

**Financial Management Services: Key Concepts and Issues**

Presented to:

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Presented by:

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**I. Putting People First: The Philosophy of Self Direction and Self Determination**

- The Centers for Medicare and Medicaid Services (CMS) defines **Self Direction/ Participant Direction** as an approach that presents elders and individuals with disabilities the option to direct and control Medicaid funds identified in an individual budget and in which the participants live in their own homes.
- National Institute on Consumer-directed Long-term Services at the National Council on the Aging defined **consumer/self direction** as:

*A philosophy and orientation to the delivery of HCB services whereby informed individuals assess their service needs, determine how and by whom these needs should be met, and monitor the quality of services received.*

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**I. Putting People First: The Philosophy of Self Direction and Self Determination (continued)**

- **Self Determination** represents a much broader concept related to individuals' overall control of their lives and abilities to participate fully in society and rests on four basic principles: (1) freedom to exercise the same rights as other citizens; (2) authority to control the funding needed for services and supports; (3) support through the organization of resources as determined by the person with the disability; and (4) responsibility to use public dollars wisely (Scala and Nerney, [www.self-determination.com](http://www.self-determination.com)).
- Self-directed support services are considered a key element of Self Determination.
- At the heart of the movements of self determination and self direction are the people - individuals with disabilities who are directing and receiving their services and supports. An essential element in facilitating individuals' use of self-directed services is the provision of appropriate, customized fiscal and consultation supports.

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I. *Putting People First: The Philosophy of Self Direction and Self Determination* (continued)

- **Self-directed support services** are based on the premise that individuals with disabilities, and their representatives, when appropriate, know best about their needs and how to address them. They should be empowered to make decisions about the services they receive, including having choice and control over the types of support services they receive, who provides them and *when and where* the support services are delivered.
- The self-directed support service delivery model does not reflect one strategy. It can reflect a continuum of approaches based on individuals' and representatives':
  - Abilities to perform employer and budget authority functions; and
  - The level of autonomy and control they wish to exercise related to the support services they receive and the individuals who provide them.

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I. *Putting People First: The Philosophy of Self Direction* (continued)

- Although there is no single service delivery model that encompasses the entire range of self-directed support service programs, in general, a program can be considered self-directed if the individual receiving the service, or his/her representative, is responsible for and/or has an active role in:
  - Recruiting and selecting/hiring his/her support worker,
  - Orienting and training his/her support worker,
  - Determining his/her support worker's duties and work schedule,
  - Supervising his/her support worker(s),
  - Establishing his/her support worker(s) rate of pay (applies to Government or Vendor F/EA FMS model more than Agency with Choice FMS model),
  - Managing his/her support worker's payroll (or having an entity to perform the task on the individual's behalf such as a Vendor Fiscal/Employer Agent or Agency with Choice FMS),
  - Reviewing the performance of his/her support worker(s), and
  - Discharging his/her support worker(s), when necessary.
- All states and the District of Columbia either have implemented or in the process of implementing at least one Medicaid or state-funded self-directed service program.

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II. *Incorporating Self Direction Into a Medicaid HCBS §1915(c)Waiver*

- Per CMS guidance, incorporating participant direction into a *Medicaid HCBS §1915(c)Waiver* involves five interrelated dimensions. These include:
  - **Participant Choice** – the waiver may be designed to exclusively serve individuals who want to direct some or all of their waiver services. When this is the case, there is usually another waiver program that is available to individuals who don't want to direct their services. Alternatively, a waiver may permit participants to direct some or all of their services or opt to receive provider-managed services exclusively. A waiver also may specify participant direction opportunities limited to individuals who reside in designated types of living arrangements.
  - **Geographic Limitation** – the waiver may make participant direction opportunities available in some but not all geographic regions where the waiver is in effect.
    - Ohio is not proposing a geographic limitation for the SELF waiver and the new waiver will be implemented statewide.

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**II. Incorporating Self Direction Into a HCBS §1915(c)Waiver** *(continued)*

- **Service Specifications** – each service under the waiver may be specified as provider-managed, self-directed or both.
- **Participant Direction Opportunities** – there are two basic participant/self direction opportunities that may be made available through a waiver: *Participant Employer Authority* and *Participant Budget Authority*. These opportunities may be used in combination to promote full-featured participant/self direction of waiver services and are not mutually exclusive.
- **Supports for Participant Direction** – when a Medicaid HCBS §1915(c) waiver offers participant/self direction opportunities, two types of supports must be made available to facilitate individuals' use of self-directed services: *Information and Assistance in Support of Participant Direction* and *Financial Management Services* (i.e., Supports Brokerage services). These supports may be furnished as a waiver service or under another Medicaid payment authority (principally as a Medicaid administrative activity) (CMS §1915(c) *Instructions, Technical Guide & Review Criteria*, version 3.5).

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**III. Employer and Budget Authority**

- There are two participant/self direction opportunities approved by CMS for states to implement self-directed services:
  - **Participant Employer Authority** – Under Employer Authority, the participant (with or without the assistance of a representative) exercises choice and control over workers who provide them with supports (i.e., personal care attendants). The principal defining characteristic of this authority is the participant functions as the employer of workers. The participant selects and supervises these workers directly. The participant can exercise employer authority either by being the common law employer (legally responsible) or co-employer (with another agency entity) of the worker.
    - When Employer Authority is offered, it must apply to at least one waiver service.
    - The minimum supports that must be provided must include:
      1. Assisting participants in verifying HCBS workers' citizenship and legal alien status;
      2. Collecting and processing support workers' timesheets; and
      3. Processing payroll including the withholding, filing and depositing of Federal, state and locally-related employment-related taxes and insurance (CMS §1915(c) *Instructions, Technical Guide & Review Criteria*, version 3.5).

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**III. Employer and Budget Authority** *(continued)*

- Under the **common law employer** approach, the participant or his/her representative is considered the legally responsible employer of workers s/he hires directly and is responsible and liable for performing all employer-related tasks, with the exception of using a Government or Vendor Fiscal/Employer Agent FMS provider. Activities include:
  - Recruiting and hiring support workers.
  - Specifying support workers' qualifications based on participant's needs.
  - Determining support workers' duties are consistent with State service specifications;
  - Obtaining criminal history and/or background checks for support worker candidates.
  - Developing work schedules support workers.
  - Supervising support workers.
  - Verifying time worked by support workers and approving/signing their timesheets.
  - Determining support worker wages and benefits subject to applicable State limits and as allowable by State.
  - Evaluating support workers' performance, and
  - Dismissing support workers.

