

Consumer-Directed Attendant Support Services Financial Management Services Frequently Asked Questions

This document has questions (Q) that come from Consumer-Directed Attendant Support Services members or their Authorized Representatives about Financial Management Services contractors and the services they provide. The answers (A) are intended to inform and support members as they navigate the CDASS program. **This document does not contain legal or tax advice.**

Key Terms and Definitions:

Colorado Department of Healthcare Policy and Financing (HCPF) - The state agency that oversees and operates Health First Colorado (Colorado's Medicaid program), Child Health Plan *Plus* (CHP+), and other public health care programs for Coloradans who qualify.

Consumer Direct for Colorado (CDCO) - Also called Consumer Direct. Colorado's training and support contractor for CDASS and In-Home Support Services (IHSS).

Consumer-Directed Attendant Support Services (CDASS) - Health First Colorado benefit program that lets a member, or their Authorized Representative (AR), direct and manage attendants who provide in-home care.

Financial Management Services (FMS) - A company contracted by the Department of Health Care Policy and Financing to provide fiscal/employer agent services to CDASS members and their attendants. An FMS can operate in a variety of ways. In CDASS, FMS are also Fiscal/Employer Agents or are said to "follow a Fiscal/Employer Agent (F/EA) model."

Fiscal/Employer Agent - An IRS-approved public or private entity that performs necessary employment-related functions as the Medicaid member's agent. It ensures employer-related legal obligations are fulfilled. The member or their Authorized Representative (AR) is the legal Employer of Record for the attendants whom they hire, supervise, and terminate. FMS following an F/EA model and CDASS employers are responsible for different employment-related tasks.

Home and Community Based Services (HCBS) - Services and supports authorized through 1915(c) waivers of the Social Security Act and provided in community settings to a Medicaid Member who requires a level of institutional care that would otherwise be provided in a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities as described at 42 CFR 441.300, et seq.

Internal Revenue Service (IRS) - Part of the U.S. Department of the Treasury and is responsible for enforcing and administering federal tax laws, processing tax returns, performing audits, and offering assistance for American taxpayers.

General FMS Questions

Q: Is Consumer Direct for Colorado an FMS?

A: In Colorado, Consumer Direct for Colorado is not a Financial Management Services (FMS) contractor. It is the contractor that provides support and training to CDASS and IHSS members, their Authorized representatives, case managers, IHSS agency staff and other stakeholders.

Consumer Direct for Colorado

Email: InfoCDCO@ConsumerDirectCare.com

Phone: 1-844-381-4433

Website: <https://consumerdirectco.com>

Q: What is a Fiscal/Employer Agent?

A: A Fiscal/Employer Agent (F/EA) is an IRS-approved public or private entity that provides Financial Management Services (FMS) by performing payroll and administrative functions for self-directing individuals. Just like a regular payroll provider, an F/EA makes sure workers get paid on time and that taxes are handled correctly. However, to fully protect participants from financial risk, an F/EA takes on full liability for each participant-employer's tax responsibilities related to participation in a self-direction program.

Q: How is an FMS different from a payroll company?

A: Every Financial Management Services (FMS) company operates under Section 3504 of the Internal Revenue Code. It requires the FMS to take on joint federal tax liability with every member to whom it provides services. Regular payroll providers do not share their member's tax liabilities. The FMS is financially responsible for making sure each CDASS employer's tax payments, filing, and reporting are done correctly. The IRS outlines FMS federal tax procedures and responsibilities in its Revenue Procedure 2013-39. If an FMS makes a tax mistake, tax authorities will hold it, not the CDASS employer, financially responsible. This protects CDASS employers from personal financial risk.

Q: What are the benefits of using an FMS that follows the Fiscal/Employer Agent model?

A: Programs that use the Fiscal/Employer Agent model of FMS allow participants to have maximum control over the services they receive while being protected from financial risk. Unlike in the Agency with Choice model of FMS, participants using an F/EA can hire workers directly and perform all employer duties themselves. However, the F/EA still bears tax liability for each participant-employer.

General CDASS FMS Questions

Q: What FMS contractors I can choose from for CDASS?

A: CDASS members can choose between these FMS contractors:

Palco

Email: CO-CDASS@palcofirst.com

Call: 1-866-710-0456

Website: <https://palcofirst.com>

Public Partnerships, LLC (PPL)

Email: ppcdass@pplfirst.com

Call: 1-888-752-8250

Website: <https://pplfirst.com>

Q: What are the roles and responsibilities of the FMS?

A: The FMS you choose will be responsible for establishing the member or Authorized Representative as the legal Employer of Record. They will also:

- Assist with obtaining a Federal Employer Identification Number (FEIN) for the employer (either the member or their Authorized Representative).
- Process attendant paperwork, timesheets, and issue paychecks.
- Withhold and file employer-related taxes.
- Issue W-2s to attendants.
- Obtain Workers' Compensation Insurance coverage.
- Monitor and report on a member's CDASS budget spending.
- Provide Electronic Visit Verification (EVV) technologies.
- Comply with state laws relating to employer and employee regulations and standards such as sick leave, family and medical leave insurance, employee retirement savings.

More Terms and Definitions:

Electronic Visit Verification (EVV) - Is a technology used to verify that home or community-based service visits occur. The purpose of EVV is to ensure that services are delivered to members and that providers only bill for services rendered.

Q: How do I choose an FMS? What separates them from one another?

A: Each FMS contractor is available to answer any questions you have about its services. You can look at its website or call its customer service for more information. Consumer Direct for Colorado also has resources and can provide basic information about the current CDASS FMS. Look at the **How to Choose a Financial Management Services Contractor for Consumer-Directed Attendant Support Services** resource located on the Consumer Direct [website](#).

Q: Can an FMS refuse to work with or terminate a member? If so, under what circumstances?

A: No, an FMS cannot refuse to work with a member. The only time when the FMS can disenroll one of its members is when the member is terminated from CDASS as described in Colorado Code of Regulation 10 CCR 2505-10 Section 8.7514.O.

Q: Will my FMS consider me a financial risk if I am hospitalized and seek to terminate me from CDASS?

A: There is no financial risk to the FMS if the member is hospitalized. The FMS cannot terminate a CDASS member from the program and generally, there is no financial impact to the FMS if you are hospitalized as long as your hospitalization is reported promptly to your case manager and FMS. If you do not notify your case manager and FMS of your hospitalization and you allow your attendants to continue providing and billing services, you may be referred to the State's Program Integrity Section and be responsible for paying the funds back to the State.

Q: Do the FMS contractors get paid to provide their services? If they do, are they paid the same amount and what impact does it have on my CDASS budget?

A: The FMS contractors are paid a Per-Member-Per-Month (PMPM) fee when you are actively served by them. This fee is established by the Department of Health Care Policy and Financing (HCPF) at the time it is selected as a contractor through a Request for Proposal (RFP) process. All FMS are currently paid the same PMPM of \$103.21. The PMPM is separate from the Member's CDASS Allocation and is paid by the State. It does not affect the funds you have available to pay your attendants.

Q: Can I change FMS contractors? If so, how do it do that?

A: Changing FMS contractors only occurs during FMS Open Enrollment. Open Enrollment occurs quarterly in March, June, September, and December. Transfer paperwork is required by set due dates. If paperwork is received after the deadline, the member must wait for the next quarter to transfer. When you are ready to begin the transfer, contact your case manager and they will help you. For more information about FMS transfers, look at the **How to Choose a Financial Management Services Contractor for Consumer-Directed Attendant Support Services** resource located on the Consumer Direct [website](#).

Q: If I change FMS, do my attendants need to complete new employment applications?

A: Yes, each FMS contractor has its own paperwork that CDASS employers must complete to change to a new FMS. Your attendants may also need to complete new forms for the new FMS. Contact the FMS you are interested in to learn more about their transfer requirements and services before you start the process.

Q: If I change FMS, will my Attendant Support Management Plan need to be updated?

A: No, your Attendant Support Management Plan (ASMP) will not be to be updated unless there has also been a change in your needs and/or you are required to go through required coaching. However, Consumer Direct recommends that you review your Monthly CDASS Allocation and recalculate your Cost to You to match your new FMS contractor's payroll taxes. The Cost to You varies slightly between the FMS based on their business standing and history in Colorado. Recalculating it when you transfer to a new FMS will ensure you are not overspending your Monthly CDASS Allocation.

More Terms and Definitions:

Monthly CDASS Allocation - Also called your monthly budget. The total amount available each month to pay your attendants for their services and your employer taxes.

Cost to You - The total amount that will come out of your CDASS Allocation when your attendants are paid. The cost factors in your attendant's hourly wage as well as your employer taxes, workers' compensation insurance and sick leave premiums. For some employers, it includes Family and Medical Leave premium.

FMS Insurance Questions

Q: What insurances are FMS providers required to have?

A: FMS must have Commercial General Liability, Automobile Liability, Cyber/Network Security and Privacy liability, Professional Liability, and Crime Insurance. FMS providers contracted through the State Department must provide copies of insurance certificates and notify the State Department if any of these policies are changed or cancelled. **Please note: These insurance requirements must be met for the FMS to operate as a contractor for the State. The policies do not extend protection or coverage for individual CDASS employers.**

Q: Does the Member need to purchase employer liability insurance?

A: Yes. CDASS as a program nor the FMS do not currently offer CDASS employers a group employer liability insurance policy.

Q: Do the FMS contractors provide Worker's Compensation insurance that cover my attendants? If they do, how do my attendants file a claim if they are injured?

A: Yes, both FMS provide CDASS employers Worker's Compensation insurance for their attendants.

Palco - Palco provides a Workers' Compensation Insurance policy through Markel. For more information, including how attendants file claims, review its [Worker's Compensation](#)

[Reporting Guide \(https://palcofirst.com/wp-content/uploads/2024/06/Workers-comp-claims-guide-One-Page-Market.pdf\)](https://palcofirst.com/wp-content/uploads/2024/06/Workers-comp-claims-guide-One-Page-Market.pdf). Call 1-866-710-0456 to request a copy of the guide.

Public Partnerships (PPL) - PPL provides a Workers' Compensation Insurance policy through Lockton Affinity. For reporting any work-related injury and to file a claim, please call Lockton Affinity 844-740-3936. For more information, view PPL's [Worker's Compensation Reference Guide \(https://pplfirst.wpenginepowered.com/wp-content/uploads/2024/02/co-cdass-workers-compensation-reference-guide.pdf\)](https://pplfirst.wpenginepowered.com/wp-content/uploads/2024/02/co-cdass-workers-compensation-reference-guide.pdf) or call PPL at 1-888-752-8250 to request a copy of the guide.

CDASS Employer and FMS Relationship Questions

Q: Who is the actual employer to my attendants?

A: Members or their Authorized Representatives (AR), not the FMS, is the legal Employer of Record for attendants. In CDASS, employers are required to have a Federal Employer Identification Number (FEIN) to establish themselves as the legal Employer of Record.

Q: Who can hold the Federal Employee Identification Number, the member or the Authorized Representative?

A: The FEIN should be held by whomever is performing most of the employer duties. Employer duties in CDASS include:

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

In most cases, the member will hold the FEIN. In cases where an Authorized Representative (AR) is directing and managing the member's services, the AR should hold the FEIN. In certain situations, a member may hold the FEIN even when they have an AR.

Q: How do I or my AR become the legal Employer of Record in CDASS?

A: The FMS will obtain a FEIN for a CDASS employer during the enrollment process. The CDASS employer does not need to contact the IRS themselves for this.

Q: What if I or my Authorized Representative already have a Federal Employer Identification Number (FEIN)?

A: If you or your AR already have a FEIN number, please tell your FMS and they will communicate any next steps needed.

Q: As the legal Employer of Record, what is my status with the IRS? Who is responsible if my employer taxes are not paid or paid improperly?

A: The IRS has a classification for Medicaid members who self-direct their care and use an FMS that follows the F/EA model. You are known as a “Home Care Service Recipient” and “Domestic Employer.” Once CDASS employer is classified as a “Domestic Employer,” their employer tax responsibilities are transferred to the FMS.

The Internal Revenue Manual, which instructs IRS agents on how to enforce tax regulations, has detailed instructions in place for Home Care Service Recipients classified as Domestic Employers. The Manual directs IRS agents to handle employers’ tax matters with the greatest possible sensitivity. The Manual also makes clear to IRS agents that an FMS under the F/EA model is responsible for handling wages and taxes related to Home Care Service Recipients’ services, and the FMS should be the only point of contact about tax issues. Therefore, the FMS handles and is liable for all issues related to a CDASS employer’s tax withholdings and filings.

In the event of a tax problem related to a member’s participation in CDASS, the IRS would pursue the FMS, *not the CDASS employer*, for any taxes and penalties due. Upon establishment as a Home Care Service Recipient in the IRS system, your individual employer filing requirements and the expectation you get notices, liens and levies from the IRS are *removed*. These filing requirements and expectations for notices, liens and levies applied to your FMS when it submits IRS Form 2678, *Employer/Payer Appointment of Agent*, during your enrollment. This form allows the FMS to manage these employer duties on your behalf.

Q: What liability does a CDASS employer have?

A: CDASS employers face the same liabilities that any other Colorado employer faces. The IRS website (www.irs.gov) and the [CDASS Training Manual](#) located on Consumer Direct’s website under the ‘CDASS’ tab) have more information about these liabilities. For state regulations, employers should visit the Colorado Department of Labor and Employment website at <https://cdle.colorado.gov>.

FMS Attendant Hiring Questions

Q: Who is responsible for hiring, dismissing, supervising, and training Attendants?

A: The member or their Authorized Representative is the legal Employer of Record therefore, they are responsible for recruiting, hiring, dismissing, training, and supervising attendants. If you want to hire a new attendant, you must contact your FMS and assist it and your new worker to ensure they successfully complete all hiring steps. The FMS must also be notified if you terminate an attendant.

Q: Can CDASS members go to their FMS or Consumer Direct to get help recruiting new attendants? What support is available for this?

A: Consumer Direct for Colorado is the best resource to get help finding new attendants. Consumer Direct manages the [CDASS Attendant Directory](https://consumerdirectco.com/find-an-attendant/) (<https://consumerdirectco.com/find-an-attendant/>). It is an online tool to connect CDASS employers with available attendants. Additionally, one-on-one guidance is available through Consumer Direct's Information and Assistance Services (I&A). I&A services provide CDASS employers specialized support and resources to match your needs and preferences. I&A supports the case manager's work.

The State of Colorado also hosts a job matching directory called Direct Care Careers. It is another resource for CDASS employers to find quality attendants. Visit the Direct Care Careers website (<https://directcarecareers.com>) for more information.

FMS Payroll and Tax Services Questions

Q: Will my FMS help me calculate overtime for my attendants?

A: Yes, the FMS will ensure attendants who are not exempt from being paid overtime have their overtime hours calculated correctly. However, CDASS employers should be knowledgeable about the Fair Labor Standards Act (FLSA), which is the law that dictates overtime rules and regulations. For information about FLSA, visit the U.S. Department of Labor website at <https://www.dol.gov/whd/homecare>.

Q: What happens if I overschedule my attendant and don't have enough money in my budget to pay the hours they worked? What options are available to me?

A: It is important to set a schedule in advance of having your attendants start working. This is typically done during your enrollment in CDASS when you are receiving help from your case manager, Consumer Direct and your FMS. If an unexpected and temporary increase in your needs means you scheduled your attendants for more hours than usual, you can spend up to 129.99% of your monthly CDASS allocation (budget) to cover the additional amount. Your FMS will track that spending and report it to you through its web-based portal and Monthly Member Expenditure Statements. Anything over 129.99% will be denied by your FMS and you may be responsible for paying the unpaid wages out-of-pocket.

