



**C** Consumer    **D** Directed    **A** Attendant    **S** Support    **S** 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 for Colorado Training Coordinator can assist you.

# **COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES (CDASS) PROTOCOL**

CDASS Two Attendant Requirement Protocol for FMS Vendors & Case Management Agencies  
Effective 1.1.2016

## **I. PURPOSE AND AUTHORITY**

### **A. PURPOSE**

The purpose of this protocol is to establish policy and procedures for Financial Management Service (FMS) vendors and Case Management Agencies (CMA) in meeting the requirement for a CDASS client to have two attendants employed with the client selected FMS vendor. Because CDASS clients are responsible for managing their homemaker, health maintenance and personal care services, it is imperative that clients have at least two employees. Two employees provides backup services in the event that the primary attendant is unavailable.

### **B. AUTHORITY**

Consumer Directed Attendant Support Services, [10 CCR 2505-10 8.510](#).

## **II. DEFINITIONS**

- A. Attendant means the individual who meets qualifications in § 8.510.8 who provides CDASS as determined by § 8.510.3 and is hired by the client or client authorized representative.
- B. Authorized Representative (AR) means an individual designated by the client or the legal guardian, if appropriate, who has the judgment and ability to direct CDASS on a client's behalf and meets the qualifications as defined at §8.510.6 and §8.510.7.
- C. Case Management Agency (CMA) means a Department approved agency within a designated service area where an applicant or client can obtain Long Term Services and Supports case management services.
- D. Case Manager means an individual who meets the qualifications to perform case management activities by contract with the Department.
- E. Consumer Directed Attendant Support Services (CDASS) means the delivery option for services that assist an individual in accomplishing activities of daily living when included as a waiver benefit that may include health maintenance, personal care, and homemaker activities.

- F. Department means the Colorado Department of Health Care Policy and Financing
- G. Financial Management Services (FMS) means an entity contracted with the Department and chosen by the client/AR to complete employment related functions for CDASS attendants and track and report on individual client allocations for CDASS.
- H. Training and Operations Vendor means the organization contracted by the Department to provide training to CDASS clients/authorized representatives, provide training to case managers on participant direction, and provide customer service related to participant direction.

### III. POLICY OVERVIEW

The purpose of this protocol is to provide guidance to FMS vendors and case management agencies on how to monitor and report CDASS client employment contracts in the CDASS service delivery option. Attendant management is a key element of the CDASS service delivery model as it gives clients the choice and control to select and manage their CDASS attendants. Clients or their CDASS authorized representative are responsible for hiring, training, scheduling and managing attendants. Assuring back up coverage is an essential part of management of attendant services in any model. CDASS clients take responsibility for arranging their own backup care and therefore must always have a backup attendant available. Prior to the case manager and the FMS vendor determining a start date for CDASS, the client or authorized representative is required to establish the employment of two attendants through the client's selected FMS vendor. Maintaining employment of a minimum of two CDASS attendants is essential for the health and welfare of CDASS participants to ensure they are able to access attendant services timely and have their personal care, homemaker, and health maintenance service needs met. **While the client or authorized representative must have established employment with two CDASS attendants, it is the determination of the client or authorized representative whether to utilize one or more attendants to perform services during any pay period.**

**This policy overview does not provide guidance for every situation, but rather provides standards for use by FMS vendors and case management agencies.**

### IV. PROTOCOL

- A. Each FMS vendor is responsible for running a monthly report to identify any clients who do not have an employment relationship with at least two CDASS attendants. When the

FMS vendor identifies a client who does not have two CDASS attendants, the client's FMS vendor shall:

1. Contact the client or client's authorized representative to inform them that the two attendant employment requirement is not being met.
  - a. This contact will be initiated by the client's FMS vendor within five business days of the identification of the client not meeting the requirement. The FMS vendor will mail or email (based on client communication preferences) the client or the client's authorized representative notification regarding noncompliance with the two attendant protocol. The notification will include the CDASS Two Attendant Requirement Protocol for FMS Vendors & Case Management Agencies and FMS employment applications for completion. Client will also be advised of the opportunity for voluntary training through the Department's contracted training and operations vendor regarding locating, interviewing and hiring new attendants. Upon request, the client's FMS vendor will provide the client or client authorized representative with a list of available attendants that are seeking employment.
  - b. The client's FMS vendor will notify the client's case manager regarding the two attendant protocol violation.
2. The client, or client authorized representative is required to submit a completed employee application to hire at least one additional attendant in order to be in compliance with the two attendant requirement.
  - a. The completed employee application must be submitted to the client's FMS vendor within 30 calendar days of FMS notification.
  - b. The client's FMS vendor has five business days to process the employee application and inform the client, or client authorized representative of the employment eligibility determination. The FMS vendor must identify all errors in the employment application within the first three business days and report any errors to the client or AR.
  - c. The client, or client authorized representative will be required to submit additional employment applications within 30 calendar days of notification of selected employee being ineligible for hire.