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III. *Employer and Budget Authority* (continued)

- Under the **co-employer** approach the agency provider and the participant or his/her representative are co or joint-employers of the participant's support workers. The participant/representative is responsible for recruiting and referring his/her support workers to the agency for hire and assignment back to the participant.
  - The agency is the **primary** employer or **employer of record** of the participant's support worker for the purpose of human resource and payroll management and Medicaid provider requirements.
  - The participant or his/her representative is the **secondary or managing** employer of his/her support worker performing or actively participating in recruiting, training, scheduling, supervising and dismissing of his/her support workers, at least from the home.
  - It is important to note that allow each party may have discrete duties and responsibilities related to the support worker, however, both parties are equally liable for any employment related issues that may arise as a result of this employment.

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III. *Employer and Budget Authority* (continued)

- **Participant Budget Authority** – Under Budget Authority, the participant exercises decision-making authority and management responsibility for an consumer-directed budget from which the participant authorizes the purchase of individual-directed goods and services that are authorized in the individual's service plan. He/she also may be afforded the flexibility to shift funds among authorized services within the total amount of the budget without prior review and approval, however changes that affect the service plan must be documented (not an OH DODD waiver feature). Participants must be afforded the opportunity to request a Fair Hearing when their request for a budget adjustment is denied or the amount of the budget is reduced (CMS §1915(c) *Instructions, Technical Guide & Review Criteria*, version 3.5).
  - When Participant Budget Authority is offered, it must apply to at least one but usually two or more waiver services.
  - The minimum supports that must be provided must include:
    1. Maintaining a separate account for participant's budget,
    2. Tracking & reporting disbursements & balances of participant funds,
    3. Processing & paying invoices for goods and services approved in the service plan, and
    4. Providing participants/representatives with periodic reports of expenditures and the status of participant directed budgets.

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IV. *Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues*

- Individuals and their representatives, as applicable, who participate in self-directed support service programs, often employ their support workers directly and are not in the trade or business of providing support services to the public. Thus, they are considered **household employers** and hire support workers who are generally considered **domestic service workers**.
- Initially, states and individuals tried to reduce the employer-related burden associated with self-directed support service programs by classifying support workers hired directly by program participants as **independent contractors**.
- However, IRS has determine in general, home-based workers (e.g., support workers) are employees and not independent contractors (see FY 2001 IRS National Taxpayer Advocate Report and IRS Proposed Notice 2003-70).
  - IRS formerly used a "20 Factor" test in determining the relationship between businesses and workers. These factors have been refined into eleven main tests organized under three main groups:
    - (1) Behavioral Control,
    - (2) Financial Control, and
    - (3) Type of Relationship.

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

- **Behavioral Control** covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means.
  - **Financial Control** covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.
  - The **Type of Relationship** factor relates to how the workers and the business owner perceive their relationship.
- Under IRS common law rules, anyone who performs services for an entity is the entity's employee if the entity can control what will be done and how it will be done even if the entity gives the employee freedom of action. What matters is that the entity has the right to direct and control the details of how the services are provided and the outcomes (IRS Publication 15A, 2010).
- It appears from the OH Department of Jobs and Family Services website that the agency is using the IRS procedures for determining the relationship between businesses and workers.

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

- If there is a question regarding the employment status of a support worker, an IRS Form SS-8, *Determination of Worker Status For Purposes of Federal Employment Tax and Income Tax Withholding* can be filed to obtain a ruling from the Service.
- This ruling is specific to the facts in the case for the specific support worker and cannot be applied to a class of support workers.
  - If a support worker is determined to be an independent contractor, he/she should complete and submit an IRS Form W-9, *Request for Taxpayer Identification Number and Certification* to either the employer (if managing payroll directly) or the Vendor Fiscal/Employer Agent (F/EA) or Agency with Choice (AwC) Financial Management Service (FMS) provider for processing.
  - If the independent contractor is paid \$600 or more for services in a calendar tax year, an IRS Form 1099-Misc needs to be completed and a copy provided to the independent contractor by January 31<sup>st</sup> of the year following the payment.
  - The completed Form 1099-Misc, along with an IRS Form 1096, *Annual Summary and Transmittal of US Information Returns*, should be sent to the IRS by February 28<sup>th</sup> (or January 31<sup>st</sup> if the form is filed electronically).

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

- In cases where there is a question about an individual's ability to perform as an employer:
- If a person who is a representative for an individual has an executed IRS Form 2848, *Power of Attorney Declaration of Representative* individual, the IRS automatically considers the individual the common law employer with a POA representing and signing on their behalf. The IRS Forms 2678 and 8821 would be executed between the individual and the Vendor F/EA with the Power of Attorney (POA) signing on the individual's behalf.
  - If the individual's representative does not have an executed IRS Power of Attorney (IRS Form 2848) with the individual, the IRS will recognize the representative as the common law employer, not the individual. The IRS Forms 2678 and 8821 would be executed between the representative and the Vendor F/EA.
- A best practice approach is to have the employer be an individual who can participate adequately at a state unemployment insurance claim hearing.

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

- Under the U.S. Department of Labor (DoL's) Fair Labor Standards Act (FLSA) of 1974, the term **domestic service** applies to employing services of a household nature in or about the private home of the person whom they are employed – (29 U.S.C. 202(1), 206(f), 207(i)).
- Domestic service workers are subject to FLSA (must be paid minimum wage for every hour worked and overtime when applicable), except under three exemptions:
  - Companionship (worker exempt from receiving minimum wage and overtime pay)
  - Casual babysitters (not discussing today)
  - Live-in Workers (partial exemption for over-time pay only)

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

■ **Companionship Exemption**

- Under the Companionship exemption, the person is *employed in domestic service employment to provide companionship services (fellowship, care and protection) to individuals who, because of age or infirmity, are unable to care for his or her own needs....* 29 U.S.C. 213 (a) (15).
  - Exempt services include household work related to the person's care (i.e., meal preparation, bed making, washing of clothes, and other similar services) as long as they are incidental and comprise not more than 20 percent of the total weekly hours worked.
  - A companion can not be trained personnel (i.e., nurse, PT/OT/ST, etc).
  - A companion can be exempt even if employed solely by a third party employer or agency, rather than an individual or family directly – (29 CFR 552.6; 552.109(a)).
  - If a support worker qualifies as a companion, he/she does not have to be paid minimum wage or overtime.

