



DEVELOPMENTAL PROGRAMS BULLETIN

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

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SUBJECT:

Vendor Fiscal/Employer Agent Financial Management Services (VF/EA FMS)

BY:


Kevin T. Casey
Deputy Secretary for Developmental Programs

SCOPE:

County Mental Health and Mental Retardation Program Directors or Administrators
Administrative Entity (AE) Directors or Administrators
Supports Coordination Organization Directors
Vendor Fiscal/Employer Agent Financial Management Service Organizations

PURPOSE:

The purpose of this bulletin is to clarify the Office of Developmental Programs (ODP) policies on the provision of the Vendor Fiscal/Employer Agent (VF/EA) Intermediary Service Organization option available to individuals or their surrogates¹ in the Pennsylvania Developmental Programs system who reside in their own private residence or in the home of their family. Such organizations are more recently known as Financial Management Service (FMS) organizations. While there are two FMS options selected by ODP (Vendor Fiscal/Employer Agent and Agency With Choice), this bulletin focuses on the provision of VF/EA FMS services. Pennsylvania's Guide to Participant Directed Services (PA Guide to PDS), developed by ODP, has detailed fact sheets and agreement forms that describe the differences between the two FMS options.

¹ Not everyone can make legally binding decisions for themselves. This would include minor children and some adults who have substantial mental impairment. In these instances, a substitute decision-maker may be identified under State law. Substitute decision-makers have various legal titles, but for the purposes of this bulletin, they will be referred to as "surrogates." "Surrogates" include the following:

- Parents of children under 18 years of age under the common law and 35 P.S. § 10101.
- Legal custodian of a minor as provided in 42 Pa.C.S. § 6357.
- Health care agents and representatives for adults as provided in 20 Pa.C.S. Ch. 54.
- Guardians of various kinds as provided in 20 Pa.C.S. Ch. 55 (as limited by 20 Pa.C.S. § 5521(f)).
- Holders of powers of attorney of various kinds as provided in 20 Pa.C.S. Ch. 56.
- Guardians of persons by operation of law in 50 P.S. §4417(c).

Any of these would be considered "legal representatives" as the Centers for Medicare and Medicaid Services uses that phrase. Please see *Application for a §1915(c) Home and Community-Based Waiver [Version 3.5]: Instructions, Technical Guide and Review Criteria* [www.cms.hhs.gov/HCBS/02_QualityToolkit.asp].

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

The Appropriate Developmental Programs Regional Office

BACKGROUND:

Everyday Lives, published in 1991 and updated in 2002 (*Everyday Lives: Making It Happen*), outlines the values and goals of individuals with mental retardation and the people who support them in Pennsylvania. One of the driving forces of *Everyday Lives* is the philosophy of *Self-Determination*. Self-Determination is the belief that one should have choice and control over all aspects of one's life, as referenced in Bulletin 00-03-05, *Principles for the Mental Retardation System*. This includes affording individuals and their surrogates choice and control over the services and supports they receive.

Individuals receive needed services and supports that are authorized in their Individual Support Plan (ISP). The ISP is developed through a person-centered planning process. Historically, the Supports Coordinator (SC) or a provider agency arranged for and managed these services for individuals and their surrogates. Now, individuals who live in their own private residence or in the home of their family may assume more responsibility for arranging and managing their own services and supports by choosing a FMS option. Individuals and surrogates may choose to exercise **employer authority** or **budget authority** over their services and select one of the Financial Management Services (FMS) options to facilitate these authority(s). Once selected the individual or their surrogate must fulfill the responsibilities associated with both employer authority and budget authority.

A. Employer Authority

Employer authority allows individuals or their surrogates to exercise choice and control over the qualified support service workers who provide services and supports authorized in the individuals' ISP. The type and level of employer authority is different in the two FMS models (Agency With Choice and Vendor Fiscal/Employer Agent). Individuals or their surrogates may choose to be:

- A “**managing employer**” and enter into a joint-employment arrangement with an Agency With Choice (AWC) FMS provider; or
- The “**common law employer**”, also known as employer of record, of the qualified support service workers they hire directly in the Vendor Fiscal/Employer Agent (VF/EA) FMS model.

In general, individuals or their surrogates who hire their qualified support service worker(s) directly are considered to be *common law employers* of these workers by the Internal Revenue Service (IRS). According to the IRS, a service recipient or his or her surrogate is the common law employer of his or her home-based care worker (such as a support service worker) if he or she directs and controls the activities performed by his or her support service worker. This control refers not only to the results to be accomplished by the work but also the means and details by which that result is accomplished.²

The two FMS options, Agency With Choice and Vendor Fiscal/Employer Agent (AWC and VF/EA), have been selected by ODP because they provide individuals and surrogates with:

² See IRS Proposed Notice 2003-70. Q & A -5

1. A high level of choice and control over their services and supports in the approved and authorized ISP.
2. The option of functioning as the common law employer by using a VF/EA FMS or as a joint-employer by using an AWC FMS.
3. Assistance with employer-related tasks (that is, management of payroll, employment-related taxes, and payment of workers' compensation insurance; orientation and training on employer responsibilities; orientation and training of workers (only in the AWC FMS model) and processing and paying one-time vendor payments).

Federal Medicaid law prohibits individuals or surrogates from receiving Medicaid funds directly. Only Medicaid Waiver providers may receive Medicaid funds directly. Due to this federal policy, an entity is needed to perform payment-related employer responsibilities for individuals or surrogates who exercise employer or budget authorities. Such entities are called FMS providers or organizations, and must be accessible to Waiver participants interested in directing their services. ODP recognizes the complexity of performing the payroll-related employer agent responsibilities and, therefore, encourages County Programs to utilize FMS organizations for base-funded individuals choosing this option of service management. Financial Management Services were developed to perform two primary functions:

1. To reduce individuals' or surrogates' employer-related burdens associated with self-directed support services and enhance individual choice and control through the provision of appropriate fiscal and supportive services.
2. Assure the Commonwealth, AEs, and County Programs that support services are being provided in compliance with federal, state, and local tax and labor requirements related to the employment of qualified support service workers.

Individuals and surrogates must be fully informed about both FMS options, and may choose the model that best meets their needs. Individuals or their surrogates who choose to become the common law employer must sign all required agreements and forms associated with exercising employer and budget authority. AEs and County Programs are responsible for ensuring that individuals and surrogates are provided information about the FMS options during intake. SCs are responsible for providing individuals and surrogates with information during the planning process and upon request.

B. Budget Authority

Budget authority allows the individual or their surrogate to:

- Negotiate qualified support service worker wages within the established wage ranges and in accordance with Labor and Industry standards. The specific components to include in the support service worker wage and the service rate can be found in section G and H of this policy bulletin.
- Shift funds between authorized PDS included in the PDS portion of the ISP **with prior approval** from their SC.
- Budget authority is applicable in both the AWC and the VF/EA options.

DISCUSSION:

This bulletin outlines the requirements of the VF/EA FMS option. It describes how the VF/EA FMS can be used to assist individuals or their surrogates in becoming the common law employer, accessing and managing certain services authorized in the individual's ISP, and gaining enhanced choice and control in their lives. It describes the employer responsibilities that individuals or their surrogates assume as a common law employer (see Section A). It also describes the requirements of the VF/EA FMS, AEs, County Programs, and SCs related to the VF/EA FMS option (see Sections B, C, D and E respectively).

ODP has contracted with one entity to provide the VF/EA FMS option statewide to Waiver participants. The VF/EA FMS will operate statewide to provide consistency and increased access to the service for individuals and surrogates. By contracting with a statewide VF/EA FMS, ODP will provide individuals or their surrogates with:

- A high level of choice and control over their services and supports.
- The option of being the common law employer of their support service worker(s).
- Consistent access to the VF/EA FMS option and related supports across the Commonwealth.
- Reduced employer-related burden through the receipt of VF/EA FMS

A VF/EA FMS must operate in accordance with section 3504 of the IRS code, IRS Revenue Procedure 70-6, and Proposed Notice 2003-70, as applicable, state and local tax, federal and state labor and PA Treasury Department's Unclaimed Property rules and regulations related to household employers using the VF/EA FMS and their qualified support service workers. ODP requires workers compensation as a program requirement, which will be paid by the statewide VF/EA FMS.

A VF/EA FMS must obtain the appropriate federal and state authorizations to operate as a VF/EA FMS for each individual or their surrogate. In addition, it must apply for and obtain a separate Federal Employer Identification Number (EIN), in addition to its corporate Federal EIN, for the sole purpose of filing certain federal tax forms and depositing the related federal taxes for the individuals or surrogates it represents as their agent.³

Under the VF/EA FMS option, the FMS is the employer agent of the individual or surrogate while the individual or surrogate is the common law employer of the qualified support service worker he or she hires directly. The VF/EA FMS must work collaboratively with the individual or surrogate to ensure needed support services from qualified support service workers are received. In general, the VF/EA FMS is responsible for providing FMS, which includes, but is not limited to:

- Orientation and training of the individual or surrogate related to the use of FMS and being an employer.
- Managing the receipt and disbursement of public funds.
- Processing and paying invoices for other services approved in the individual's ISP.

³ See IRS Proposed Notice 2003-70.

- Establishing and maintaining a customer service system.
- Preparing and disbursing qualified support service workers' payroll in compliance with federal, state and local tax, labor and workers' compensation insurance requirements.
- Establishing and maintaining individual, surrogate, worker, and VF/EA files.
- Generating reports for ODP, the AE or County Program, the SC Organization, and the individual or surrogate.
- Assuring that Waiver and non-Waiver provider requirements are met.

A more detailed list of the VF/EA FMS responsibilities can be located on pages 10-14 of this policy bulletin.

POLICY:

A. Availability/Knowledge

The VF/EA FMS option is currently only available to Waiver participants who reside in their own private residence or the private home of a family member. The VF/EA FMS option must be made available to all of the above-identified individuals or their surrogates in the Developmental Programs service system. Individuals living in licensed and unlicensed agency owned, rented, leased, or operated homes may not exercise these self-direction options at this time.

The VF/EA FMS option is currently required for Waiver participants through the use of local VF/EA FMS contracts. Effective January 1, 2009, the statewide VF/EA FMS option will be available to all interested Consolidated and Person/Family Directed Support (P/FDS) Waiver participants and their surrogates through a statewide vendor. Local VF/EA FMS organizations will be available to Waiver participants and their surrogates through the AEs until the statewide vendor is operational as indicated in ODP correspondence dated December 10, 2007. This letter indicated that new requests for VF/EA FMS by Waiver participants on or after April 15, 2008, shall be directed to the Statewide VF/EA FMS. Existing Waiver participants who have been using the local VF/EA FMS organizations prior to April 15, 2008, will remain with those organizations until they transition to the statewide VF/EA FMS on January 1, 2009. County Programs should continue to make the VF/EA FMS option available through their local contracts for individuals not enrolled in a Waiver.

For Waiver participants the VF/EA FMS is an option that is an administrative service, not a "Waiver service". Because the service is administrative, Waiver provider choice requirements are not applicable. Therefore, a choice of VF/EA FMS organization is not available to individuals or their surrogates, nor is the lack of choice of a VF/EA FMS organization subject to fair hearings and appeals.

It is the responsibility of the VF/EA FMS, individuals or their surrogates, AEs, County Programs, SC Organizations and ODP to be knowledgeable of all federal, state and local rules and regulations pertaining to Medicaid services, any amendments, and the provision of the VF/EA FMS option as it relates to employers who hire their own support service workers.

The current Waiver services available for administration and payment through the VF/EA model are located in Appendix E of the approved Consolidated and P/FDS Waivers and the PA Guide to PDS. The Waiver services currently available for administration and payment through the VF/EA FMS model are: Home and Community Habilitation (Unlicensed), Supported Employment, Transitional Work Services, Home Finding, Homemaker/Chore, Unlicensed Respite, Personal Support, Environmental Accessibility Adaptations, Adaptive Appliances/Equipment and Transportation (mile and public).

Non-Waiver services currently available through the VF/EA FMS model may be provided as specified in the ISO/FMS payment agent column in the current service definitions bulletin and the corresponding non-Waiver services approved and authorized in the individual's ISP.

B. Requirements to Become a Common Law Employer

The individual or surrogate must meet the following criteria in order to qualify as the common law employer:

- Be at least 18 years of age or older.
- Complete a State Police criminal background check as per the Older Adult Protective Services Act (OAPSA) [35 P.S. §10225.101 et. Seq and Title 6 Pa. Code Chapter 15], and when the participant is a child under age 18, conduct clearances as per the Child Protective Services Law (CPSL) 23 Pa. C.S. Chapter 63.
- If the individual or surrogate has not been a resident of Pennsylvania for the 2 years immediately preceding application, they must obtain a report of Federal Criminal History Record from the Federal Bureau of Investigation (FBI). This requirement also applies to surrogates who reside outside of Pennsylvania.⁴
- Participate in the required training sponsored by ODP and the VF/EA FMS.
- Sign all agreements with ODP and the VF/EA FMS related to the VF/EA FMS option.
- Agree to perform all the tasks outlined in Section A of this Bulletin.
- Agree to work with the SC to develop and revise the individual's ISP as needed and required, and agree to participate in the required frequency and location of SC monitorings.

Currently there is no Service Definition that can fund the costs associated with the above required criminal background checks, child abuse clearances, and Criminal History Records. ODP is in the process of obtaining approval for adding a new Service Definition that will cover the administrative expenses to the employer for these checks. Until that occurs, a signed statement from the common law employer will be accepted that indicates they have never been convicted of a crime. The AE or County Program is responsible for having procedures to verify the employer meets the requirements for becoming the common law employer.

⁴ A Federal Criminal History Report is required under OAPSA: "Where the applicant is not and for two years immediately preceding the date of application has not been a resident of this Commonwealth, administration shall require [an FBI history]." 35 P.S. § 10225.502(a)(2)

C. Use of VF/EAs by Individuals or Surrogates

Individuals or surrogates who choose to use the VF/EA FMS to facilitate their receipt of support services must be fully informed (that is, receive initial and ongoing employer skills training) of their right to choose and direct their support services and the workers who provide them, and their roles and responsibilities as a common law employer as well as those of the VF/EA FMS. Once fully informed, individuals or surrogates must review and sign an agreement developed and made available by ODP and distributed by the VF/EA FMS. The *Employer/ Surrogate Agreement Form* is located in the PA Guide to PDS. In addition, the standard *Authorized Surrogate Designation Form* developed and made available by ODP will be completed and submitted to the VF/EA FMS. This form is also located in the PA Guide to PDS.

D. Individuals' Right to have a Surrogate

When using the VF/EA FMS option, individuals have the right to identify a *surrogate* to function as the common law employer of their support service worker(s), in accordance with the guiding principles of self-determination.

Individuals have the right to have a surrogate to assist them in hiring and managing support service workers who are paid through the VF/EA FMS. If an individual wishes to select a surrogate, the surrogate must:

1. Effectuate, as much as possible, the decision the individual would make for himself/herself.
2. Accommodate the individual, to the extent necessary, so they can participate as fully as possible in all decisions that affect them. Accommodations shall include, but not be limited to, communication devices, interpreters, and physical assistance.
3. Give due consideration to all information including the recommendations of other interested and involved parties.
4. Embody the guiding principles of Self-Determination referenced in Bulletin 00-03-05 "*Principles for the Mental Retardation System*".

If a surrogate is desired or needed to support the individual in performing the common law employer functions, and a surrogate has not been designated by a court, the following hierarchy should be followed in choosing a surrogate:

- If the individual does not have a legal guardian or if the existing legal guardian is not able or willing to be the individual's surrogate, the individual may designate a surrogate from the following in order of priority and as available and willing:
 - The spouse (unless a legal action for divorce is pending).
 - An adult child.
 - A parent.
 - An adult brother or sister.
 - An adult grandchild.
 - An adult who has knowledge of the individual's preferences and values, including, but not limited to, religious and moral beliefs. The AE (for Waiver participants) or County Program (for base-funded individuals) is responsible to ensure that the "other" surrogate is able to assist the

individual with employer-related responsibilities, and complies with the requirements outlined in this bulletin.

The VF/EA FMS must recognize an individual's surrogate as a decision-maker for the individual and provide the surrogate with all the information, training, and support it would typically provide an individual if they were using VF/EA FMS services directly.

The VF/EA FMS must fully orient and inform an individual's surrogate of their rights and responsibilities in performing this role and in using the VF/EA FMS. Once fully informed, individuals or surrogates must review and sign an agreement developed and made available by ODP and distributed by the VF/EA FMS called the *Employer/Surrogate Agreement Form*. In addition, all VF/EA FMS will collect the standard *Authorized Surrogate Designation Form* developed and made available by ODP. The *Authorized Surrogate Designation Form* and *Employer/Surrogate Agreement Form* are located in the PA Guide to PDS. The individual or their surrogate must maintain signed copies of the agreement forms, and must provide the originals to the VF/EA FMS. The VF/EA FMS will send copies to the AE or County Program and the individual's SC. The original signed copies of each form must be maintained in the individual's or surrogate's file at the VF/EA FMS.

The VF/EA FMS must establish a file for each individual and the surrogate that references the individual. The VF/EA FMS also must collect and maintain all required information, including contact information, in each individual's file. Both the individual's current and archived file must be maintained in a complete, confidential, and secure manner.

E. Payment to Individuals or Surrogates Functioning as the Common Law Employer

Individuals or their surrogates may not receive payment for the functions that they perform in the role of common law employer. In addition, an individual's surrogate may not receive payment for any other ODP services he or she provides to the individual.

RESPONSIBILITIES:

A. Individual or Surrogate Responsibilities Related to VF/EA FMS Option

An individual or his or her surrogate who chooses to use the VF/EA FMS option to facilitate receipt of authorized services is the common law employer of the support service workers he or she hires directly. Individuals and surrogates are responsible for working collaboratively to ensure:

1. Individuals receive high quality services.
2. Individuals receive needed support services from qualified workers.
3. Services are provided in accordance with the guiding principles of self-determination and Medicaid and state-funded program requirements and in accordance with the approved and authorized ISP.

As the common law employer, the individual or his or her surrogate assumes full and legal responsibility to:

1. Recruit, interview and hire his or her qualified support service workers. In cooperation with the VF/EA FMS, a copy of the *Documentation of Support Service Worker (SSW) Qualification Form* must be completed and verified prior to the support service worker rendering service. This form is located in the PA Guide to PDS and will be completed for each support service worker by the individual or surrogate and the VF/EA FMS. The original signed copy will be maintained in the file at the VF/EA FMS office and a copy will be given to the individual or surrogate, the AE or County Program, and the SC.
2. Negotiate the wage for his or her support service workers within the established wage ranges and report the wage to the VF/EA FMS for payment and to the SC for ISP calculation. (The wage must be developed in accordance with federal and state Department of Labor rules and regulations).
3. Enroll with the VF/EA FMS (contingent on timeline of request, see Section H for timeline) and complete the required documents included in the individual or surrogate employer packet.
4. Ensure his or her support service workers complete the required documents included in the support service worker employment packet, and maintain a personnel file on each support service worker.
5. Submit completed and required support service worker documents to the VF/EA FMS for processing.
6. Determine the work schedule of his or her support service workers up to a maximum of 40 hours per week based on the approved and authorized ISP.
7. Determine the tasks to be performed by his or her support service workers; including how and when service-related tasks are to be performed in accordance with the authorized ISP.
8. Orient and train his or her support service workers as per the provider qualification criteria included in the Waivers. The training must be documented in the individual's file at the VF/EA FMS.
9. Develop emergency back-up plans for coverage of support service worker hours when a worker fails to report to work for any reason. Responsible for completing the *Emergency Back-Up Form* for each qualified worker, vendor, small provider, and non-paid natural support person who is willing and able to provide coverage during emergencies that does not result in overtime. This form is located in the PA Guide to PDS. A copy will be forwarded to the VF/EA FMS, the AE or County Program, and the individual's SC for their records.
10. Assure all outcomes for Waiver services are documented by support service workers or employer as required in Bulletin 00-07-01, "*Provider Billing Documentation Requirements for Waiver Services*". Although this bulletin refers to "Providers" or organizations, the same requirements outlined in this bulletin apply to Waiver services rendered by individuals (that is, support service workers) providing Waiver services through an FMS.
11. Review to ensure accuracy, approve, and sign timesheets of his or her support service workers.
12. Submit support service worker timesheets, and all other invoices, to the VF/EA FMS for processing in accordance with the VF/EA FMS annual payment cycle or schedule and in accordance with Labor and Industry standards. ISPs are developed and updated to ensure authorized services and supports are reflective of an individual's current, assessed needs. Therefore, if a timesheet or invoice is submitted to the VF/EA FMS by the individual or his or her surrogate that includes services or supports not authorized for the person, the individual or his or her surrogate will be responsible for paying the costs in

excess of those authorized for the individual. The individual or his or her surrogate must pay any excess amount(s) using their own personal funds or other non-ODP funds.

13. Manage the day-to-day tasks performed by his or her support service workers.
14. Terminate his or her support service workers for just cause and notify the VF/EA FMS and the SC of the dismissal.
15. Track utilization of services and budget to ensure services are provided in accordance with the authorized ISP. This tracking will take place through the review of standard reports provided by the VF/EA FMS and the review of local records maintained by the individual or surrogate.
16. Notify the SC and VF/EA FMS of any changes in need that require a change to the ISP.
17. Notify the VF/EA FMS when the individual or surrogate suspects or is aware of any issues of Medicaid fraud or financial abuse related to the use of ISP funds.
18. Report incidents to the SC as required in Bulletin 6000-04-01, "*Incident Management*".
19. Respond to surveys regarding satisfaction with the VF/EA FMS.
20. Participate in all required trainings offered by ODP and the VF/EA FMS related to the VF/EA FMS management option.
21. Sign all standard agreements with VF/EA FMS and ODP.

An individual or his or her surrogate who meets the criteria to become the common law employer and chooses to use the VF/EA FMS option to facilitate the receipt of authorized services must be fully informed of his or her roles and responsibilities related to using a VF/EA FMS agent, and those of the VF/EA FMS. Once fully informed, the individual or surrogate must review and sign all agreements and forms required by ODP for the VF/EA FMS option. The agreements and forms related to VF/EA FMS option and common law employer responsibilities are located in the PA Guide to PDS and the VF/EA FMS enrollment packets. The VF/EA FMS, the individual or surrogate, AE or County Program, and the individual's SC must maintain signed copies of agreements and forms.

B. Vendor Fiscal/Employer Agent (VF/EA) FMS Role and Responsibilities

The primary role of the statewide VF/EA FMS is to act as the employer agent for individuals or surrogates who are the common law employer of the qualified support service workers they hire directly. As the employer agent, ODP requires that the VF/EA FMS be responsible for processing payroll for qualified support service workers hired directly by individuals and surrogates and for paying for other authorized services delivered in accordance with individuals' ISPs (to qualified, small unlicensed providers, individuals providing transportation for mileage reimbursement, and vendors).⁵ In order to fulfill this role, the VF/EA FMS must apply for and receive approval from the IRS to act as the *employer agent* for each individual or surrogate it represents.