- d. The FMS vendor will notify the client's case manager upon receipt of the employment application and also upon determination of employment eligibility.
  - e. If a client submits incomplete applications and fails to correct them or continuously submits applications for ineligible employees resulting in no additional hires over a three month period, the client or AR will be required to attend mandatory retraining with the Department's contracted training and operations vendor.
3. If the client, or client authorized representative does not submit an employee application within the first 30 calendar days following FMS identification and notification of the client not meeting the two attendant requirement:
- a. The FMS vendor will notify the client's case manager within five business days of the requirement not being met.
  - b. Within five business days after notification from the client's FMS vendor, the case manager will refer the client or client authorized representative to the Department's contracted training and operations vendor for mandatory retraining. The case manager shall inform the client, or client authorized representative if applicable, that retraining must be completed within 45 days from the date the case manager contacts, and submits the retraining referral to the training and operations vendor. The case manager will send written notification to the client, or client authorized representative informing them of the mandatory training and the time frame for training to be completed.
  - c. The client, or client authorized representative will no longer be required to complete training if an eligible employee is hired before the established 45-day timeframe.
  - d. If the client or AR notifies the FMS with good cause for not complying and has made reasonable efforts to secure a second attendant the FMS will contact the Department to request an extension. The maximum extension is an additional 20 days.
4. If the client, or client authorized representative does not complete the required training through the training and operations vendor by the established 45-day timeframe and does not have two attendants approved for employment through the FMS vendor:

- a. The training and operations vendor will notify the client's case manager within five business days of the timeframe for retraining not being met.
  - b. The case manager will notify the client within five business days of notification from the training and operations vendor that the client is required to designate an authorized representative; or a new authorized representative will need to be designated if one is being utilized. The case manager will provide the client with written notification of the requirement and timeframe to designate an authorized representative or a new authorized representative. The authorized representative shall be identified and scheduled for training with the Department's contracted training and operations vendor within 15 calendar days. The authorized representative's training and paperwork with the CDASS training and operations vendor and the client selected FMS vendor shall be completed within 60 calendar days.
  - c. The client authorized representative will be required to submit a complete employment application within 30 calendar days of completing the required CDASS training and paperwork.
  - d. The client's FMS vendor has five business days to process the employee application and inform the client, or client authorized representative of the employment eligibility determination. The FMS vendor must identify all errors in the employment application within the first three business days. The authorized representative will be required to submit at least one additional employment applications within 30 calendar days of notification of the selected employee being ineligible for hire.
5. If the client does not designate an authorized representative or a new authorized representative, or the client authorized representative does not complete all required CDASS training and paperwork within 60 calendar days, the case manager shall:
- a. Inform the client and AR that the client will be terminated from the CDASS service delivery option in accordance with §8.510.12 and 8.510.9.C within 30 calendar days.
  - b. The case manager will work collaboratively with the client to secure IHSS or agency based waiver services.
  - c. The case manager shall provide the client with a Notice of Action, in accordance with §8.510.12.A.1 and §8.510.12.A.2. This notice provides the client with their appeal rights.

- d. The case manager shall notify the client FMS organization of the date on which the client is being terminated from CDASS.
6. If the client's authorized representative does not submit an employee application within 30 calendar days following training or does not have two attendants approved for employment through the FMS vendor within 60 calendar days following training, the case manager shall:
- a. Inform the client and AR that the client will be terminated from the CDASS service delivery option in accordance with §8.510.12 and 8.510.9.C within 30 calendar days.
  - b. The case manager will work collaboratively with the client to secure IHSS or agency based waiver services.
  - c. The case manager shall provide the client with a Notice of Action, in accordance with §8.510.12.A.1 and §8.510.12.A.2. This notice provides the client with their appeal rights.
  - d. The case manager shall notify the client FMS organization of the date on which the client is being terminated from CDASS.

## Colorado Law and the Fair Labor Standards Act (FLSA)

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.