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

**Live-In Worker Exemption**

- Live-in workers under FLSA are defined as, *domestic service employees in a household who reside in that household...* 29 U.S.C. 213(b)(21).
- Live-in workers must be paid minimum wage but are exempt from overtime pay. Total hours worked in a 24 hr period may be reduced up to eight hours to reflect break and sleep time if mutually agreed upon by the employer and employee.
- In regards to the Long Island Care at Home, Ltd. v. Coke case, the Supreme Court upheld the provision of the companionship exemption, even if the support worker works for an agency.
  - The Obama Administration currently is looking into the decision and revising the Companionship Exemption rule at the Department of Labor.
- States do not have to recognize the exemptions and some do not (i.e., NJ).
  - OH DODD needs to determine whether or not the state recognizes the companionship and/or live-in exemptions before using either to implement a self-directed service program.

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**IV. Individuals as Household Employers and the Employment Classification of Support Workers Under Employer Authority: Key Issues (continued)**

- Managing the employer-related tasks (particularly payroll) associated with self-directed support services can be a challenge for some individuals and their representatives.
- The Center of Medicare and Medicaid Services (CMS) requires states that offer self-directed support services offer a system of supports that assist individuals with managing their services. This includes **Information and Assistance (I&A)** (i.e., Supports to help develop and revise their individual service plans and budgets, identify resources available in the community and provide other related consultation such as Supports Brokerage services) and **Financial Management Services (FMS)** (i.e., Government or Vendor F/EA or Agency with Choice FMS) to help manage support workers' payroll and processing and paying invoices for approved individual-directed goods and services included in the individuals budgets.

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**V. What Support Services Facilitate Individuals' Use of Self-directed Services?**

Service	Operating Entity	Worker's Employer	Entity's Responsibilities
Fiscal Conduit (FMS)	Government or Vendor	Individual or representative unless agency-based services used.	Disburses public funds via cash or check or payments to individual representatives and performs other related duties.
Government Fiscal/Employer Agent (FMS)	Individual or institution 3504 of the IRS Code and IRS Rev Proc. 80-4)	Individual or representative unless agency-based services used.	Under IRS Rev Proc. 80-4 and IRS Proposed Notice 2003-70, acts as "employer agent" for individuals for limited purposes that include filing its decoupled federal income tax withholding and employer's taxes. Also, may track a state for public funds, manage payroll & related state & local employment-related taxes, pay vendors, generate reports, & broker worker's compensation & health insurance, as available. May be authorized to delegate agent tasks to a reporting or subagent per IRS Proposed Notice 2003-70.
Vendor Fiscal/Employer Agent (FMS)	Vendor (Section 504 of the IRS Code and IRS Rev Proc. 70-6 and IRS guidance for those sections apply & listed)	Individual or representative unless agency-based services used.	Some Government FEA/EO/EOB above occupies a vendor in accordance with IRS Rev Proc. 70-6 and IRS guidance for those serving publicly-funded programs. May delegate agent tasks to a reporting agent per IRS Proposed Notice 2003-70.
Agency with Choice (FMS)	Agency with Choice (Health, AAHC social services)	Individual or representative unless agency-based services used.	Some Government FEA/EO/EOB above occupies a vendor in accordance with IRS Rev Proc. 70-6 and IRS guidance for those serving publicly-funded programs. May delegate agent tasks to a reporting agent per IRS Proposed Notice 2003-70.
Information & Assistance (I&A) Support	Individual or organization or individual (i.e. Supports Broker)	Individual or representative or agency	Individual recruits & refers to agency for hire & assignment back to them. The agency is primary employer for human resources, payroll and Medicaid provider requirements. The agency may provide additional supports to individuals & workers (i.e. manage worker registry, provide referrals & emergency back-up workers, provide worker training & assist individual with employer tasks, as requested). The individual is the secondary "managing" employer performing or actively participating in the recruiting, determining terms & conditions of work, training, supervising and discharging their workers.

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**VI. What Are Financial Management Services (FMS)?**

- Financial Management Services (FMS)** is CMS' umbrella term for fiscal supports provided to individuals using self-directed services.
- In general, FMS models of fiscal support can:
  - Assist individuals/representatives in calculating and managing their individual budgets;
  - Act as a "bank" receiving and disbursing public funds in accordance with individuals' approved budgets;
  - Monitor an individual's spending of public funds and any underage and overage in accordance with the individual's approved budget;
  - Process criminal background and other checks of qualifications on prospective support workers and Medicaid provider agreements;
  - Collect, process and maintain support workers' time sheets;
  - Manage payroll for support workers hired by the individual/representative including federal, state and local employment taxes;
  - Broker and process the payment of workers' compensation, health and other insurance benefits, as available;
  - Process and pay invoices for individual-directed goods and services included in individual budgets;
  - Provide skills training to individuals/representatives related to employer-related tasks (e.g., recruiting, hiring, training, managing and discharging support workers and managing payroll and paying bills) or to support workers (Agency with Choice);

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**VI. What Are Financial Management Services (FMS)?** *(continued)*

- Provide other employer-related supports as desired and requested by the individual/representative (Agency with Choice FMS only); and
- Implement program accountability and individual protections (e.g., internal controls).
- Fiscal supports models under FMS recognized by CMS include:
  - Government Fiscal/Employer Agent,
  - Vendor Fiscal/Employer Agent (both common law employer authority), and
  - Agency with Choice (co-employment authority).
- These FMS models reduce the employer-related burden (particularly payroll and bill payment) associated with self-directed support service programs while ensuring compliance with federal, state and local program, tax and labor rules and regulations and fiscal/program accountability.

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**VII. What Is A Government Fiscal/Employer Agent FMS Provider?**

- Under the **Government Fiscal/Employer Agent** model, a state or local government entity may apply for and receive approval from the IRS (under Section 3504 of the IRS Code and IRS Revenue Procedure 80-4 as modified by IRS Proposed Notice 2003-70) to be an **employer agent** on behalf of individuals/representatives performing all that is required of an employer for wages paid on their behalf and all that is required of the payer for requirements of back-up withholding, as applicable.
- The Government F/EA FMS provider may choose to delegate employer agent tasks to a reporting or subagent per *IRS Proposed Notice 2003-70*.
- Since only one reporting or subagent may be used by a Government F/EA FMS provider, the F/EA administrative fee/costs are considered administrative for the purpose of receiving federal matching funds.
- The Government F/EA FMS provider may delegate the task of executing and maintaining Medicaid provider agreements with support workers to its reporting or subagent through an MOU and by describing the task in its HCBS waiver or SPA.

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**VII. What Is A Government Fiscal/Employer Agent FMS Provider?** *(continued)*

- The Government F/EA FMS model provides individuals/representatives with a high level of choice and control (including being the common law employer of their support workers) while providing them with employer-related supports and without being considered the common law employer of individuals' support workers.
- The Government F/EA FMS provider, its subagent, (if used) and the individual/representative-employer are jointly liable for any unfulfilled federal tax obligations, including penalty and interest.
- If the Government F/EA FMS provider delegates agent tasks to a reporting agent, the reporting agent is not liable for any unfulfilled tax obligations, including penalty and interest in the eyes of the IRS. This is why Government F/EA FMS providers should:
  - Have a good understanding of Government F/EA FMS provider requirements and tasks, and develop performance standards and internal controls to use in selecting a competent reporting agent to contract with and for monitoring its readiness and ongoing performance;
  - It is recommended that it execute informed consent statements with each individual it represents as agent informing each person that it is using a reporting agent, the reporting agent's name and tasks it has been delegated to perform and that the individual concurs with this; and

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**VII. What Is A Government Fiscal/Employer Agent FMS Provider?** *(continued)*

- Develop and implement an effective contract with its reporting agent that hold the reporting agent accountable for any unfulfilled federal tax obligations, including penalties and interest and performance requirements.
- When delegating tasks to a reporting agent, a Government F/EA FMS provider must execute an IRS Form 8855, *Reporting Agent Authorization* with the reporting agent.
- A Government F/EA provider should obtain a separate FEIN (IRS Notice 95-18, Q&A 5), in addition to its corporate FEIN, for the sole purpose of filing Federal employment and income tax withholding or the individual/representative - employers it represents using the IRS Form SS-4, *Request for FEIN*.
  - If a Government F/EA FMS provider uses a reporting or subagent, this entity filing and pays federal taxes on the Government F/EA FMS provider's behalf using the agent's contact information and separate FEIN.

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**VIII. What is a Vendor Fiscal/Employer Agent Provider?**

- Under the *Vendor Fiscal/Employer Agent (F/EA) FMS* model, a private or public vendor entity may apply for and receive approval from the IRS (in accordance with IRS Revenue Procedure 70-6, 1970-1 CB 420 and Proposed Notice 2003-70, as applicable and REG-137036-08, Notice of Proposed Rulemaking: Section 3504 Agent Employment Tax Liability) to be an **employer agent** on behalf of individuals/representatives performing all that is required of an employer for wages paid on their behalf and all that is required of the payer for requirements of back-up withholding, as applicable.
  - In addition, a Vendor F/EA FMS provider may (See Vendor F/EA FMS Task List Handout).
    - Act as a "bank" and receive, disburse and track public funds on behalf of individuals/representatives;
    - Monitor an individual's spending of public funds and any underage and overage in accordance with the individual's approved budget/fund allocation;
    - Provide a variety of customer service-related services to individuals/representatives (e.g., provide a toll free and TTY number, information in alternate formats, foreign language and ASL interpreter services, complaint resolution, satisfaction surveys, paper and/or web-based budget reporting);
    - Assist in completing individual's enrollment with the Vendor F/EA FMS provider and support worker employment forms;

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**VIII. What is a Vendor Fiscal/Employer Agent Provider?** *(continued)*

- Assist in conduct criminal background and other checks of qualifications prospective support workers and process Medicaid provider agreements as required;
- Assist in verifying support workers' citizenship status;
- Collect, process and maintain support workers' time sheets;
- Prepare and distribute support workers' payroll including withholding, filing and depositing of Federal and state income tax withholding and employment taxes and locality taxes, when applicable;
- Process and pay vendor invoices for approved individual-directed goods and services;
- Process returned payments (i.e., payroll checks or invoice payments) in accordance with Ohio Unclaimed Property law;
- Provide individuals/representatives with employer skills training (e.g., recruiting, hiring, training, managing and discharging support workers);
- Generate required financial reports for state and/or local government, as required.

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**VIII. What is a Vendor Fiscal/Employer Agent Provider?** *(continued)*

- Implement fiscal accountability and individual protections (e.g., incident/mandatory reporting related to fiscal issues; implementation of internal controls related to Vendor F/EA FMS tasks); and
- Broker workers' compensation and other insurance, as required.
- Vendor F/EA FMS providers may perform these tasks for individual/representative-employers as their *employer agent* without being considered the common law employer of the support workers the individual/representative hires directly.
- The Vendor F/EA FMS provider and the individual/representative-employer are jointly liable for any unfulfilled federal tax obligations, including penalty and interest.
  - A Vendor F/EA FMS provider may choose to contract with and delegate agent tasks to a reporting agent. However, same risk of liability and precautions apply as describe for Government F/EA FMS providers describe in Slide 24.
  - When delegating tasks to a reporting agent, a Vendor F/EA FMS provider must execute an IRS Form 8655, *Reporting Agent Authorization* with the reporting agent.

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**VIII. What is a Vendor Fiscal/Employer Agent Provider?** *(continued)*

- A Vendor F/EA FMS provider uses the separate FEIN for filing and paying federal employment and income tax withholding for all individual/representative-employers it represents in all states and self-directed service programs.
- No Federal employment or income tax withholding of the Vendor F/EA FMS provider's corporate employees should be filed under this FEIN.
- The separate FEIN reinforces that the Vendor F/EA FMS provider is not the individuals' support workers' employer for federal tax purposes (i.e., FUTA) and provides for discrete accounting of Federal income tax withholding and employment taxes filed and paid on behalf of individual/representative-employers and their support workers.
- When serving private pay employers, the Vendor F/EA FMS provider must establish a separate process for filing and paying federal taxes for these individuals in accordance with IRS Rev. Proc. 70-6. This can be problematic because filing and paying FICA in the aggregate and FUTA in the individual (as required by IRS Rev. Proc. 70-6) causes a "mismatch" problem reporting and paying FICA and FUTA that results in the employer receiving a Failure to File and Pay FICA Notice from IRS.

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**VIII. What is a Vendor Fiscal/Employer Agent Provider?** *(continued)*

- Government program agencies that contract with Vendor F/EA FMS providers should have clear contract language holding the Vendor F/EA FMS provider liable for any unfulfilled federal or state tax obligations, including penalties and interest, regardless of whether or not a Vendor F/EA FMS provider uses a reporting agent.
  - The contract should clearly reflect the Vendor F/EA FMS provider standards that the government program agency has developed.
  - Vendor F/EA FMS providers' initial readiness and ongoing performance should be monitored based on the Vendor F/EA FMS provider standards and requirements included in the executed Vendor F/EA FMS provider contract.

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**IX. What are the Advantages and Challenges of the Vendor F/EA FMS Model?**

**■ Advantages**

- Provides individuals/representatives with a high level of choice and control (including being the common law employer support workers they hire directly and allowing the funding to follow the individual rather than the provider) while providing supports to reduce the employer-related burden for individuals/representatives and assuring the contracting entity (state or local agency or entity) of fiscal and program accountability.
- Allows a vendor entity to provide employer-related supports to individuals/representatives as a Vendor F/EA FMS provider without being considered the common law employer of individuals' support workers.
- Allows state or local agencies or entities to purchase F/EA FMS services at a competitive price from entities that have the knowledge and experience necessary to operate effectively as a Vendor F/EA FMS provider.
- State or local agencies or entities may offer freedom of choice of Vendor F/EA FMS provider (and receive service matching Medicaid funds). However beware, monitoring multiple Vendor F/EA FMS providers is labor intensive and costly. Often "less is more."

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**IX. What Are The Advantages and Challenges of the Vendor F/EA FMS Model?**  
*(continued)*

**■ Challenges**

- State and local agencies and entities must have the knowledge necessary to recruit and select and certify Vendor F/EA FMS providers and monitor their ongoing performance effectively.
- Vendor F/EA FMS providers can provide an array of fiscal supports and skills training to individuals/representatives but not directly to support workers, except for preparing and issuing payroll, without being considered at least a joint/co-employer of the support worker.
- Some Federal and state taxation issues continue to be a challenge for some Vendor F/EA FMS providers.
- Offering freedom of choice of Vendor F/EA FMS provider can be a resource and cost challenge for some state and local agencies and entities. In some cases, restricting choice of Vendor F/EA FMS provider may be less costly for a state even without the receipt of Medicaid service matching funds.
- Currently, Vendor F/EA FMS providers cannot file and deposit FUTA in the aggregate for individuals who use solely private funds to pay for their self-directed services.

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**IX. What Are The Advantages and Challenges of the Vendor F/EA FMS Model?**  
*(continued)*

- Monitoring the performance of large numbers of Vendor F/EA FMS providers can be labor intensive and costly. Less is definitely more. Monitoring is essential in order to provide effective Vendor F/EA FMS consistently throughout a state.

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**X. Review of Key Vendor F/EA FMS Provider Tasks**

- There are a number of key Vendor Fiscal/Employer Agent FMS provider tasks (See Vendor F/EA FMS Task List Handout). These can be grouped into the following categories:
  - Establishing and Maintaining a State-specific Vendor F/EA FMS Provider Policies and Procedures Manual;
  - Staying up-to-date with Federal, State and Local Program, Tax, Labor, Immigration and Workers' Compensation Insurance Laws;
  - Obtaining Federal and State Approval to Be a Vendor F/EA FMS Provider (and Revoking/Retiring Authority When Appropriate);
  - Preparing and Distributing Individual Enrollment and Support Worker Employment Packets and Collecting and Processing Required Information;
  - Managing Individual's Budget Funds and Invoicing Government for Services Rendered;
  - Processing Support Workers' Payroll;

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**X. Review of Key Vendor F/EA FMS Provider Tasks** *(continued)*

- Managing Federal and State Taxes When An Individual Changes Vendor F/EA FMS in a Calendar Tax Year;
- Processing End of Year Federal Tax Requirements;
  - Processing Refunds for Over Collected FICA
  - Processing IRS Forms W-2
  - Processing Unclaimed Property
  - Processing Reconciliations for State Taxes
- Processing Payment for Qualified Independent Contractors;
- Preparing and Maintaining a Customer Service System;
- Managing Records and Files;
- Processing and Paying Invoices for Individual-directed Goods and Services;
- Preparing and Submitting Required Reports to State/County Government and Individual/Representative-Employers;

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**X. Review of Key Vendor F/EA FMS Provider Tasks** *(continued)*

- Brokering Workers' Compensation Insurance; and
- Implementing a Continuous Quality Management System.
- **Preparing & Maintaining a Vendor F/EA FMS Provider Policies and Procedures Manual**
  - It is important for Vendor F/EA FMS providers to prepare and maintain a Vendor F/EA FMS provider manual because it is:
    - The "road map" for Vendor F/EA FMS provider operations for the organization;
    - An excellent tool for orienting and training Vendor F/EA FMS staff; and
    - An excellent tool for implementing continuous quality improvement activities.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- A Vendor F/EA FMS provider should prepare and maintain a Vendor F/EA FMS Provider Policies and Procedures Manual that is:
  - Specific to the tax labor and workers' compensation insurance rules and regulations for the particular state;
  - Includes all Vendor F/EA FMS provider tasks;
  - Includes example completed forms, as appropriate;
  - Includes internal controls to monitor the performance of all Vendor F/EA FMS provider tasks;
  - Is available in an electronic format; and
  - Is updated at least annually and more often, as necessary.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Staying Up-to-Date with Federal, State and Local Program, Tax, Labor, Immigration and Workers' Compensation Insurance Laws**
  - Federal, state and local program, tax, labor, immigration and workers' compensation insurance laws and forms can change at any time.
  - It is important to use the most updated procedures and forms to avoid delays in the receipt and processing of required information and payments.
  - Agency websites should be reviewed at least monthly for updates.
  - Also it is good to develop a relationship with an agency staff person, when possible.
  - The *Social Security Administration/IRS Reporter* is a quarterly publication for employers available on the IRS website that provides updates on IRS developments and initiatives pertaining to employers and agents.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Obtaining Federal and State Approval to Be a Vendor F/EA FMS Provider**
  - In addition to getting a separate FEIN for itself to operate as an Agent, Vendor F/EA FMS providers must file and IRS Form SS-4, *Application for Employer Identification Number*, and obtain a FEIN for each individual/representative-employer it represents as agent.
    - When an individual/representative-employer stops being an employer for any reason (permanently), the Vendor F/EA FMS provider must retire the individual/representative-employer's FEIN.
  - Vendor F/EA FMS providers must executive and submit to the IRS an IRS Form 2678, *Employer/Payer Appointment of Agent* and receive written approval from the IRS (LTR 1997C) for each individual/representative-employer it represents.
  - Vendor F/EA FMS providers' liability for filing and paying federal income tax withholding and employment taxes for individual/representative-employers begins when the Agent receives approval from the IRS.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- If a Vendor F/EA FMS provider stops representing an individual/representative for any reason, it must rescind the IRS Form 2678 per IRS Form 2678 instructions. Then it must receive an acknowledgement from the IRS that the Form 2678 has been rescinded through the receipt of a LTR 4228C from the IRS.
- Vendor F/EA FMS providers must execute and file an IRS Form 8821, *Tax Information* for each individual/representative-employer it represents.
  - Vendor F/EA FMS providers can report more than one staff person's name in Box 2, *Appointee*.
  - IRS Forms 8821 must be renewed every three years per Form Instructions.
  - Should the Vendor F/EA FMS provider stop representing an individual/representative-employer for any reason, it must revoke the IRS Form 8821, when appropriate per IRS instructions.
  - If the Vendor F/EA FMS provider uses a reporting agent, the reporting agent should be reported as a second appointee on the IRS Form 8821.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- Ohio Department of Taxation Form TBOR 1, *Declaration of Tax Representative*, appears to be the document required for an agent to manage SIT withholding and payment for individuals.
- Ohio Department of Job and Family Services Form JFS 00501, *Employer Representative Authorization*, appears to be the document required for an agent to manage SUI withholding and payment for individuals.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- **Registering with OH Department of Taxation for State Income and Other Tax Withholding Purposes**
  - SIT withholding is not required on compensation paid for services provided in a domestic home in Ohio. It is voluntary and can be withheld if employee requests. However, it is a national best practice for Government and Vendor F/EA FMS to withhold all state and local income and other tax withholdings as required for support workers.
  - If a Vendor F/EA FMS provider decides to manage SIT withholding for workers, it must register each individual-employer for state income tax purposes within 15 days from the date that withholding liability begins. Registration is free and can be done one of three ways:
    - By Internet electronically through the OH Business Gateway,
    - By telephone (888) 405-4089, or
    - By paper by completing and filing the Form IT1, *Application for Registration as an Ohio Withholding Agent* and mail or fax form to OH Department of Taxation (see [www.tax.ohio.gov](http://www.tax.ohio.gov))
  - OH Department of Taxation has Form TBOR1, *Declaration of Tax Representative*. A Government or Vendor F/EA FMS provider should check to see if this form must be completed and filed when registering an individual as an employer.

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X. Review of Key Vendor F/EA FMS Provider

Tasks (continued)

- When an individual/representative ceases to be an employer for SIT purposes, permanently, the Vendor F/EA FMS provider should process the last SUI tax filing (even if it's a zero filing) and associated tax payment and retire the individual/representative-employers SIT account and number per Ohio Department of Taxation requirements and process.
- The Ohio Department of Taxation has Form TBOR 1, *Declaration of Tax Representative* also should be revoked when all SIT related tasks have been completed for the individual/representative-employer.

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X. Review of Key Vendor F/EA FMS Provider

Tasks (continued)

■ Registering As an Employer for Municipal Income Tax Withholding Purposes

- For most taxpayers in Ohio, wages and salaries are subject to withholding by the employer who sends the payment monthly to the municipality.
- Ohio Department of Taxation's role in municipal income tax is limited to administration of the tax for electric light and local exchange telephone companies. Other business taxpayers, as well as individual taxpayers should direct questions about the tax, including employer registration, to the city or village that enacted the tax, or the agency hired by the municipality to handle such matters on its behalf.
- State law requires a flat rate within a municipality. The rate is determined locally. The maximum rate without voter approval is one percent. In 2006, 566 municipalities (235 cities and 335 villages) in Ohio levied the tax. Rates ranged from 0.30 to 3 percent.
- Ohio also has a school district income tax and its not known how this might apply to household employers receiving self-directed services.

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X. Review of Key Vendor F/EA FMS Provider

Tasks (continued)

■ Registering with the OH Department of Job and Family Services for State Unemployment Tax (SUTA) Purposes

- For state unemployment insurance (SUI) Domestic/household employers liable under Ohio Unemployment Insurance Law are required to pay SUI tax if they pay \$1,000 or more in total cash wages in any calendar quarter in the current or preceding calendar year.
- If a support worker is a family employee who is exempt from paying into FUTA, the support worker may also be exempt from paying into SUI.
- The Vendor F/EA FMS provider should register each individual/representative as an employer for SUI purposes when he/she reaches the aggregate wages paid threshold (see above) per Ohio DJFS requirements and procedures to establish a SUI account and number for SUI tax filing and payment purposes.
- Ohio Department of Job and Family Services (DJFS) Form JFS 00501, *Employer Representative Authorization*, appears to be the document required for an agent to manage SUI withholding and payment for individuals. A Government or Vendor F/EA FMS provider should check to see if this form must be completed and filed when registering an individual as an employer for SUI purposes.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- When an individual/representative ceases to be an employer for SUI purposes permanently, the Vendor F/EA FMS provider should process the last required SUI tax filing (even if it is a zero filing) and make the SUI tax payment and then close out the person's SUI account and account number per Ohio DJFS requirements and process.
- The Ohio DJFS Form JFS 00501, *Employer Representative Authorization*, also should be revoked when all final SUI related tasks have been performed for the individual/ representative-employer.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

#### ■ Preparing and Distributing Individual Enrollment and Worker Employment Packets and Collecting and Processing Required Information

- Individual/Representative - Employer Enrollment Packets typically include:
  - Information on Vendor F/EA FMS provider's hours of operation, contacts, services, and roles and responsibilities of Agent, individual/ representative - employer and support worker;
  - Individual "Bill of Rights";
  - Semi-completed IRS Forms SS-4, 2678, and 8821;
  - Form TBOR 1, *Declaration of Tax Representative*, as required;
  - Form JFS 00501, *Employer's Representative Authorization*, as required;
  - Semi-Completed Forms to register an individual/representative as an employer for SUI and SUI purposes;
  - Self-directed Service Employment Agreement, as required;
  - Time sheet and instructions;
  - Time sheet due date and pay day schedule;
  - Informed Consent Form if reporting agent used (or subagent if a Government F/EA FMS uses one); and
  - Other forms, agreements and information as required by the state (i.e., agreement between the individual/representative-employer and Vendor F/EA FMS provider; Emergency Back-up Support Work Designation Form, or Representative Designation Form).

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- Support Worker Employment Packets typically include:
  - Information on Vendor F/EA FMS provider's hours of operation, contacts, services, and roles and responsibilities of Agent, individual/ representative-employer and support worker;
  - Employment application;
  - IRS Form W-4, *Employer Withholding Allowance Certificate*;
  - OH *Employer Withholding Allowance Certificate* (state-specific Form W-4);
  - Form to collect information required for Ohio New Hire, if information not available on IRS Form W-4 or state Form W-4;
  - US CIS Form I-9 and instructions;
  - Time sheet and instructions;
  - Time sheet due date and pay day schedule;
  - Medicaid provider agreement;
  - Consent form(s) to conduct support worker candidate background checks, as required by state; and
  - Agreement between the individual/representative-employer and support worker outlining roles, responsibilities and non-negotiable employment related issues, if required by state.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks (continued)**

- Promising practices related to *Individual/Representative - Employer Enrollment and Support Worker Employment Packets* include:
  - The materials included in the packets should be clear and easy to read and be available in alternate formats and languages, when requested.
  - The Vendor F/EA FMS provider should have an internal control documented and in place to make sure that all packets produced are complete and of good quality print.
  - The Vendor F/EA FMS provider should have an internal control documented and in place to make sure all required information submitted is accurate and complete and submitted in a timely manner from all individual/representative-employers and support workers.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks (continued)**

- **Managing Individuals' Budget Funds and Invoicing the Government for Services Rendered**
  - Vendor F/EA FMS providers should have a system and written policy(s), procedure(s) and internal control(s) for receiving and maintaining individuals' initial and updated service plan and budget information.
  - There must be good communication between the service coordination/ case management staff who are responsible for creating and updating these documents and the Vendor F/EA FMS provider.
  - Tardy receipt of updated plan and budget information can result in the F/EA FMS provider paying for services that may not be approved.
  - Vendor F/EA FMS providers should have a system and written policy(s), procedure(s) and internal control(s) for invoicing the appropriate entity for the provision of support service, other applicable individual-directed goods and services and their F/EA FMS provider fee and receiving funds.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks (continued)**

- Vendor F/EA FMS providers should have a system in place and written policy (s), procedure(s) and internal control(s) for tracking the receipt and disbursement of public funds and any balances.
- Vendor F/EA FMS providers should have a system in place and written policy (s), procedure(s) and internal control(s) for processing any individuals' co-share payments or private funds, as applicable.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Processing Support Workers' Payroll**
  - Verifying Support Workers Social Security Numbers
    - Visually examine the worker's Social Security Card with a picture ID.
    - Verify support workers' SSN through free SSA SSN Verification Service (SSNVS) that worker's name and SSN match SSA records.
  - Reporting new hires in compliance with the Ohio New Hire Reporting System.
  - Processing completed Forms W-4 and Ohio DoT Form W-4, as applicable.
  - Reviewing USCIS Form I-9 to make sure it is completed correctly.
  - Determining that the hourly wage paid to the support worker is in compliance with Federal and Ohio DJFS rules.
  - Collecting, reviewing and processing support worker timesheets.
  - Vendor F/EA FMS providers should have a system in place and written policy and procedure and internal control for (1) tracking and responding to occurrences of over reporting on time sheets, (2) a pattern of under reporting on timesheets, and (3) timesheets that can not be paid due to missing or erroneously reported information.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Processing and Paying Federal Income Tax Withholding and Medicare and Social Security Tax (FICA)**
  - Vendor F/EA FMS providers must determine if any support workers are family employees who are exempt from paying FICA (See IRS Publication 15, Chapter 3, *Family Employees*).
  - Vendor F/EA FMS providers complete and file the IRS Form 941, *Employer's Quarterly Federal Tax Return*, in the aggregate using its separate FEIN for FICA and federal income tax withholding.
- Vendor F/EA FMS providers may never use the IRS Form 944, *Employer's Annual Federal Tax Return* to file these taxes on behalf of the individuals they represent as Agent.
- Vendor F/EA FMS providers deposit federal income tax withholding and FICA in the aggregate using its separate FEIN per IRS depositing rules based on amount of total deposit withheld.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- Effective January 1, 2010, Vendor F/EA FMS must file an IRS Form 941, Schedule R, *Allocation Schedule for Aggregate Form 941 Filers*, quarterly with their quarterly IRS Form 941.
  - The Form is available on the IRS website.
  - A Schedule R may be filed electronically if it reports 1,000 or fewer individual/representative-employers' information.
  - If the IRS Form 941 is filed for more than 1,000 individual/representative-employers, it must be filed in paper form.
  - Annkissam, LLC staff are developing a systems solution for completing the Schedule R electronically. For more information contact Mollie Grotpetter Murphy at (617) 953-3914 or [mollie.grotpetter@annkissam.com](mailto:mollie.grotpetter@annkissam.com).

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- Should a Vendor F/EA FMS provider need to amend one or more IRS Forms 941, it should use the IRS Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, to do so.
- The IRS Form 941-X replaces the IRS Form 941(c).
- This Form should be used to adjust applicable IRS Forms 941 when refunding over collected FICA to eligible employers (or the funding entity) and support workers. Also used to correct any error to a previously filed IRS Form 941.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Processing and Paying Federal Unemployment Insurance Taxes (FUTA)**
  - Vendor F/EA FMS providers must determine if any support workers are family employees who are exempt from paying FUTA.
  - Vendor F/EA FMS providers complete and file the IRS Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, in the aggregate using its separate FEIN for FUTA.
  - Vendor F/EA FMS providers deposit FUTA in the aggregate using its separate FEIN quarterly if \$500 or more in deposits are withheld, otherwise, annually.
  - Effective for the annually filing of the 2010 IRS Form 940 (filed in January 2011), IRS will be issuing an IRS Form 940 Schedule R, similar to the one used for the IRS Form 941. Should be available on IRS website in Fall of 2010.
  - The same electronic and paper filing rules will apply.

**Note:** If a F/EA FMS provider is a 501(c)(3) entity and receives an IRS notice stating that FUTA is not required for wages paid to individuals' support worker, the notice is erroneous. Whether a F/EA FMS provider is a 501(c)(3) entity or not, the entity must file and pay FUTA on behalf of individual/representative employers using its separate FEIN.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Determining Worker Eligibility to Receive Federal Advanced Earned Income Credit (EIC) and Processing EIC**
  - Effective 1/1/2011, IRS will eliminate the requirement of Advanced Earned Income and related Forms and processes.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

■ **Processing State Income Tax (SIT) Withholding Filings and Payments**

- Typically, a Vendor F/EA FMS provider would file and deposit state income tax withholding for each individual/representative-employer using his/her Ohio Department of Taxation Employer Account Number either electronically or by paper form. Vendor F/EA FMS providers should check with the Department at [www.tax.ohio.gov](http://www.tax.ohio.gov) or 888-405-4039 (Business Taxpayer Assistance) to determine the filing and deposit requirements.

■ **Processing OH Municipal and School District Tax Withholding**

- A Vendor F/EA FMS provider should file and pay any required municipal and/or school district tax withholdings per instructions from the municipality/school district.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

■ **Processing State Unemployment Taxes (SUTA) Filings and Payments**

- Domestic/household employers liable under OH Unemployment Insurance Law are required to pay SUI tax if they pay \$1,000 or more in total cash wages in any calendar quarter in the current or preceding calendar year.
- If a support worker is a family employee who is exempt from paying into FUTA, the support worker may also be exempt from paying into SUI.
- A Vendor F/EA FMS provider may file and deposit SUTA for each individual/representative-employer using his/her MODES ID Number either via the internet or by paper form. For complete details see Publication JFS 08201, *OH UC Guide*.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

• **Processing Federal and State Garnishments, Levies and Liens on Support Workers' Wages**

- The Vendor F/EA FMS provider should process as required.

• **Application of OH Unclaimed Property Law to Payments (i.e., Payroll, FICA Refunds or Vendor Payment) Returned to the Vendor F/EA**

- The Vendor F/EA FMS provider should process as required.

• **Providing Workers' Wage Information To Federal, State and Local Government Agencies, When Requested**

- The Vendor F/EA FMS provider should process requests and maintain documentation when requested.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Process For When Individual/Representative-Employers Changes Vendor F/EA Mid-Year**
  - A bifurcated tax filing and payment year is particularly problematic. It is recommended that individual/representative-employers change agents effective January 1<sup>st</sup>, whenever possible.
  - The old F/EA FMS provider must retire its IRS Form 2678 and IRS Form 8921 with the individual/representative-employer, and the new Vendor F/EA FMS provider must execute new Forms, when appropriate to do so.
  - The State SIT and SUTA filing and payment process remains the same since it is performed for each individual/representative-employer but this should be confirmed with OH Department of Taxation and OH Department of Job and Family Services.
    - However, the old Vendor F/EA FMS provider must retire its Form JFS 00501, *Employer's Representative Authorization* and OH Department of Taxation Form TBOR 1, *Declaration of Tax Representative* when appropriate and the new Vendor F/EA FMS must execute and file these forms when it is appropriate to do so.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Processing End of Year Federal Tax Requirements**
  - **Preparing and Filing IRS Forms W-2 and W-2c**
    - Prepare IRS Forms W-2 and W-3 in compliance with IRS instructions for employer agents.
    - Electronic filing is required when filing 250 or more Forms W-2.
    - When individual/representative-employers switch Vendor F/EA mid-year it is problematic.
    - An IRS Form W-3 is not required if IRS Forms W-2 are filed electronically.
  - **Preparing and Filing IRS Forms W-3 and W-3c**
    - Prepare IRS Forms W-2(c) and W-3(c) in compliance with IRS instructions for employer agents.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Processing FICA Refunds**
  - FICA wage threshold for 2010 is \$1,700 but this can vary by year.
  - A Vendor F/EA FMS provider withholds FICA as if the support worker will earn the FICA wage threshold amount from their employer in a calendar year, but some do not.
  - When a support worker does not earn the FICA wage threshold, the Vendor F/EA FMS provider must refund the employer portion (states frequently opt to receive these funds) and employee portion (to the support worker) of over collected FICA at the end of the calendar year.
  - Review FICA Refund process described in the handout provided.
    - IRS requires that over collected FICA be refunded only to support workers for whom the Vendor F/EA FMS provider has an accurate, current address. Otherwise the employer and employee portion of over collected FICA stays with the IRS.
    - If a refund check is returned to the Vendor F/EA FMS provider, then it should be processed in accordance with OH Unclaimed Property Law.
  - Process for when an individual/representative-employer switches Vendor F/EA mid-year.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

- **Processing Payment for Qualified Independent Contractors**
  - Make sure they truly meet the requirements to be an independent contractor (IRS Form W-9, and IRS Form 1099-misc).
- **Preparing and Maintaining Customer Service System**
  - Vendor F/EA FMS providers should develop and implement effective customer service systems for individual/representative-employer in accordance with state program agency requirements.
  - Promising practice elements include, but are not limited to:
    - Paper and web-based information regarding F/EA FMS provider services;
    - Toll free number (regular and TTY or have an alternate method to communicate with individuals with hearing impairments);
    - Internet/e-mail communication;
    - Ability to provide translation and interpreter services including American Sign Language and for individuals with limited English proficiency;

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

- Materials available in alternate formats (Braille, languages other than English);
- Have a system in place for receiving, responding to and tracking calls and complaints within a reasonable period of time;
- Have a system in place for acting as a mandatory reporter;
- Develop and implement orientation and skills training for individual/representative-employers;
- Provide individual/representative-employers with orientation and skills training;
- Implement Individual/Representative Satisfaction Surveys at least annually, analyze results, prepare and submit summary report to the state program agency and address issues raised through the Vendor F/EA FMS provider's continuous quality improvement process and
- Have written policies, procedures and internal controls that emphasize the philosophy of self-direction and being culturally sensitive in all business practices in order to communicate effectively with a diverse population of all ages and with a variety of needs, disabilities and chronic conditions.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

- **Record Management**
  - Vendor F/EA FMS providers must maintain current and archived records and files in a complete, accurate, confidential and secure manner.
  - Vendor F/EA FMS providers must maintain documentation as required by the state program agency and federal and state tax, labor, immigration and worker's compensation insurance agencies.
  - Ohio Department of Taxation requires the following records related to employees to be retained:
    - Name, address, social security number or worker,
    - Period of employment;
    - Payroll dates and amounts;
    - Sick day payments; and
    - Employee's SIT withholding allowance certificate.
  - Vendor F/EA FMS providers should check with Ohio Department of Taxation regarding any other records that should be retained including tax filing and payment information.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- All records should be kept for at least four (4) years after the date the taxes to which they relate become due, or the date the taxes are paid, whichever is later. OH Department of Taxation follows federal record retention guidelines.
- Ohio Department of Jobs & Family Services requires employers (or their designated agent), maintain records for at least four (4) calendar years, as well as the current incomplete calendar year.
- Records that must be maintained can be found in the Ohio UC Guide Form #JFS 08201. However typically, state UC tax agencies require that the following documents be maintained:
  - Worker's name, address and social security number;
  - Dates a worker was hired and separated,
  - Dates on which a worker performed some services,
  - The location where services were performed,
  - The hours of each day in each pay period an individual worked in non covered employment, and nature of work, and
  - Wages, including commissions, bonuses, prizes, and gifts. Also tips received by a worker from persons other than employer, if such tips are reported to the employer for social security purposes.

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- In accordance with IRS Requirements for Record Maintenance, a Vendor F/EA FMS provider records should include:
  - Assignment verification of EIN;
  - Amounts and dates of all wage payments;
  - Names, addresses, social security numbers, employer identification numbers and occupations of employees and recipients
  - Any employee copies of Forms W-2 and W-2c that were returned to you as undelivered;
  - Dates of employment of each employee;
  - Periods for which employees were paid while absent due to sickness or injury and the amount of weekly payments the Vendor F/EA FMS provider or its reporting or subagent made them;
  - Copies of employees' income tax withholding allowance certificates (Form W-4);
  - Dates and amounts of tax deposits that the F/EA FMS provider or its reporting or subagent made and acknowledgement numbers for deposits made by EFTPS;

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## X. Review of Key Vendor F/EA FMS Provider

### