sexual explicit conduct, distribution and exhibition of material depicting minors in sexually explicit conduct or sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct,
- Purchase or sale of a child,
- Sexual offenses (including but not limited to incest, sexual abuse, or indecent exposure).

These are referred to as the Criminal Barrier Crimes. If a possible employee has any of these convictions, they are not eligible for hire.

TIPS



You can appeal a decision not to hire a prospective Attendant based on the criminal background check. To do so, you and your potential Attendant must provide a copy of the disposition to prove the charge was either dropped or reduced to a lesser

OIG Check

The FMS providers must run an Office of Inspector General (OIG) check on all potential Attendants. This is required by law and an update is run every month. All Attendants, even those already hired, are compared to the list.

OIG's List of Excluded Individuals/Entities (LEIE) provides information to the health care industry, patients and the public regarding individuals and entities currently excluded from participation in Medicare, Medicaid and all other Federal health care programs. Individuals and entities who have been reinstated are removed from the LEIE. The OIG imposes exclusions under the authority of sections 1128 and 1156 of the Social Security Act. A list of all exclusions and their statutory authority can be found on the Exclusion Authorities page.

Reinstatement of excluded entities and individuals is not automatic once the period of exclusion ends. Those wishing to again participate in the Medicare, Medicaid and all Federal health care programs must apply for reinstatement and receive authorized notice from OIG that reinstatement has been granted. Please use the contact information listed below as neither Consumer Direct, your FMS, nor HCPF has control over this data and is simply enforcing the law.

HHS, OIG, OI

Exclusions Staff

7175 Security Boulevard, Suite 210

Baltimore, MD 21244

Phone: (410) 281-3060

Fax: (410) 265-6780

Email: sanction@oig.hhs.gov

I-9 Form

The purpose of this form is to document and verify that each new Attendant (both citizen and non-citizen) that you intend to hire is authorized to work in the United States. This form is required to complete the application with the FMS provider.

It is your responsibility to certify that you have:

1. Examined the documents presented by the Attendant.
2. Ensured the documents appear to be genuine and relate to the Attendant.
3. Validated to the best of your knowledge the Attendant is authorized to work in the United States.

The FMS will provide additional instructions and assistance with completing the I-9 form.

W-4 Form

An Attendant must complete a W-4 form so the FMS provider can appropriately withhold Federal and State income taxes.

The FMS will provide additional instructions and assistance with completing the W-4 form.

Training

If you choose an Attendant who already knows you, your needs, and preferences, they may require less training on your specific needs. However, if you hire an Attendant who doesn't know you, training is key to receiving the necessary supports. You are in control of training Attendants on your needs, likes and dislikes. In addition to general training, you should tailor your training to match the Attendants job description. If your Attendants are going to be a backup for each other, you will need to train each on all of your needs.

The FMS provider will have specific training materials and resources they will require be reviewed by both you and the Attendant. Some standard training topics that you should cover include the following:

Orientation to your house – everyone has certain “house rules,” such as not wearing shoes or if everyone enters through the backdoor. You should explain those rules to the Attendant to avoid any issues or misunderstanding.

Equipment – if they are required to use certain equipment, such as a lift, you must properly train them on how to use the equipment to ensure both your and their safety.

Health Needs or Considerations – If your Attendant is going to help you with personal care or monitoring a health condition, it may expose your Attendant to potential exposure.

Blood Borne Pathogens and Needle Sticks – Needle stick injuries and other sharps-related injuries which expose workers to blood borne pathogens continues to be an important public health concern. Attendants in many different occupations are at risk of exposure to blood borne pathogens, including Hepatitis B, Hepatitis C, and HIV/AIDS. First aid team members, housekeeping personnel in some settings, nurses and other healthcare providers are examples of workers who may be at risk of exposure. Some ways to help reduce exposure are:

- Attendants agree to promptly dispose of used needles in appropriate sharps disposal containers.
- Attendants agree to avoid recapping needles.
- Attendants agree to get hepatitis B vaccinations.
- Attendants agree to report any hazards to the Client.
- Client agrees to provide a sharps container for proper disposal of needles.
- Client agrees to provide a blood spill cleanup kit.

Refer to the Blood Borne Pathogen Fact Sheet at the end of this section for additional information.

TIPS



If an exposure occurs, you should report it to your FMS provider immediately.

HIPAA - HIPAA is the Health Insurance Portability and Accountability Act of 1996. This law protects the privacy of a person’s medical information and makes sure that it is treated confidentially. The information includes the reason the person is sick, the treatments and medications they receive, Social Security Number, and any other personal information. Do not pass this information on unless it involves information professional staff need to know to do their jobs.

Tips for training your Attendants to safeguard your information:

- Watch what you say, where you say it and to whom.
- Close doors when talking about private information.
- Do not talk about health information in front of others.
- If someone asks you a question involving personal information, make sure that person has a “need to know” before answering.
- Do not leave medical records lying around or in an area where others can see them.
- Do not leave private information on an answering machine.

Refer to the HIPAA fact sheet at the end of this section for additional information.

NOTE



If you believe protected health information has been shared without authorization, you should report it to your FMS provider.

Lifting and Moving - Numerous workers suffer back injuries each year, and back injuries account for many workplace injuries. Further, back injuries cause a great deal of pain and suffering to employees. Most of these injuries occur while the employee is lifting improperly. Your FMS Provider will have materials available on proper lifting and moving techniques.

HEALTH



Properly trained Attendants reduce the risk of injury to both of you. If an Attendant is injured, he or she may file a workers' compensation claim and/or may not be able to work for you for an extended period of time.

Fraud – It is everyone's responsibility to guard against fraud. The following activities are examples of behaviors that would be considered fraudulent:

- Submitting time that an Attendant didn't actually work
- Forging signatures on a time sheet
- Providing services while someone is in the hospital or nursing home
- Billing for services not approved by your Case Manager

False Claims Laws

One of the primary purposes of false claims laws is to combat fraud and abuse in government health care programs. False claims laws do this by making it possible for the government file civil actions against individuals to recover damages and penalties when individuals submit false claims. The Federal False Claims Act, the Program Fraud Civil Remedies Act of 1986, and Colorado law all address fraud and abuse in the Colorado Medicaid program.

Federal False Claims Act

Under the Federal False Claims Act (FCA), any person or entity that knowingly submits false or fraudulent claims, causes such claims to be submitted, makes a false record or statement in order to obtain payment from a federally funded program for such a claim, or conspires to get such claim allowed or paid is liable for significant penalties and fines. The civil fines include a penalty of up to three times the cost of the claim, plus penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the person or entity that submitted the false claims.

The FCA also allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The person who initiates the lawsuit is generally referred to as the “whistleblower”. If the suit is ultimately successful, the whistleblower that initially brought the lawsuit may be awarded a percentage of the funds recovered. The FCA also contains a provision that protects a whistleblower from retaliation by his or her employer. If an employee is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of bringing false claims action, that employee may bring an action in federal court seeking reinstatement, two times the amount of back pay plus interest, and other costs, damages and fees.

Federal Program Fraud Civil Remedies Act of 1986

The Federal Program Fraud Civil Remedies Act of 1986 (PFCRA) provides for administration remedies against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services). A violation of the PFCRA may result in a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

Colorado Law

Colorado has adopted a Medicaid anti-fraud statute that is intended to prevent the submission of false and fraudulent claims to the Colorado Medicaid program. The statute makes it unlawful for any person to make a false representation of material fact, present a false claim for payment or approval, or present a false cost document in connection with a claim for payment or reimbursement from the Colorado Medicaid program. Violations of this law will result in significant monetary civil penalties.

Reporting Fraud- Suspected fraud should be reported to your FMS provider. You can also report to Consumer Direct or to the Department of Health Care Policy & Financing:

- Call toll free: 855-375-2500
- Send an email to ReportProviderFraud@hcpf.state.co.us
- Send a fax to 303-866-4411, or
- Mail information to:
Department of Health Care Policy and Financing
Attn: Program Integrity Section
1570 Grant Street
Denver, Colorado 80213

Worker's Compensation

In the F/EA model, your FMS provider is responsible for ensuring your Attendants have workers' compensation coverage. This coverage provides Attendants with insurance coverage and compensates them for loss of wages if they are injured while working with you. It is your responsibility to ensure they are trained to perform any tasks in a safe manner. You and your Attendants are responsible for reporting any workplace injury within 24 hours. The report should be made to the FMS provider. Each FMS provider will share information regarding their workers' compensation program, how to report an injury and resources to assist in the processing of any claims.

Additionally, see the state of Colorado worker's compensation posters in Appendix C or visit the Colorado Department of Labor and Employment website for additional information at <https://www.colorado.gov/cdle/dwc> .

Supervision

As a supervisor you should maintain an employee file for all of your Attendants. Making one file folder for each Attendant you have will assist you with organization. Keep a copy of their initial Employee Packet. This file can hold copies of timecards, Attendant reviews that both of you have signed or anything else pertaining to that specific person.

Think about the HIPAA guidelines and plan where you are going to store your files. Keep them put away but in a place that you can access them if questions arise. Remember you have important information, such as date of birth, social security number and bank account information. You can make notes to yourself or track an Attendant's time and then keep it in the file for when you fill out timecards. It is completely up to you so make it organized but easy for yourself.

The FMS provider is also required to maintain a copy of the Attendants employment paperwork. Because they are responsible for paying Attendants, it is important they are kept up to date on address or phone number changes.

The FMS provider will also issue W-2s to your Attendants, either as the employer or on your behalf. To ensure the W-2 reaches the Attendant in a timely fashion it is their responsibility to ensure the FMS provider has their current address. The FMS provider may have a process for address, phone, and email changes for both you and your Attendants. This information will be available from the FMS provider.

Attendant Performance

Many times it is difficult to evaluate a person you are working with, especially when you have to place such trust in an Attendant and work with them so closely. One way to avoid making this an unpleasant situation for you is to plan ahead for regular evaluations. Think about what situations you would like to praise an employee for and what areas you would like to see improvement in. This can be any item you would like so it is specific to your exact care needs.

After you think about the areas you would like to cover with your Attendants, come up with some questions that pinpoint the areas you want to document. Below are list of possible questions. These are merely suggestions and you can develop any format you want. You could just write them up and have your employees sign and date it along with you so everyone is in agreement.

Another important part of being an employer is providing feedback to your Attendant. Attendant evaluations allow for you and your Attendant to discuss the current employment arrangement. This discussion should be open and honest and you should document the discussion and keep record in the employee file. During this discussion, you should let the Attendant know what they are doing well and what areas need improvement. You should work with the Attendant to make improvements and create a positive work environment. You should also allow the Attendant to express concerns and let you know what is going well and what areas may need improvement. It is suggested that you conduct an evaluation on a monthly basis, or at least a minimum of two times per year.

As with any employment arrangement, you should be evaluating and coaching your Attendants. This process includes tracking absences, late arrivals and no call/no shows. You should track these items in the Attendants employee file with dates and details of the occurrences.

It is suggested that you give Attendants a verbal warning and written warnings before terminating an Attendant. You are the managing employer and the FMS provider is the employer of record. They will have a process for addressing performance issues. If you have questions or need assistance, your FMS provider will be able to help you through the process. It is very important to document all interactions with Attendants and keep them in their employee file or submit them to your FMS provider for storage. Attendants should always be given the chance to improve less than desirable behaviors.

You need to use the same form for **all** Attendants. This makes it easier to compare the performance of different people on the same scale. Again, it will assist you in making sure your care needs are being met in the best manner possible.

- Are there any tasks which you perform that could be done in a different way?
- What do you enjoy about your position? How can we make it better?
- Is there a task that you would rather not do and how do we change that?
- Are the hours working for you and if not, can we alter them?
- I value your help and it makes my day possible. How would you like to receive my appreciation?

Attendant Dismissal

Unfortunately, at some point, you may have to dismiss an Attendant. It is a good idea to follow some simple guidelines that will make the process less stressful for you.

- In the employee file, you have documented verbal warnings about the issues you are having with the employee.
- You have written warnings that have been discussed and signed by both you and the Attendant.
- There are corrective actions in the file. It would be wise to put specific timelines with those requested changes in performance.
- As soon as you dismiss an employee, you need to inform your FMS provider according to their process and submit the Attendant's final timesheet. There are Federal and state labor laws that require the final check to be processed within this timeframe.

NOTE



Remember: If it is not documented, it did not happen!

Unemployment Insurance

Employers have an unemployment account and file unemployment taxes based on wages paid to their employees.

Unemployment benefits may be available to workers who have lost their job through no fault of their own. An Attendant can file for an unemployment claim by going to: <https://www.colorado.gov/pacific/cdle/start-a-claim>

For additional information regarding Unemployment Insurance, please contact your FMS Provider. In the F/EA model, you are the employer. Your FMS provider establishes an unemployment account and contributes unemployment taxes on your behalf. In the F/EA model unemployment claims will impact your unemployment experience rating by the state.

In either model unemployment claims impact the unemployment rate that is charged to your allocation as part of the employer related tax rate.

Additionally see the state of Colorado unemployment poster in this section or visit the Colorado Department of Labor and Employment website for additional information. <https://www.colorado.gov/pacific/cdle/unemployment>

PERSONAL FEATURE: Rick, Meridian

“When our daughter was ten months old, she became very ill. We took her to the hospital. They said she had the flu and sent us home with directions to take Tylenol and drink a lot of liquid. She was later diagnosed with spinal meningitis. Since no treatment was given, our daughter has devastating and lasting consequences. She has a seizure disorder, cerebral palsy, and learning disabilities.

At the age of eighteen months, she entered her first developmental center. From five years old to twenty-one, she attended public school before entering into adult centers. Because she was not enjoying life in these centers, we decided to go Self-Direct. Since making the decision, we have been honored to know many children and adults with disabilities in Self-Direct Services.

It is important for people with disabilities to have control and “say” in how they spend each and every day. Our daughter is happy when she wakes up and looks forward to her day. We are making sure she is doing what makes her happy.”



OSHA[®]

FactSheet

OSHA's Bloodborne Pathogens Standard

Bloodborne pathogens are infectious microorganisms present in blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV), the virus that causes AIDS. Workers exposed to bloodborne pathogens are at risk for serious or life-threatening illnesses.

Protections Provided by OSHA's Bloodborne Pathogens Standard

All of the requirements of OSHA's Bloodborne Pathogens standard can be found in Title 29 of the Code of Federal Regulations at 29 CFR 1910.1030. The standard's requirements state what employers must do to protect workers who are occupationally exposed to blood or other potentially infectious materials (OPIM), as defined in the standard. That is, the standard protects workers who can reasonably be anticipated to come into contact with blood or OPIM as a result of doing their job duties.

In general, the standard requires employers to:

- **Establish an exposure control plan.** This is a written plan to eliminate or minimize occupational exposures. The employer must prepare an exposure determination that contains a list of job classifications

in which all workers have occupational exposure and a list of job classifications in which some workers have occupational exposure, along with a list of the tasks and procedures performed by those workers that result in their exposure.

- **Employers must update the plan annually** to reflect changes in tasks, procedures, and positions that affect occupational exposure, and also technological changes that eliminate or reduce occupational exposure. In addition, employers must annually document in the plan that they have considered and begun using appropriate, commercially-available effective safer medical devices designed to eliminate or minimize occupational exposure. Employers must also document that

they have solicited input from frontline workers in identifying, evaluating, and selecting effective engineering and work practice controls.

- **Implement the use of universal precautions** (treating all human blood and OPIM as if known to be infectious for bloodborne pathogens).
 - **Identify and use engineering controls.** These are devices that isolate or remove the blood-borne pathogens hazard from the workplace. They include sharps disposal containers, self-sheathing needles, and safer medical devices, such as sharps with engineered sharps-injury protection and needleless systems.
 - **Identify and ensure the use of work practice controls.** These are practices that reduce the possibility of exposure by changing the way a task is performed, such as appropriate practices for handling and disposing of contaminated sharps, handling specimens, handling laundry, and cleaning contaminated surfaces and items.
 - **Provide personal protective equipment (PPE), such as gloves, gowns, eye protection, and masks.** Employers must clean, repair, and
- **Make available post-exposure evaluation and follow-up to any occupationally exposed worker who experiences an exposure incident.** An exposure incident is a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or OPIM. This evaluation and follow-up must be at no cost to the worker and includes documenting the route(s) of exposure and the circumstances under which the exposure incident occurred; identifying and testing the source individual for HBV and HIV infectivity, if the source individual consents or the law does not require consent; collecting and testing the exposed worker's blood, if the worker consents; offering post-exposure prophylaxis; offering counseling; and evaluating reported illnesses. The healthcare professional will provide a limited written opinion to the employer and all diagnoses must remain confidential.
 - **Use labels and signs to communicate hazards.** Warning labels must be affixed to containers of regulated waste; containers of contaminated reusable sharps; refrigerators and freezers containing blood or OPIM; other containers used to store, transport, or ship blood or OPIM;

contaminated equipment that is being shipped or serviced; and bags or containers of contaminated laundry, except as provided in the standard. Facilities may use red bags or red containers instead of labels. In HIV and HBV research laboratories and production facilities, signs must be posted at all access doors when OPIM or infected animals are present in the work area or containment module.

- **Provide information and training to workers.** Employers must ensure that their workers receive regular training that covers all elements of the standard including, but not limited to: information on bloodborne pathogens and diseases, methods used to control occupational exposure, hepatitis B vaccine, and medical evaluation and post-exposure follow-up procedures. Employers must offer this training on initial assignment, at least annually thereafter, and when new or modified tasks or procedures affect a worker's occupational exposure. Also, HIV and HBV laboratory and production facility workers must receive specialized

initial training, in addition to the training provided to all workers with occupational exposure. Workers must have the opportunity to ask the trainer questions. Also, training must be presented at an educational level and in a language that workers understand.

- **Maintain worker medical and training records.** The employer also must maintain a sharps injury log, unless it is exempt under Part 1904 -- Recording and Reporting Occupational Injuries and Illnesses, in Title 29 of the Code of Federal Regulations.

Additional Information

For more information, go to OSHA's Bloodborne Pathogens and Needlestick Prevention Safety and Health Topics web page at: <https://www.osha.gov/SLTC/bloodbornepathogens/index.html>

To file a complaint by phone, report an emergency, or get OSHA advice, assistance, or products, contact your nearest OSHA office under the "U.S. Department of Labor" listing in your phone book, or call us toll-free at (800) 321-OSHA (6742).

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations.

This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; the teletypewriter (TTY) number is (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



Occupational Safety
and Health Administration
www.osha.gov 1-800-321-6742

What is HIPAA?

HIPAA, the Health Insurance Portability and Accountability Act of 1996, is a law that keeps the identifiable health information of Clients confidential. It includes what must be done to maintain this privacy, and explains punishments for anyone caught violating privacy. The Office of Civil Rights of the U.S. Department of Health and Human Services is the agency authorized to enforce HIPAA's privacy regulations. The regulations took effect on April 14, 2003.

What is confidential?

All information about a Client is considered private or confidential, whether written on paper, saved on a computer, or spoken aloud. This includes their name, address, age, Social Security number, and any other personal information.

What are the consequences of breaking the law?

The consequences will vary based on the severity of the violation. Factors considered are whether the violation was intentional or unintentional, or whether the violation indicated a pattern or practice of improper use or disclosure of identifiable health information. Depending on the violation, agencies may be fined by the government if they are found to be in non-compliance with HIPAA regulations.

Why are privacy and confidentiality important?

Clients need to be able to trust their Attendants with some personal health information. In order for Attendants to provide quality care, they must have this information. Clients must know that whatever they share will be kept private.

What is the "Need to know" rule?

If an Attendant needs to know Client information to perform his or her job, you can share that information with the Attendant. However, every Attendant may not need to all the information about every Client. An Attendant should only have access to what is needed to perform the job.

What are the Client's HIPAA rights?

Each Client has certain rights under the HIPAA regulations. Unless the information is needed for treatment, payment, and health care operations, it cannot be released without a written authorization from the Client. The Client must also give verbal/written permission to discuss information with family

members. The Client also has the following rights:

- To inspect and copy his/her medical record
- To amend the medical record if he/she feels it is incorrect
- To receive an account of all disclosures that were made, and to whom, except those necessary for treatment, payment, or health care operations
- To restrict or limit use or access to medical information by others
- To access confidential communications in the manner he/she requests
- To receive a copy of an agency's Notice of Privacy Practices

If the Client feels the agency or its staff has not followed the HIPAA regulations, the Client can make a formal, written complaint to the agency or to the Department of Health and Human Services, Washington, DC.

What are ways to protect confidentiality?

1. Spoken Communications:

- Watch what you say, where you say it, and to whom.
- Close doors when discussing private information.
- Do not talk about health information matters in front of others.
- If someone asks you a question involving personal information, make sure that person has a "need to know" before answering.

2. Telephone Communications:

- Do not leave messages on answering machines or voicemail with health information.
- When talking on the phone, be aware of who can overhear your conversation.

3. Medical Records:

- Make sure medical records are viewed only by those who need to see them.
- Store them in an area not easily accessible to non-essential staff/others.
- Do not leave medical records lying around unattended or in an area where others can see them. Don't leave files on car seats; lock them in the trunk.

4. Trash:

- Shred all papers containing personal health information.

- Put trash cans and shredders as close as possible to fax machines and desks where personal health information is used.

5. Fax Transmissions:

- Do not leave papers containing private information on the fax machine.
- Pre-program frequently faxed numbers into the fax machine to reduce errors.
- If possible, notify the receiver when you are sending a fax.

6. Computers:

- Develop a personal password which is hard to guess and change it as instructed.
- Position your monitor so it is not facing where someone could view identifiable health information.
- Never leave a computer unattended without logging off.
- Double-check the address before sending any e-mail.

SUMMARY



Section 6: Being an Employer

- A well-developed job description based on your Task Worksheet will assist in developing a job listing, ad, or job description.
- There are many ways you can post a job listing. Be creative!
- Be safe! When interviewing:
 - Do not share your address with a potential Attendant
 - Meet in a public location and bring a friend
 - Check on the potential Attendant's references
- Remember do not ask interview questions that are discriminatory in nature.
- Together with the FMS provider, you support your Attendants in completing necessary employment paperwork provided by the FMS provider. Attendants cannot start working until the FMS provider has given notice they are cleared to work.
- All Attendants must successfully pass criminal background, Board of Nursing, and OIG checks.
- Train for Success –
 - You are responsible for training Attendants on your needs, preferences, house rules, and required health and safety tasks.
 - HIPAA – as part of training emphasize that your Attendants should not share your private information.
 - Regular feedback for Attendants is important to having a successful employment relationship.
- Document! – If you have concerns or issues regarding your Attendant, such as attendance, tardiness, or behavior, you should discuss it with the Attendant and document the occurrence and a summary of your discussion.
- Everyone is responsible for preventing fraud. Be sure you:
 - Verify timesheets reflect the actual service and time provided before you sign off on them.
 - Do not pre-sign timesheets.
 - Don't schedule Attendants if you are in the hospital or nursing home.
 - Report any concerns.
- If an Attendant is injured while working with you, you and your Attendant must report it within 24 hours to your FMS provider.

