



 Consumer  Directed  Attendant  Support  Services

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

Fiscal/Employer Agent (F/EA)

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

The F/EA model provides Clients with flexibility, control, and responsibility. You are the Employer. You recruit, interview, hire, train, schedule, and when necessary, terminate your Attendants. Consumer Direct Colorado assists you with developing an ASMP in order to secure desired services and become an effective employer of your Attendants.

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

In IRS Publication 15, The IRS has designated some familial relationships as exempt from certain taxes. This only applies if you have an Attendant who is related to the FEIN holder in one of the following manners. If one of the relationships is present the Attendant, and your allocation, may be exempt from FICA (Social Security and Medicare), FUTA (Federal Unemployment) and SUTA (State Unemployment) taxes. Your FMS provider can help you determine which exemptions you and your attendants qualify for.

The following relationships exempt the FEIN holder from associated taxes:

Relationship to EIN Holder	FICA	FUTA	SUTA
Child employed by Parent	Exempt (18 – 20 years of age)	Exempt (18 – 20 years of age)	Exempt (18 – 20 years of age)
Parent employed by Adult Child (including Adoptive or Stepparent)	Exempt	Exempt	Not Exempt
Spouse employed by Spouse	Exempt	Exempt	Exempt

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

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

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

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

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

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

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

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

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

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.





FLSA FAQ – Based on Department of Labor (DOL) Guidance

**Created by Consumer Direct Colorado and approved by
Colorado Department of Health Care Policy and Financing (HCPF)**

Regardless of the service option; agency-based, In Home Support Services (IHSS) or Consumer Directed Attendant Support Services (CDASS), minimizing risk is a joint effort between the client or Authorized Representative and providers. This Fair Labor Standards Act (FLSA) information sheet has been created to highlight the features and responsibilities associated with in the CDASS model. It is intended to assist clients and Authorized Representatives to understand the responsibilities and requirements to employers under the FLSA.

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

The following Frequently Asked Questions have been compiled by Consumer Direct Colorado to assist clients and Authorized Representatives. Please note, Consumer Direct Colorado cannot provide tax advice or legal advice. Advice from a tax professional or a lawyer regarding individual situations is recommended.

1. Q: What is the Fair Labor Standards Act (FLSA)?

A: FLSA is the Federal Law that requires employers to pay employees, minimum wage and overtime. This includes domestic services employees.

“Domestic Service Employment” means services of a household nature performed by an employee in or about a private home.

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

A: In CDASS, clients may elect to set different rates of pay for shifts that fall on holidays, weekends etc. if they would like. CDASS budgets are not built with funds to pay for sick time, unworked holidays and paid vacations. Timesheets may only be submitted to FMS providers for hours worked.



3. Q: Are there any exemptions from the FLSA Overtime requirements?

A: There are two exemptions under FLSA an employer may claim should all of the criteria be met. These are known as “**Live-in Domestic Service Employee Exemptions**” and “**Companionship Services Exemption**”

Because CDASS is a task based service, the Companionship Exemption **DOES NOT** apply due to the definition established by DOL.

Live-in Domestic Service Employee Exemptions

To be a “live-in” home care worker, the employee must either live at the consumer’s home full-time (that-is, have no other home of their own), or spend at least 120 hours or five consecutive days or nights in the consumer’s home per week.

A live-in home care worker could be a family member of the consumer or a provider who moved into a consumer’s home as part of a shared living arrangement. Workers who come to a consumer’s home for 24-hour shifts but are not present for at least 120 hours each week or for five consecutive days or nights are not live-in workers.

Employees who do not meet this definition are not considered live-in domestic service workers and must be paid at least the federal minimum wage for all hours worked and overtime pay at one and a half times the regular rate of pay for all hours worked over 40 in a workweek.

- Workers who work temporarily for the household for only a short period of time, such as two weeks, are not considered live-in domestic service workers, because residing on the premises of the household implies more than temporary activity. The employer, in this care, cannot claim the overtime pay exemption and must pay overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.
- Workers who work 24-hour shifts but are not residing on the employer’s premises “permanently” or for “extended periods of time” are not considered live-in domestic service workers and, thus, the workers must be paid overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.

See Wage and Hour Division Fact Sheet 79B, Live-in Domestic Service Workers Under the FLSA, for more information about live-in home care workers and how they must be paid.

www.dol.gov/whd/homecare/factsheets.htm

http://comsumerdirectco.com/wp-content/uploads/2014/12/homecare_guide_20160331.pdf



4. Q: What is my requirement for Overtime Pay under the FLSA regarding Sleep Time for my attendants?

A: This can depend on many factors such as whether or not the employee is a live in caregiver or not, and how many hours are in their scheduled shift. The chart below summarizes the sleep time rules for each category of worker. Additional information about these requirements is available at http://www.dol.gov/homecare/sleep_time.htm.

	Live-in employee		Shifts of 24 hours or more	Shifts of fewer than 24 hours
	Extended periods of time	Permanent		
Requirements for excluding an employee's sleep time from hours worked	<ul style="list-style-type: none"> • Reasonable agreement to exclude sleep time • Employer must provide private quarters in a homelike environment 		<ul style="list-style-type: none"> • Employer provides adequate sleeping facilities • Employee can usually enjoy an uninterrupted night's sleep (5 consecutive hours) • Express or implied agreement to exclude sleep time 	Sleep time may not be excluded
Maximum number of hours that can be excluded	Up to 8 hours per night as long as the employee is paid for at least 8 hours during the 24-hour period	Up to 8 hours per night as long as the employee is paid for some other hours during the workweek	Up to 8 hours, in a fixed period, in each 24-hour shift	Sleep time may not be excluded
Limitations on exclusion on a particular night	<ul style="list-style-type: none"> • Any interruption to sleep time must be paid • If during any night the employee does not get reasonable periods of uninterrupted sleep totaling at least 5 hours, the employer may not exclude any sleep time 			



Source: Fact Sheet # 79D: Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/whd/regs/compliance/whdfs79d.pdf>



COLORADO
Department of Health Care
Policy & Financing

F/EA Model Frequently Asked Questions Information
Created by Consumer Direct Colorado and approved by the
Colorado Department of Health Care Policy and Financing
March 2021

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

The Department of Health Care Policy and Financing (Department) contracts with the FMS provider in accordance with the State of Colorado Procurement C. R. S. 25.5-6-12 et sec., and requires that they are operating within industry standards.

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

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

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

A: Upon appointment as your fiscal agent, the FMS provider assumes responsibility for properly filing employer and attendant related payroll taxes with the IRS and State of Colorado. Filing is based on the information

submitted by the attendant on their W-4 and exempt relationship status, if applicable. In the event there is an issue with the filing or penalties, the FMS provider assumes responsibility.

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

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

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

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

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

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

A: Each FMS provider was required to submit a Business Continuity plan to

the Department. In the event of technical issues, emergencies, natural disasters or similar, the plan details how the FMS provider will respond.

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

Having multiple FMS providers allows for additional assurances. In the event one FMS provider's contract is terminated or the FMS provider becomes financially insolvent, the Department will work with Members and/or Authorized Representatives and the remaining FMS providers to ensure attendant payroll is processed and paid. The timing of payment is dependent on the timely completion of attendant paperwork and timesheet submittal.

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

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

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

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

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

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

4. Q: What insurances are FMS providers required to have?

A: Important insurance contract requirements related to CDASS FMS providers include:

Insurance	Contract Language
<p>Worker's Compensation Insurance – The FMS providers ensure Worker's Compensation Insurance is in place in the event an attendant is injured when “clocked in” and working with a Client. Each FMS provider has a process for reporting a workplace injury.</p>	<p>Contract language states – FMS provider Contract Amendment NO. 01, State Fiscal Year 2020-2021</p> <p>Exhibit B, Statement of Work</p> <p>4.5.1. The Contractor, on behalf of the Member or Authorized Representative, shall process and/or submit all required and completed forms, documentation, or other information received from the Member, Attendant, and/or the Authorized Representative in accordance with applicable federal, state, and local labor and employment laws, including those regarding worker's compensation insurance....</p> <p>5.1. The Contractor shall provide customer support to Members, Authorized Representatives, Attendants and Case Managers. This customer support shall include, but is not limited to, assistance with all the following:</p> <p>5.1.2. Attendant's worker's compensation insurance claims documentation and processing.</p>
<p>General liability</p>	<p>Contract language states – FMS provider Contract, Executed Fiscal Year 2019-2020, page 10</p> <p>10. Insurance</p> <p>B. General Liability</p> <p>Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:</p> <ul style="list-style-type: none"> i. \$1,000,000 each occurrence; ii. \$1,000,000 general aggregate; iii. \$1,000,000 products and completed operations aggregate; and iv. \$50,000 any one (1) fire.

Insurance	Contract Language
Protected Health Information Insurance	<p>Contract language states – FMS provider Contract, Executed Fiscal Year 2019-2020, page 10-11</p> <p>10. Insurance</p> <p>C. Protected Information</p> <p>Liability insurance covering all loss of State Confidential Information, such as PII, PHI, Tax Information, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:</p> <ul style="list-style-type: none"> i. \$1,000,000 each occurrence; and ii. \$2,000,000 general aggregate.
Crime Insurance	<p>Contract language states – FMS provider Contract, Executed Fiscal Year 2019-2020, page 11</p> <p>E. Crime Insurance</p> <p>Crime insurance including employee dishonesty coverage with minimum limits as follows:</p> <ul style="list-style-type: none"> i. \$1,000,000 each occurrence; and ii. \$1,000,000 general aggregate.

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

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

Insurance	Contract Language
Insurance Certificates	<p>Contract language states – FMS provider Contract, Executed Fiscal Year 2019-2020, page 12</p> <p>K. Certificates</p> <p>Contractor shall provide to the State certificates evidencing Contractor’s insurance coverage required in this Contract within seven (7) Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven (7) Business</p>

Insurance	Contract Language
	<p>Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven (7) Business Days following Contractor's execution of the subcontract. No later than fifteen (15) days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.</p>

6. Q: What happens if an FMS provider's insurance is cancelled?

A: Contract language indicates the FMS provider must notify the Department.

Insurance	Contract Language
Insurance Cancellations	<p>Contract language states – FMS provider Contract, Executed Fiscal Year 2019-2020, page 12</p> <p>H. Cancellation The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least thirty (30) days' prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven (7) days of Contractor's receipt of such notice.</p>

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

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

Payments-May-Be-Excludable-From-Income.

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

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

8. Q: What happens if I overspend my monthly allocation by 130% or more?

A: If an attendant's wages exceed 129.99% of the Member's monthly allocation, the employer would be responsible for providing payment of the difference. The FMS provider will pay up to 129.99% but anything 130% and beyond is the responsibility of the employer to pay. The FMS provider or Case Manager do not have the ability to approve expenses of 130% or more, and a Member's reserve fund will not cover the expenditure beyond 129.99%.

If you have questions about how this affects payroll taxes, talk with a tax professional.

9. Q: How is a family member's social security and possible eligibility for unemployment impacted?

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

Relationship to FEIN Holder:	FICA	FUTA	SUTA
Child employed by Parent	Exempt (18 – 20 years of age)	Exempt (18 – 20 years of age)	Exempt (18-20 years of age)
Parent employed by Adult Child (including Adoptive or Stepparent)	Exempt	Exempt	Not Exempt
Spouse employed by Spouse	Exempt	Exempt	Exempt

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

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

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

10.Q: What does the FMS provider consider a substantial period of time for hospitalization (for example) after which they will consider the participant a financial risk and say to the member that they will not carry them as a Member? In such cases, would a CDASS Member be terminated from CDASS?

A: There is no financial risk to the FMS provider if the Member becomes ill. The FMS provider vendor cannot terminate services to a CDASS Member. Additionally, a CDASS Member can only be terminated in accordance with 10 CCR 2505-10 Sections 8.510.14 and 8.510.15.

11. Q: In the F/EA model, if a CDASS Member is in the hospital for an extended period of time and loses their attendants, could the CDASS

Member go to Consumer Direct for help finding new attendants when they get back home? Or is the CDASS Member on their own in such cases? In other words, what support is available to hire new attendants?

UPDATE (10/2016): Consumer Direct hosts an Attendant Directory on their website as a tool to help connect potential Attendants with Members. You can access this directory at <http://consumerdirectco.com> and click on “CDASS Directory.”

12. Q: What liability does a Member have when being an employer?

A: Members face the same liabilities that any other employer will face. Details can be found on the IRS website at www.irs.gov.

13. Q: Under the F/EA model, how do I get a Tax/Employer ID Number (EIN)?

A: The FMS provider vendor will assist Members/Authorized Representatives in obtaining the FEIN.

UPDATE (11/2015): The following forms are required to be completed by the Member or Authorized Representative and returned to the FMS provider to appoint the FMS provider as the agent. The FMS provider will then assist with obtaining the Federal Employer Identification Number (FEIN) and the State of Colorado unemployment and withholding accounts.

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

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

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

14. Q: Who can hold the FEIN, the Member or the Authorized Representative?

A: The FEIN should be held by whoever is directing and managing the services. In most cases this will be the Member. In cases where an Authorized Representative is directing and managing the services, the Authorized Representative should hold the FEIN.

UPDATE (11/2015): Per the National Resource Center for Participant-Directed Services: In self-direction programs, the individual receiving services is usually registered as the employer. But when the individual receiving services cannot perform employer duties or prefers not to do them, he/she can authorize a representative to serve as the employer and make employer decisions on his/her behalf.

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

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

15. Q: How do the FMS providers handle situations in which the Member or their Authorized Representative have an FEIN already established?

A: The FMS provider would require the FEIN number of the Client or Authorized Representative to run a Taxpayer Identification Number (TIN) match. If the FEIN holder does not know their FEIN number, they would need to obtain the 147C FEIN letter from the IRS in order for the FMS to run a TIN match to ensure that the FEIN can be used for CDASS. If the FMS runs a TIN match and there is a business name set up that is different from the Employer of Record's name, the FEIN holder will be asked to reach out to the IRS and have the business changed to a Home Care Service Recipient FEIN and to drop the business name. The FMS would then need the updated 147C letter from the IRS in order to accept the FEIN.

If a FEIN is active and is being used for business purposes, the FMS cannot accept or use the FEIN. If it were just the Member in this scenario, they may need to get an Authorized Representative in place to have the Authorized Representative be the Employer of Record.

UPDATE (3/2021): An Attendant employed by an Authorized Representative (holding the FEIN) and working for multiple CDASS Members will receive one W-2 with applicable wages and withholdings combined. This may complicate tax filings in some cases. It is recommended that the Member and Authorized Representative determine the most appropriate holder of the FEIN prior to hiring attendants.

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

A: You are considered the Employer of Record and therefore your attendants work directly for you regardless of which FMS provider you use as your fiscal agent.

UPDATE (8/2019): The FMS Providers will work together to transfer as much information and documentation as possible. However, additional paperwork may be required per FMS provider.

17. Q: In F/EA who is responsible for hiring, dismissing, supervising, and training attendants?

A: In the F/EA model, the Member or Authorized Representative has the sole

responsibility for day to day management of attendants. This includes; interviewing, hiring, training, and scheduling, supervising and terminating attendants. As an employer, the Member or Authorized Representative is responsible for ensuring employment laws are followed, such as using proper interview techniques or creating a harassment free workplace. For additional information see the Being an Employer section of the CDASS manual at <http://consumerdirectco.com/forms>.

18. Q: Will the Member need to purchase employer liability insurance?

A: The FMS provider carries liability insurance as outlined in the FMS provider Contract and this coverage does **NOT** extend to CDASS Members. Therefore, if coverage is desired then it must be purchased at the Member's expense.

UPDATE (01/2021): See #4 above



COLORADO
Department of Health Care
Policy & Financing

Department of Health Care Policy & Financing
1570 Grant Street
Denver, CO 80203

Note from Consumer Direct

The purpose of this letter is to help identify if you have additional CDASS responsibilities. You are not required to return it to us.

**CDASS Participant and Authorized Representative
Travel and Overtime Responsibilities**

Are you an Authorized Representative (AR) for more than one Consumer Directed Attendant Support Services (CDASS) participant?

☐ **Yes** ☐ **No**

Are you a CDASS participant yourself and also an AR for another CDASS participant?

☐ **Yes** ☐ **No**

If yes to either question, you may have a joint employer relationship according to the Department of Labor.

Joint employment exists when an employee is employed by two (or more) employers and the employers are responsible, both individually and jointly, for following employment laws for that employee.

As a CDASS participant or an AR, you must comply with the Fair Labor Standards Act (FLSA). This means you are potentially responsible for the overtime and travel time that your attendants work. Overtime is when an attendant works over 40 hours in a week or more than 12 hours in a shift. Travel time is when an attendant completes work at one participant's home and then travels to another participant's home to work.

The U.S. Department of Labor (DOL) may consider you the employer whether you hold the Federal Employer Identification Number (FEIN) for everyone whose care you manage or not. As a CDASS participant or an AR, you manage your attendant and are responsible for:

- Managing your attendant's work hours.
- Making sure that attendants, who work for more than one CDASS participant under your management, do not work more than 40 per hours per week total. We cannot pay for overtime pay that is shared across two or more CDASS participants.

Our mission is to improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources.
www.colorado.gov/hcpf



- Attendants may be required to receive payment for travel time costs under the FLSA. We do not have a mechanism to pay for this so do not arrange your care where you would be liable for the travel costs under the FLSA.
- Making sure your attendants do not charge travel costs. We cannot pay them for travel costs that are shared across two or more CDASS participants.
- Monitoring travel time and overtime for shared attendants. There is not a system in place to split these costs among CDASS participants who share an attendant.

Example: You or your AR manages the care of two participants active with CDASS. These participants live 1 mile apart and share the same CDASS attendant. The CDASS attendant works 30 hours a week for one participant and 25 hours for the other participant. You have created a schedule that has the attendant working 55 hours in a week. The attendant must receive overtime pay for all hours past 40 for that week. Because the Colorado CDASS delivery option cannot reimburse for travel time or overtime across multiple participants, the attendant will not be able to get paid an overtime rate for the 15 hours worked.

We appreciate that you have volunteered to be an AR for a CDASS participant. It is the responsibility of the CDASS participant/AR to manage attendant hours with regards to the FLSA. The Department implores you to be cautious and safeguard any risk of violating the FLSA. If it is found that a joint employer relationship exists, it will be the CDASS participant and/or AR responsibility to cover the expense of overtime and travel time.

Please note: Colorado Department of Health Care Policy and Financing is not providing you with legal advice. It is the responsibility of the CDASS participant/AR to ensure compliance with all employment laws.

For more information about the FLSA please contact Consumer Direct Colorado at <http://consumerdirectco.com/> or 1-844-381-4433.



SUMMARY



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

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