If you expect your increased need to continue, it is critical that you contact your case manager so they can reassess you and potentially increase your CDASS Annual Allocation. Doing this will ensure that you have the right number of services for your full certification year. If your allocation is increased, your case manager or the State will work with your FMS to report the increased amount so it can update its system.

More Terms and Definitions:

CDASS Annual Allocation - The total amount your case manager calculates to pay your services while you are in the CDASS program. This amount is set for the full year you are certified for CDASS (Certification Year) unless your case manager revises your allocation due to a change in your needs.

Q: What are my requirements as the employer to pay attendants for sick time, paid vacations, and holidays?

A: In CDASS, the Cost to You factors in an employer premium to pay sick leave for your attendants. CDASS employers with 10 or more attendants have an additional premium to fund the state's Family and Medical Leave Insurance program for employees. CDASS employers can set different hourly rates for shifts that occur on holidays or weekends. CDASS does not allow attendants to be paid for vacation or as "paid time off (PTO)."

Q: Do I or my attendants get any tax discounts by working with an FMS?

A: CDASS employers and their attendants may qualify for some tax exemptions or exclusions depending on the employer-employee relationship. These are dictated by the federal government and not each FMS; however, your FMS or Consumer Direct can help you identify if you or your attendant qualify for any. The FMS will work with you to ensure that the correct taxes are withheld from you and your attendants.

The following chart outlines the current exemptions available for **CDASS employers**.

Attendant Relationship to the CDASS Employer (FEIN Holder)	Social Security and Medicare Tax (FICA)	Federal Unemployment Tax (FUTA)	State Unemployment Tax (SUTA)
Spouse employed by Spouse	Exempt	Exempt	Exempt
Child employed by Parent (child under the age 21)	Exempt	Exempt	Exempt
Parent employed by Adult Child (adoptive parent or stepparent)	Exempt	Exempt	Not Exempt
Minor students employed (full-time students under age 18)	Exempt	Not Exempt	Not Exempt

An attendant who lives with the member that they provide services to may apply for the Difficulty of Care Exclusion. Difficulty of Care excludes the attendant **from federal income tax and state income tax when certain steps are taken**. Attendants must identify during their enrollment with the FMS whether they qualify for the exclusion. For more information about Difficulty of Care, CDASS employers and their attendants should speak with their FMS, a tax advisor, and visit the IRS website at <https://www.irs.gov/individuals/certain-medicaid-waiver-payments-may-be-excludable-from-income>.

Q: What happens if my FMS is unable to process and/or pay attendant payroll?

A: Typically, your FMS will be unable to process payroll if you are ineligible for Medicaid or CDASS, or if you have approved your attendants' timesheets and will spend more than 129.99% of your monthly CDASS allocation. In these cases, you must work with your case manager and the FMS to resolve the issue. All FMS are contractually required to maintain a reserve of money that can pay attendants in emergency situations.

Q: What happens if the FMS provider inappropriately files payroll taxes?

A: The FMS is responsible for properly withholding and filing CDASS employer payroll taxes with the IRS and State of Colorado. Filing is based on the information submitted by the CDASS employer and their attendants during the FMS enrollment process. If you are notified of an issue with your payroll taxes, the FMS will address it.

Q: What happens if my FMS goes out of business?

A: All FMS are required by the State to have emergency and business close out plans. These plans ensure that the services provided to you while on CDASS are not impacted. If your FMS no longer is in business, the Department of Health Care Policy and Financing will work collaboratively with it, the other FMS contractor(s), Consumer Direct, and your case manager to transition you to another FMS. Remember, your FMS is responsible for ensuring proper payment to your attendants and accurate and timely withholding and filing of taxes. It is required to complete this task fully whether it is actively in business or going out of business.