If an AR is the Employer of Record for two or more Members, and those Members 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 Members. This could lead to problems with the labor board if not monitored closely.

**Example 1:** An individual is the AR for two Members, 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 Members, 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 Members.

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 Members' allocations.

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

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.

## Equal Pay for Equal Work Act Information

The Equal Pay for Equal Work Act was created to ensure that employees with similar job duties are paid the same wage rate, regardless of gender. Pay may vary based on seniority, merit, education, training, or other specific factors but cannot vary based solely on gender. The law requires employers to disclose compensation information in job postings, to notify employees about advancement opportunities, and to keep track of job descriptions and wage rates.

## Recruiting Attendants

Prior to recruiting an Attendant, you must consider what tasks need to be performed. Once the tasks are determined, you 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 preferences on your care.

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. You can also check the CDASS Attendant Directory. This is an online database managed by Consumer Direct that lists Attendants looking for work.

Recruiting is the most important step in the hiring process. Below are the steps in the order they will occur during your recruiting process. Use this as a checklist or outline; it is completely up to you.

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

## TIPS



Remember, recruiting is an ongoing 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. You can 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, timeliness, 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 \$13 per hour. If interested, call (719) 555-5555 or send email to: myemail@writeme.com

In the next example advertisement, a variety of people are likely to respond; however, people who do not want to work with women are not likely to respond. Each additional detail in your advertisement helps narrow the pool of candidates so you can find your ideal attendant.

### PERSONAL CARE WORKER

Nonsmoker needed to work for adult female with disabilities, assist with personal care and housekeeping. Schedule is negotiable. Pay will be \$13 per hour. If interested, call (719) 555-5555 or send email to: myemail@writeme.com

Likewise, people who do not have experience working with severe disabilities or feel uncomfortable may not respond to the third example, below.

## 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 \$13 per hour. If interested, call (719) 555-5555 or send email to: myemail@write.me.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 Members for suggestions of individuals who might be interested in picking up some additional hours. Other CDASS Members 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](http://consumerdirectco.com). Contact Consumer Direct for assistance.

**Local publications** can be a free or a low-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 listing 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 Members have found that local newspapers are good 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, 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 Consumer Direct 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. You might want a copy at your computer or placed by your phone.

### **TIPS**



Always use caution and 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.



## Helpful Guidelines for Telephone Screening

### **Act quickly:**

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

### **Be Pleasant:**

- 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, will you be able to perform these 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 16 years of age?
- What hours are you available?
- What days can you work?
- I have pets. Will you be comfortable performing services in my home?
- 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. Is this a task you will be able to perform?

If at the end of your phone screening you think you want 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, then 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 an in-person 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?**

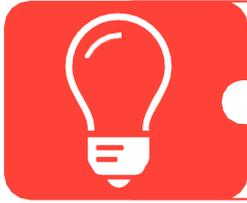
You are not obligated to interview anyone. Let each person know you are taking names and phone numbers and will call them back if you decide to interview them. You may find that you would like to interview someone later even though your initial reaction was not to. Taking everyone's name and address 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, but you need more specific information about them before setting up an interview. A resume gives written record of the person's experience, 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, childcare arrangements or marital status.
- General questions about disabilities or physical limitations. It is better to ask if they are able to perform the specific tasks you need.
- 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 as a CDASS Attendant (16).

## **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?

## Acting as a Reference

As an employer, other employers may contact you regarding your current or past employees' work history. They may ask questions similar to those listed above. Contact your FMS provider to discuss policies about what information you can disclose. You can also review [Title 8](#), Labor I, Article 2, Part 1 [C.R.S. 8-2-114](#) for additional information.

## 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 critique 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 at least 16 years of age.
- Must complete a Office of Inspector General, State of Colorado criminal background check, and Board of Nursing (BON) check on all Attendants.
- The Attendant must pass both the OIG and BON 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 and your new Attendant must work together to complete all your FMS provider's Attendant enrollment 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. The most common delay 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.

### Background Checks

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 to submit the employment paperwork.

- Criminal Background and Board of Nursing Checks.
- Office of Inspector General (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.

### Colorado Adult Protective Services (CAPS) Check

Members/ARs hiring a care provider through CDASS may also choose to run a check of the Colorado Adult Protective Services data system (CAPS) at their own expense. CDASS funds cannot be used for CAPS check fees, and Members/ARs are not required to run a CAPS check on applicants.

This check provides information about whether an applicant has substantiated allegations of physical abuse, sexual abuse, caretaker neglect, or exploitation of an at-risk adult. If you would like to access a CAPS check or would like more information, you can visit this website- [Colorado.gov/ccu](http://Colorado.gov/ccu)

## Do you want to be more involved in shaping CDASS policy?

The **Participant-Directed Programs Policy Collaborative (PDPPC)** is a monthly joint meeting for stakeholders and the Colorado Department of Health Care Policy and Financing meeting.

The PDPPC is a place where stakeholders and the Department work together, with transparency on issues relating to the Participant-Directed Programs administered by the Department.

For more information and to join, contact:

[John.R.Barry@state.co.us](mailto:John.R.Barry@state.co.us)

or (303) 866-3173



## CDASS Criminal Barrier Crimes List



### Colorado Consumer Directed Attendant Support Services (CDASS) Criminal Barrier Crimes List Updated February 2021

Attendants shall not be approved or utilized for employment if ever convicted of the following crimes within any time frame:

- 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 theft.
- Hate crimes.
- Fraud (including but not limited to identity theft, forgery, financial fraud, or 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 sexually 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).

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

following crimes within the specified time frames:

- Felony drug related offenses (within the last 5 years).
- Felony DUI (within the last 5 years).

These are referred to as the Criminal Barrier Crimes. If a prospective attendant has any of these convictions, they are not eligible for hire. CDASS FMS and Training and Operations vendors can provide more information on the background check requirements and process.

## 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 in class.

## Office of Inspector General 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 provider, nor the Department 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](mailto: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.

You will receive additional instructions and assistance with completing the I-9 form from your FMS provider.

## **W-4 Form**

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

You will receive additional instructions and assistance with completing the W-4 form from your FMS provider.

## **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 essential in making sure you receive 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 wiping their feet before entering 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. Attendants under the age of 18 are not permitted to operate mechanical lifts.

**Bloodborne 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 you.
- You agree to provide a sharps container for proper disposal of needles.
- You agree to provide a blood spill cleanup kit.

Refer to the Blood Borne Pathogen Fact Sheet at the end of this section for additional information. If you need help finding medical supplies such as a sharps container, contact your Case Manager for assistance.

## 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 in **Appendix C** 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. 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, they 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:

- Approving time that an Attendant didn't work.
- Allowing Attendants to approve time each pay period.
- Billing for services while someone is in the hospital or nursing home.
- Billing for services not approved by the 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 and Financing:

- Call toll free: 855-375-2500
- Send an email to [ReportProviderFraud@hcpf.state.co.us](mailto: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

### **Workers' 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 Workers' 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 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 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 is a 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 indicating everyone agrees.

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 employer of record and should 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 guidelines during their employment, which will make it easier when you need to let them go. Make sure to:

- Document verbal warnings about issues you have with the employee in that employee's file.
- Keep a record of written warnings that have been discussed, and signed, by both you and the Attendant.
- Develop and file a corrective action plan with your employee. The action plan should be detailed with specific timelines and requested changes in their 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 of Record. 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.

Unemployment claims impact the unemployment rate that is charged to your allocation by your FMS provider as part of the employer related tax rate or “Cost to you”.

See the state of Colorado unemployment poster in **Appendix C** or visit the Colorado Department of Labor and Employment website for additional information. <https://www.colorado.gov/pacific/cdle/unemployment>

## **Sick Time**

As of January 2022, Attendants now earn sick time. They earn 1 hour of sick time for every 30 hours worked. Attendants can earn up to a maximum of 48 hours in a year. Sick time rolls over year to year but cannot exceed the 48 hour maximum. If an Attendant separates from employment they are not entitled to be paid the value of their unused sick time; however, if they return to work for the Member within six (6) months, their time is restored. It is at the discretion of the Member/AR to approve sick time. If you are approving sick time, please have your Attendant submit a request for sick time with your FMS provider. Sick time cannot be used as holiday or vacation time for your Attendant.

**Member Experience: 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.”



# 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 the prospective Attendant's references.
- Remember do not ask interview questions that are discriminatory in nature.
- Together with the FMS provider, you will support your Attendants in completing the 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. Your FMS provider will complete these checks on your behalf.
- 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 to your FMS provider, Case Manager, Consumer Direct or the Department.
- If an Attendant is injured while working with you, you and your Attendant must report it within 24 hours to your FMS provider.