This is accomplished by the VF/EA FMS submitting an executed IRS Form 2678, *Employer/Payer Appointment of Agent*, for each individual or surrogate it represents and receiving written authorization from the IRS. From an IRS perspective, the agent

⁵ Under IRS rules, the VF/EA acts as an employer agent for individuals performing all that is required of an employer for wages paid on the employer's behalf and all that is required of the payer for requirements of back-up withholding, as applicable.

appointment is effective and the VF/EA FMS is liable for any unfulfilled income tax and employment tax obligations from the date the VF/EA FMS receives written agent authorization from the IRS.⁶ However, ODPs contract with the statewide VF/EA FMS Organization includes a provision that holds the VF/EA FMS Organization liable for any unfulfilled income tax withholding and employment tax obligations from the date the IRS Form 2678 is signed by the individual or surrogate. A copy of the executed Form 2678 and written IRS authorization must be maintained in each individual's or surrogate's file at the VF/EA FMS. When the VF/EA FMS permanently ceases to represent an individual or surrogate for any reason, it must revoke its agent authorization with the IRS per IRS Form 2678 instructions.

The VF/EA must execute an IRS form 8821 with each individual or surrogate it represents as an agent. This form must be periodically renewed per IRS Form 8821 instructions. If the VF/EA delegates tasks to a reporting agent, it should report the reporting agent as a second appointee on the IRS form 8821. Should the VF/EA permanently cease representing an individual or their surrogate, the VF/EA must revoke the IRS form 8821 per the form instructions.

When a VF/EA contracts with and delegates agent tasks to a reporting agent, the VF/EA must also execute an IRS Form 8655 between itself and its reporting agent. The VF/EA should revoke this authorization when it ceases using a reporting agent per IRS Form 8655 instructions.

The VF/EA FMS also must apply for and obtain a separate Federal Employer Identification Number (FEIN), in addition to its corporate EIN, for the sole purpose of filing certain federal tax forms and depositing the related federal taxes for the individuals or their surrogates it represents.⁷

The Pennsylvania Department of Labor and Industry, the Office of Unemployment Insurance Tax Services requires VF/EAs to execute a form UC-884, *Power of Attorney*, with each individual or surrogate it represents as agent. This form must be submitted with the PA-100 form, *Enterprise Registration Form*, when it is filed for state unemployment insurance tax employer registration purposes. This power of attorney must be revoked if the VF/EA permanently ceases to represent an individual or their surrogate.

Once federal and state agent authorizations have been applied for and received for each individual or surrogate the VF/EA FMS represents and it has received its separate FEIN, the VF/EA FMS shall have the following general responsibilities (specific responsibilities for the statewide VF/EA FMS are outlined in the VF/EA FMSs contract with the Commonwealth):

1. Act as "the bank" for individuals or their surrogates it represents by receiving and disbursing Medicaid Waiver and base funds for services and goods delivered in accordance with the person's ISP.
2. Track all transactions per person, to have oversight of under and over utilization and report issues to the individual or surrogate, the AE for Waiver

⁶ See October 2007 revised form 2678 instructions.

⁷ See IRS Proposed Notice 2003-70.

- participants, the County Program for people receiving non-Waiver services, and the SC. This information must be maintained for the monthly reports required to be completed for common law employer performance.
3. Establish and maintain documentation, records, and files for individuals or their surrogates and support service workers, individuals providing transportation services for mileage reimbursement, unlicensed providers, and vendors the VF/EA FMS is paying.
 4. Conduct Criminal Background Checks and Child Abuse Clearances for prospective support service workers and individuals providing transportation services for mileage reimbursement directly hired by individuals or surrogates.
 5. Verify that vendors, small unlicensed providers, prospective support service workers, and entities or individuals providing transportation services for mileage meet the minimum qualifications for the service(s) they are providing prior to service delivery.
 6. Assist individuals or surrogates in completing the US CIS Form I-9, *Employment Eligibility Verification*, to determine citizenship and legal alien status of workers directly hired by individuals or surrogates.
 7. Report new support service workers directly hired by individuals or their surrogates per Pennsylvania new hire reporting requirements.
 8. Develop and produce an individual or surrogate enrollment packet; and collect, review, and process information in completed packets. At a minimum, the information must include all individual or surrogate agreements and forms required by ODP, the annual payroll and payment schedule, and the federal and state required forms for processing employer information.
 9. Develop and produce a support service worker employment packet; and collect, review, and process information in completed packets.
 10. Verify the social security numbers of support service workers who are directly hired by individuals or surrogates.
 11. Assist individuals or surrogates in filing for, obtaining, and retiring their FEIN and their state income tax withholding and unemployment insurance tax account numbers.
 12. Maintain a schedule for collection and processing timesheets of support service workers within the time required by the Pennsylvania Department of Labor and Industry.
 13. Develop and maintain a system and database for effectively tracking and responding to occurrences of common law employer performance issues. Any responsibilities outlined in Section A of this bulletin and all agreements and forms signed by the common law employer will be tracked for inclusion on the monthly reports.
 14. Determine if support service workers of individuals or their surrogates are paid family members who *may* be exempt from filing and paying Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Tax Authority (SUTA) taxes.
 15. Withhold, file, and deposit federal income tax withholding,⁸ Medicare and Social Security taxes (FICA), and federal unemployment insurance taxes

⁸ Using the IRS Form 941, *Employer's Quarterly Federal Tax Report*. Currently, this form is filed in the aggregate using the VF/EA separate FEIN and contact information for all individuals and surrogates the VF/EA represents as agent, but this procedure could change in the future based on future IRS instruction.

- (FUTA)⁹ per IRS VF/EA FMS requirements on behalf of individuals or their surrogates and support service workers.
16. Withhold, file, and deposit state income tax withholding and state unemployment insurance taxes per Pennsylvania Department of Revenue requirements for support services workers directly hired by individuals or surrogates.
 17. Withhold, file, and deposit employment-related locality taxes per local government requirements for support service workers directly hired by individuals or surrogates.
 18. Process all judgments, garnishments, tax levies, or other related holds on support service workers' pay as may be required by federal or state governments.
 19. Process IRS Forms W-5 and *Federal Advanced Earned Income Credit* for eligible support service workers directly hired by individuals or their surrogates.
 20. Distribute payroll checks to support service workers in accordance with Pennsylvania Department of Labor and Industry payroll requirements.
 21. Process direct deposits of payroll checks for support service workers, as requested.
 22. Process and refund employer and employee portions of over-collected FICA in accordance with IRS guidance. Any refunds on the employer portion should be collected by the VF/EA FMS and returned to the entity that provided the funds on behalf of the individual. Individual or surrogate identifying information must be included when making the return. The employee portion is returned directly to the employee from the VF/EA FMS. The VF/EA FMS must maintain documentation of all relevant refunds.
 23. Prepare, file, and distribute IRS Forms W-2 and W-3 electronically in accordance with IRS Form W-2 and W-3 instructions for agents.
 24. Verify the employment status of a vendor when he or she claims to be an independent contractor (through use of the IRS Form SS-8, *Determination of Worker Status for the Purpose of Federal Employment Taxes and Income Tax Withholding*). The IRS has very clear and rigorous criteria for who qualifies as an independent contractor. The VF/EA FMS must consistently and accurately adhere to these criteria.
 25. Obtain an IRS Form W-9, *Request for Taxpayer Identification Number and Certification*, from qualified independent contractors who have been verified as such.
 26. Process and file IRS Form 1099-MISC, *Miscellaneous Income*, for verified and qualified independent contractors who earn more than \$600 in a calendar year.
 27. Submit any unclaimed funds for all entities to the Pennsylvania Treasury Department in accordance with the Pennsylvania Unclaimed Property Act.
 28. Manage the receipt, renewal, and payment of workers' compensation insurance policies, as well as any other required or negotiated insurances.
 29. Facilitate workers' compensation (WC) insurance annual audit process, including hosting WC insurance staff on site and providing necessary compensation.

⁹ Using the IRS Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*. Currently, this form is filed in the aggregate using the VF/EA separate FEIN and contact information for all individuals and surrogates the VF/EA represents as agent, but this procedure could change in the future based on future IRS instruction.

30. Process wage information requests for support service workers directly hired by individuals or surrogates from federal and state agencies and other qualified entities.
31. Process and pay invoices for services approved in the individual's ISP.
32. In accordance with the approved and authorized ISP, the VF/EA FMS provider may administer payments for one time only services and for ongoing services rendered by qualified vendors (such as providers of ramps, public transportation), small unlicensed provider services, and mileage reimbursement.
33. Submit clean claims for Waiver services to the AE or PROMISe according to ODP financial management specifications and timeframes.
34. Submit clean claims for base services to PROMISe for payment according to County Program specifications and timeframes.
35. Submit clean claims to ODP for VF/EA FMS administrative services, in accordance with contract specifications and timeframes.
36. Prepare, produce, and distribute monthly utilization reports to individuals or their surrogates, the AE or County Program, and the SC as specified by ODP.
37. Prepare, produce, and distribute monthly, quarterly, and annual reports to ODP as specified by ODP.
38. Provide orientation and training to those who met the requirements for becoming the common law employer related to using VF/EA FMS and being a common law employer.
39. Orient AEs, County Programs, and SCs, upon request, on the roles and responsibilities of the VF/EA FMS.
40. Communicate with ODP, AEs, County Programs, and SCs per ODP specifications.
41. Immediately report any suspected or confirmed Medicaid fraud to ODP and the AE or County Program.
42. Process wage information requests from federal and state agencies and other qualified entities.
43. Develop and implement an annual individual satisfaction survey tool, analyze the results, and prepare and submit summary reports to ODP based on specifications determined by ODP.
44. Develop an automated VF/EA FMS Policy and Procedure Manual specific to providing the VF/EA FMS management option in Pennsylvania and update it at least annually.

The VF/EA FMS can only pay for the authorized services in the individual's ISP that have been delivered by qualified support service workers, vendors, small unlicensed providers¹⁰, and individuals providing transportation for mileage reimbursement. The VF/EA FMS may not pay for services that have not been authorized or for services provided in settings licensed by the Department of Public Welfare.

C. AE Responsibilities Related to Waiver Participants

1. AEs must ensure consistent access to the VF/EA FMS management option, by implementing the ODP policy requirements in this section.

¹⁰ For the purposes of this bulletin, a small provider is define as: An individual or agency that provides unlicensed services to a maximum of four individuals statewide.

2. AEs are responsible to ensure that SC Entities provide information to individuals or their surrogates on:
 - Person-centered planning and other choice and control opportunities.
 - Employer authority opportunities available in the Pennsylvania Mental Retardation system (such as the two FMS options available to individuals or their surrogates in the Pennsylvania Developmental Programs System – Agency With Choice and Vendor Fiscal/Employer Agent).
 - The benefits of each employer authority model, the individual or surrogate responsibilities associated with each model, and the required performance criteria established in the budget authority agreements.
 - The FMSs role and responsibilities under each FMS option.
 - The alternative options to the FMS option (such as use of traditional providers).
3. AEs, in conjunction with the SC Organization, must assist individuals or their surrogates, upon request, with decisions related to self-direction, including whether to self-direct considering the benefits and responsibilities, and which FMS option to use. If an individual or surrogate chooses the VF/EA FMS option for the first time, the AE must ensure the individual or surrogate receives assistance to transition to the VF/EA FMS. AEs must have written procedures to ensure the requirements to become the common law employer are met and to ensure the approved agreements and forms are completed by the employer and the VF/EA FMS. All the required forms are located in the PA Guide to PDS and the VF/EA FMS enrollment packets.
4. Once enrolled with the VF/EA FMS, the AE in cooperation with the VF/EA FMS and the common law employer, must track the utilization and budget in accordance with each authorized ISP. The AE will share any concerns related to the utilization and budget with the SC Organization, VF/EA FMS, and ODP for follow up and resolution.
5. The AE must have written procedures regarding tracking, monitoring, and corrective action as it relates to performance of the common law employer. The AE will report any concerns and corrective action measures to ODP as required.
6. AEs are responsible to ensure that SC Organizations use the person-centered planning process to develop ISPs for all individuals. It is the responsibility of AEs and the VF/EA FMS, to be knowledgeable about person-centered planning; the guiding principles of self-determination; the minimum guidelines for choice and control; all federal, state, and local rules and regulations pertaining to Waiver and non-Waiver services; the operation of a VF/EA FMS; and any Waiver amendments.
7. AEs must develop and implement written procedures and safeguards that reflect ODP policies and the guiding principles of self-determination, including those outlined in Bulletin 00-03-05, "*Principles for the Mental Retardation System*". They must ensure that individuals and their surrogates have the right to choose, direct, and control the support services in the approved and authorized ISP and the qualified support service workers who provide them, without local restrictions or barriers. The procedures and safeguards must ensure individuals or surrogates have the right to:
 - a. Recruit and hire qualified support service workers.

- b. Provide the qualified support service worker orientation and training.
 - c. Determine schedules of qualified support service worker(s) up to 40 hours per week.
 - d. Determine tasks to be performed by qualified support service workers and where and when they are to be performed in accordance with the approved and authorized ISP.
 - e. Manage the day-to-day activities of qualified support service workers.
 - f. Verify time worked by qualified support service workers, approve, sign, and submit timesheets and invoices.
 - g. Complete and maintain progress notes in accordance with ODP Bulletin 00-07-01, *“Provider Billing Documentation Requirements for Waiver Services”*.
 - h. Terminate qualified support service workers from working when appropriate.
 - i. Complete employer skills training from the VF/EA FMS as needed and requested by the individual or surrogate.
8. AEs must ensure that the VF/EA FMS meets the needs of individuals in accordance with Waiver and non-Waiver service requirements. AEs may not impose additional qualified support service worker training requirements above and beyond the training requirements that ODP establishes in the provider qualifications included in the Commonwealth’s approved Medicaid Waivers for Waiver-funded services¹¹. AEs are responsible for working with the VF/EA FMS to ensure the VF/EA FMS verifies that all support service workers hired by individuals or surrogates are qualified and meet the applicable Waiver and non-Waiver requirements prior to service delivery. Additionally, AEs will ensure compliance to Bulletin 00-08-01, *“Process for Qualification and Disqualification of Waiver Providers”*.
 9. AEs are responsible for working with the VF/EA FMS to ensure the common law employer and VF/EA FMS verifies that all support service workers hired by individuals or surrogates are qualified and meet the applicable Waiver requirements prior to service delivery. The AE is also responsible to ensure small providers, vendors and transportation for mileage meets applicable Waiver requirements.
 10. Upon implementation of the ODPs statewide VF/EA FMS and until June 30, 2009, AEs must contract with the VF/EA FMS selected by ODP to facilitate the payment for Waiver-funded services authorized in individuals’ ISPs when individuals or their surrogates have selected the VF/EA FMS management option. Waiver “service dollar funds” will be paid from the AE to the VF/EA FMS to pay qualified support service workers, small unlicensed providers, individuals providing transportation for mileage reimbursement, and vendors who deliver services and goods in accordance with a Waiver participant’s authorized ISP and in accordance with the ODP standard AE and VF/EA FMS contract. AEs must assist individuals who are currently utilizing the local AEs VF/EA FMS in the transition to the statewide VF/EA FMS as specified in the transition timeline correspondence issued by ODP on December 10, 2007, unless the individual or surrogate has selected an alternative management option. AEs will maintain their current contracts utilizing the ODP standard

¹¹ Refer to Appendix C of the current, approved Consolidated Waiver /P/FDS Waiver. This section of the Waivers provide requirements for individual, surrogates and agency providers .

AE/Provider Agreement with the local VF/EA FMS as specified in the ODP correspondence dated December 10, 2007.

11. No later than July 1, 2009, the VF/EA FMS will receive payment for claims for authorized Waiver-funded services through Pennsylvania Treasury. Until HCSIS is modified to provide the local and statewide VF/EA FMS with access to applicable ISPs, AEs must provide the VF/EA FMS with electronic (HCSIS or other electronic access) or hard copy access to the following components of the applicable ISPs, at a minimum:

- The section(s) of an individual's ISP that outlines all authorized services and supports for which the FMS is or will be making payment.
- The budget for those authorized services and supports.
- Any updates that are made to these two documents that impact the VF/EA FMS payments.

This information must be provided to the appropriate VF/EA FMS within 24 hours of an authorization of services in the annual review ISP, the fiscal year renewal ISP, and any critical revision.

D. County Program Responsibilities Related to Base-Funded Individuals

1. ODP encourages County Programs to ensure consistent access to the VF/EA FMS option, by implementing the ODP policy requirements in this section.
2. County Programs are responsible to ensure that SC Organizations provide information to individuals or surrogates on:
 - Person-centered planning and other choice and control opportunities.
 - Employer authority opportunities available in the Pennsylvania Developmental Programs system (such as, the two FMS management options available to individuals or surrogates in the Pennsylvania Developmental Programs system – AWC and VF/EA).
 - The benefits of each employer authority model, the individual or surrogate responsibilities associated with each model, and the required performance criteria established for budget authority agreements.
 - The FMSs role and responsibilities under each FMS option.
 - The alternative options to the FMS management option (such as, use of traditional providers).
3. County Programs, in conjunction with SC Organizations, should assist individuals or their surrogates, upon request, with decisions related to self-direction, including whether to self-direct considering the benefits and responsibilities, and which employer authority option to use. If an individual or their surrogate chooses the VF/EA FMS management option, the County Program should review with the individual or surrogate the forms needed and assist the individual or his or her surrogate with his or her transition to the local VF/EA FMS to pay qualified support service workers, unlicensed small providers, and vendors who deliver services and goods in accordance with a base-funded individual's authorized ISP. The contract must meet the requirements of Title 55 Pa. Code § 4300.139 (relating to Contract Requirements). The County Program also will pay the VF/EA FMS base funds

- for the administration functions performed by the FMS. This administrative fee should not be included in the individual's service budget amount.
4. The County Program should establish written procedures for validating that common law employer's meet the requirements. The County Program should have written procedures for how they will work cooperatively with their VF/EA FMS contractor to ensure all agreements and forms are completed by the common law employer (that is, individual or surrogate) and their local VF/EA FMS provider.
 5. The County Program, in cooperation with the VF/EA FMS and the common law employer, should track the utilization and budget in accordance with the each authorized ISP. The County Program should share any concerns related to the utilization and budget with the individual or their surrogate, SC Organization, VF/EA FMS, and ODP.
 6. The County Program should have written procedures regarding tracking, monitoring, and corrective action as it relates to performance of the common law employer. The County Program should report any concerns and corrective action measures to the individual or their surrogate, VF/EA FMS and the SC Organization. They may report their concerns and corrective action to ODP as needed.
 7. County Programs should develop and implement written procedures and safeguards that reflect ODP policies and the guiding principles of self-determination, including those outlined in Bulletin 00-03-05, "*Principles for the Mental Retardation System*". They should ensure that individuals and their surrogates have the right to choose, direct, and control the support services in the approved and authorized ISP and the qualified support service workers who provide them, without restrictions or barriers. The procedures and safeguards should ensure individuals or surrogates have the right to:
 - a. Recruit support service workers for hire.
 - b. Provide qualified support service worker orientation and training.
 - c. Determine wages for the support service worker within the established wage ranges.
 - d. Determine schedules of qualified support service worker(s).
 - e. Determine tasks to be performed by qualified support service workers and where and when they are to be performed in accordance with the approved and authorized ISP.
 - f. Manage the day-to-day activities of qualified support service workers.
 - g. Verify time worked by qualified support service workers and approve timesheets.
 - h. Complete and maintain progress notes and outcomes.
 - i. Terminate the individual's qualified support service workers when appropriate.
 - j. Receive initial and ongoing common law employer skills training from the VF/EA FMS as needed and requested by the individual or surrogate.
 8. County Programs should ensure that SC Organizations use a person-centered planning process to develop ISPs for all individuals. It is the responsibility of County Programs and the VF/EA FMS organizations with which they contract, to be knowledgeable about person-centered planning; the guiding principles of self-determination; the minimum guidelines for choice and control; all federal, state, and local rules and regulations pertaining to non-Waiver services; and the operation of a VF/EA FMS organization.

9. Until HCSIS is modified to provide the VF/EA FMS with access to applicable ISPs, County Programs must provide the VF/EA FMS with electronic (HCSIS or other electronic access) or hard copy access to the following components of the applicable ISPs, at a minimum:
 - The section(s) of an individual's ISP that outlines all authorized services and supports for which the FMS is making payment.
 - The budget for those authorized services and supports.
 - Any updates that are made to these two documents that affect VF/EA FMS services.

This information must be provided to the VF/EA FMS within 24 hours of finalizing an authorization of services in the annual review ISP, the fiscal year renewal ISP, and any critical revision.

E. Supports Coordination Organization Responsibilities

1. SC Organizations are responsible for providing information from the PA Guide to PDS to individuals or their surrogates on:
 - Person-centered planning and other choice and control opportunities.
 - Employer authority opportunities available in the Pennsylvania Developmental Programs system (such as, the two FMS options available).
 - The individual's or surrogate's responsibilities associated with each employer authority option.
 - The FMS provider's role and responsibilities under each FMS option.
 - The alternative service options to the FMS option (such as use of traditional providers).
2. SC Organizations must assist individuals or their surrogates, upon request, with decisions related to self-direction, including whether to self-direct considering the benefits and responsibilities, and which FMS option to use. If an individual or their surrogate chooses the VF/EA FMS option for the first time, the SC Organization, in conjunction with the AE or County Program, must assist the individual or their surrogate with his or her transition to an VF/EA FMS..
3. SC Organizations must use a person-centered planning process to develop ISPs for all individuals. It is the responsibility of SC Organizations to be knowledgeable about person-centered planning; the guiding principles of self-determination; the minimum guidelines for choice and control; all federal, state, and local rules and regulations pertaining to Waiver and non-Waiver services; the operation of an AWC FMS provider; and any Waiver amendments. SC Organizations must work cooperatively with the individuals or their surrogates, the VF/EA FMS, the AE or County Program and ODP as requested and required.

F. Compliance Requirements

VF/EA FMS administrative functions must be provided in accordance with U.S. IRS, U.S. Department of Labor and state and local rules and regulations pertaining to

household employers, domestic/support service workers and VF/EA FMS entities, as well as ODP policies and requirements. Until the IRS determines otherwise, VF/EA FMS administrative functions must be provided in accordance with section 3504 of the IRS code, IRS Revenue Procedure 70-6 and Proposed Notice 2003-70, as applicable. If VF/EA FMS administrative functions are funded by Medicaid, they must be provided in accordance with federal Medicaid law.

VF/EA FMS contractors, AEs and County Programs, and ODP are responsible for ensuring compliance with the above rules and regulations, as well as contract conditions.

G. Individual Support Plans and Budgets

AEs and County Programs must ensure that ISPs are developed through a person-centered process. The cost associated with the VF/EA FMS administrative fee is not included in the individual's ISP Supports and Services budget. See Section I of this Bulletin for more information on the FMS administrative fee.

AEs and County Programs must provide the VF/EA FMS organizations with access, either electronically, in HCSIS, or by hard copy, with the section of an individual's approved and authorized ISP that outlines all services and supports for which the VF/EA FMS is making payment, the authorized budget, and all updates that are made to these two documents that affect VF/EA FMS services. Authorized supports and services provided to individuals by the VF/EA FMS must be reflected in the individual's ISP.

The individual's authorized service budget should include the wage for the qualified support service worker and Waiver service rate, which includes:

1. The hourly wage for the support service worker must include:
 - a. The hourly wage.
 - b. Consideration for costs of employee benefits (optional).
2. Costs associated with required insurances and taxes, such as:
 - a. Employer-related federal, state, and local income taxes including FICA, Medicare, and unemployment.
 - b. All costs related to the purchase of workers' compensation insurance.

The individual or surrogate, along with the SC, is responsible for calculating the ISP budget. This will be accomplished by utilizing the ODP approved methodology for budget calculation. AEs and County Programs are responsible for approving and authorizing those proposed ISPs and budgets based on ODP established standards for ISP and budget approval and authorization. Once approved and authorized, individuals or surrogates, the AE and County Programs, along with the VF/EA FMS will be responsible to track service utilization and their budget by utilizing the monthly reports provided to them from the VF/EA FMS.

AEs and County Programs must develop and implement written procedures for monthly tracking of services and budgets billed by VF/EA FMS organizations compared to services authorized. ISPs are developed and updated to ensure authorized services are reflective of an individual's current, assessed needs. All services and supports must be approved and authorized in the ISP before services are provided by qualified

supports service workers, vendors, or small unlicensed providers. Therefore, if a timesheet or invoice is submitted to the VF/EA FMS by an individual or surrogate for more than the authorized ISP units and budget, or for services and supports that are not included in the individual's approved and authorized ISP, the individual or surrogate will be responsible for payment per the *Individual or Surrogate and VF/EA FMS Agreement Form*.

H. Payment of Wages for Qualified Support Service Workers, Vendors, Small Unlicensed Providers and Individuals Providing Transportation Services for Mileage Reimbursement

1. For Waiver Funded Services:

Until June 30, 2009, AEs are responsible for establishing wage ranges and rates (developed in accordance with federal and state Department of Labor and Industry (rules and regulations), which must be approved by ODP, to guide individuals or their surrogates in determining the hourly wages paid to support service workers of Waiver services. Using the approved wage ranges, the individual or surrogate may select the hourly wage for the support service workers they hire directly. Effective July 1, 2009, the wage ranges and total service rate for support service workers of Waiver services will be established by ODP.

Using the wage ranges approved by ODP, the individual or surrogate may select the hourly wage for the support service workers they hire. The individual or surrogate may include consideration for costs of benefits for the support service worker in the wage; however, this component is optional.

The AE, SC Organization, and individual or surrogate, in conjunction with the VF/EA FMS Organization, is responsible to ensure the total rate for the service includes:

- The hourly wage of support service workers.
- Costs for benefits paid to workers (if indicated by the common law employer).
- Costs related to all required employer taxes and insurances.

Until December 31, 2008, AEs will contract with local VF/EA FMS for "Waiver service" payments for individuals enrolled in the VF/EA FMS prior to April 15, 2008. This contract will facilitate the payment of the "Waiver services" authorized in the ISP for those receiving FMS services. Contracts with local VF/EA FMS Organizations may need to span through the first quarter of calendar year 2009 to provide time for the Organizations to complete tax-related paperwork.

By July 1, 2008, for FY 08-09, AEs will establish a Waiver contract with the statewide VF/EA FMS for "Waiver services" payments for new requests for VF/EA FMS services by Waiver participants on or after April 15, 2008. This contract and payment arrangement information is outlined in ODP correspondence dated April 3, 2008, and December 10, 2007.

2. Wage Range Review Process:

Prior to the development of wage ranges, the AE must assess existing wages of the support service workers to identify impacts of the new wage ranges. After this analysis, the AE is responsible to provide ODP, through the appropriate Regional Office, with the following information to facilitate the review and approval or disapproval of the range:

- Specific information on the number of support service worker wages who could be impacted by the new wage ranges. This includes information on the number of support service workers who may be eligible for an increase in the wage, as well as those who may exceed the wage ranges.
- Detailed financial impact information, including the total cost of the new wage range, and any funding issues.

Approval of the wage ranges will not occur without the above information. The information will assist ODP in determining both the financial and individual impacts in order to minimize or eliminate the impacts where possible.

If a Waiver participant who is currently utilizing support service worker(s) with wages in excess of the wage range approved by ODP, the AE must identify that information in their submission to ODP, and a tentative plan to address the issue. If the AE and employer are unable to propose a resolution to ODP consistent with applicable laws and standards, the AE will notify the ODP Regional Office of the outstanding issue(s) when they submit their wage range information. ODP will then initiate a review of the situation using a standard review process, and provide information to assist the common law employer and the AE in the determination of the final wage of the worker(s). This review process may **only** be used for Waiver participants with worker(s) with existing wages in excess of the new wage range developed by the AE, and approved by ODP.

3. For Base-Funded Services:

County Programs are responsible to establish a wage range (developed in accordance with federal and state Department of Labor and Industry (rules and regulations) and approved by ODP to guide individuals and surrogates in determining the hourly wages of support service workers. Using the approved salary range, individuals or surrogates may select the hourly wage for the support service workers they hire directly. The County Program, the SC Organization, and the individual or the surrogate, in conjunction with the VF/EA FMS, are responsible to ensure the total rate for the service includes the hourly wage of the worker, costs related to all required taxes and insurances, and costs for benefits paid to workers (if indicated by the common law employer), and other costs deemed allowable in Title 55 Pa. Code Chapter 4300 regulations.

Base-funded payments made for authorized vendor services, mileage reimbursement, and small unlicensed provider services are made based on

actual costs of the goods or the rate established by law, the provider or the vendor in accordance with ODP policies.

I. Payment to the Vendor Fiscal/Employer Agent FMS for Administrative Functions

As outlined in the ODP correspondence dated December 10, 2007, AEs will make payment through Waiver administrative dollars to their local VF/EA FMS organizations for the administrative functions they perform. The administrative fee must be established consistent with Title 55 Pa. Code Chapter 4300 and will be established as a monthly fee per participant. ODP will make payments to the statewide VF/EA FMS for administrative functions they perform through Waiver administrative dollars utilizing the monthly fee per participant methodology for all individuals enrolled with the statewide VF/EA FMS. AEs are responsible to ensure the local administrative fee or the statewide administrative fee is **not** included in the individual's "Waiver services" ISP budget amount. The monthly fee per participant must be the same for all individuals served by the VF/EA FMS Organization.

ODP shall establish a monthly fee per participant to be paid to the statewide VF/EA FMS for the administrative functions they perform as the fiscal agent. The VF/EA FMS shall bill ODP for those functions using this monthly fee per participant, in accordance with contractual requirements. The monthly fee will be the same for all participants. ODP may modify this fee as required.

For the local VF/EA contracts, AEs are responsible to ensure the monthly fee includes the costs associated with training provided to common law employers by the VF/EA FMS (this includes orientation and training provided by the VF/EA FMS to individuals or their surrogates on employer practices). Costs associated with conducting criminal clearances for support service workers will also be included in the VF/EA FMS monthly fee.

County Programs should consider utilizing a standard monthly fee per individual for base-funded individuals. However, ODP recognizes that there may be a more cost-effective mechanism to develop the VF/EA FMS fee for base-funded individuals. County Programs should establish the most cost effective VF/EA FMS fee utilizing the Title 55 Pa. Code Chapter 4300 regulations. The County Program will pay the VF/EA FMS base funds for the administration functions performed by the FMS. This administrative fee should not be included in the individual's "base service" ISP budget amount.

County Programs should continue to contract and offer local VF/EA FMS services for individuals in their base service program. The contract must meet the requirements of Title 55 Pa. Code § 4300.139 (relating to Contract Requirements). In addition, the contract must include language that holds the VF/EA accountable for any unfulfilled income tax withholding or employment tax obligations, including interest and penalties caused as a result of its performance or the performance of the reporting agent with which it has contracted for the individuals or their surrogates it serves in said county.

J. Qualifications for Support Service Workers, Vendors, Small Unlicensed Providers, and Individuals Providing Transportation for Mileage Reimbursement

For Medicaid Waiver services, provider qualifications are included in the Consolidated and P/FDS Waivers for each service. The qualification criteria must be verified by the VF/EA FMS and the individuals or surrogate prior to the delivery of services by a support service worker, vendor, small unlicensed provider, or transportation for mileage entity, and at least annually thereafter. ODP recommends using the Waiver qualification criteria for base-funded services.

In general, minimum requirements for support service workers are:

1. At least 18 years of age or older.
2. Complete a State Police Criminal Background Check as per the OAPSA [35 P.S. §10225.101 et. Seq and 6 Pa. Code Chapter 15], and when serving a child under age 18 conduct clearances as per the Child Protective Services Law (CPSL) 23 Pa. C.S. Chapter 63.
3. If the support service worker has not been a resident of Pennsylvania for the two (2) years immediately preceding application, they must obtain a report of Federal Criminal History Record from the FBI.
4. Necessary pre/in-service training to implement the person's ISP.
5. Agreement to carry out the service-related responsibilities outlined in the person's ISP.
6. A valid Pennsylvania driver's license when transportation is provided.

Please refer to the applicable Medicaid Waiver (Consolidated and P/FDS) for a detailed list of provider qualification criteria.¹²

As the common law employer, the individual or their surrogate is responsible to ensure that individuals, support service workers, small unlicensed providers, vendors, and transportation for mileage entities meet the qualification criteria for the service(s) they provide. In addition, the individual or their surrogate must provide documentation that these entities meet the applicable qualification criteria to the VF/EA FMS for verification of qualification. The *Documentation of Support Service Worker Qualification Form* is located in the PA Guide to PDS. This documentation must be submitted by the individual or their surrogate, and verified by the VF/EA FMS, initially (prior to delivery of services), and at least annually thereafter.

Support service workers who serve individuals receiving Waiver or non-Waiver services must have a State Police Criminal Background Check completed. Support service workers who are from out-of-state and who serve individuals receiving Waiver or non-Waiver services, and individuals who provide services to individuals under the age of 18, must have a Criminal Background Check completed by the FBI. In addition, support service workers who serve individuals under the age of 18 must also have a State Child Abuse Clearance.

¹² Refer to appendix C of the current, approved Consolidated Waiver and P/FDS Waiver. This section of the Waivers provide requirements for both Individual and Agency Providers.

The above-mentioned Criminal Background Checks are transferable if they are dated within one year immediately preceding the support service worker's date of hire. The cost of conducting these Criminal Background Checks will be included in the administrative fee paid to the VF/EA FMS. AEs, County Programs, Supports Coordination Organizations and ODP are responsible to monitor the VF/EA FMS to ensure that all support service workers hired by individuals or surrogates are qualified and meet the applicable Waiver or non-Waiver requirements. The FMS must maintain documentation in the individual's or surrogate's file regarding the qualification of all support service workers. The qualifications must be reviewed and updated on an annual basis. This does not require that background checks be done annually. New background checks must be completed when the person is hired resigns their employment and then returns to work for the individual or surrogate, or works for a new individual or surrogate, and the previous background check is dated more than 1 year from the date of hire.

K. Monitoring the Quality of Supports and Services Provided To Individuals

The individual or surrogate must monitor the quality of the services provided in accordance with the individual's ISP. Additionally, the individual's SC is responsible for the SC functions of locating, coordinating, and monitoring services. For Waiver services, monitoring by the SC must be conducted at the minimum frequency outlined in Appendix D-2-a of the approved Consolidated or P/FDS Waiver for Waiver participants and at least annually for non-Waiver individuals, and at a level that would assure the health and welfare of the individual. This monitoring must be documented using the standard ISP monitoring tool, and must be entered in the Home and Community Services Information System (HCSIS).

For Waiver services, AEs are responsible to ensure that minimum monitoring frequency established in the Waiver requirements are met. For base-funded services, County Programs are responsible for ensuring that monitoring takes place at least annually and at a frequency necessary to ensure the person's health and welfare.

AEs and County Programs must ensure that a person-centered planning process and self-directed support service are available to all individuals; and that service, self-direction opportunities, and safeguards for individuals' health and welfare and against fraud and abuse are uniformly implemented.

L. Monitoring the Quality of Supports and Services Provided By the VF/EA FMS

ODP shall conduct the initial readiness review of the statewide VF/EA FMS to determine readiness to begin providing VF/EA FMS services. In addition, ODP will conduct periodic reviews of the VF/EA FMSs performance with at least one review occurring every 2 years. Until full transition to the statewide VF/EA is accomplished, AEs will conduct periodic reviews of their local VF/EA FMS organization's performance. For base-funded VF/EA FMS services, County Programs shall conduct periodic reviews of the VF/EA FMSs performance using the same timeline mentioned above.

ODP is responsible for notifying AEs of any concerns regarding the performance of the statewide VF/EA FMS. Likewise, AEs and SC Organizations are responsible for notifying ODP of any concerns they may have regarding the performance of the statewide VF/EA FMS. AEs and County Programs must monitor their local contracts so

that appropriate intervention can occur if concerns arise from individuals or their surrogates, SC Organizations, and other stakeholders.

Such performance concerns may include, but not be limited to:

- The adequacy and quality of VF/EA FMS services provided by to the individuals or surrogates.
- The adequacy and quality of customer service provided to individuals or surrogates by the VF/EA FMS.
- The accuracy and timeliness of preparing and issuing payroll to support service workers, processing invoices, and making payments to unlicensed providers and vendors.
- Any unfulfilled federal, state, or local income tax and employment tax obligations including interest and penalties.
- The manner and timeliness of issuing individual or surrogate satisfaction surveys.
- The manner and timeliness of generating required summary reports.
- The manner and timeliness of reporting employer authority performance issues and incident reporting.

The statewide VF/EA FMS shall develop an individual or surrogate satisfaction survey for review and approval by ODP. Once approved by ODP, the VF/EA FMS will administer the satisfaction survey annually to a representative sample of individuals or surrogates it serves. The VF/EA FMS will analyze and summarize the results and generate a summary report as specified by ODP. The report must be submitted to ODP as specified by contract. The survey results will be considered as part of the periodic ODP review of the VF/EA FMS performance. The statewide VF/EA FMS will implement corrective actions as indicated by the survey results. The AEs and County Programs must continue to monitor the performance of their local VF/EA FMS to assure quality FMS performance. AEs must monitor their local VF/EA contractors in order to ensure a smooth transition for the Waiver participants to the statewide VF/EA FMS.

OBSOLETE BULLETIN:

Bulletin 00-04-01, *“Intermediary Service Organizations (ISOs)”*, which was issued on January 2, 2004.

Bulletin 00-92-24, *“County Responsibilities for Waiver Funded Habilitation In A Private Home”*

OBSOLETE RELATED DOCUMENTS

Guidelines for Operating a Vendor Fiscal/Employer Agent and Agency With Choice Intermediary Service Organization (Draft), which was issued on May 6, 2003.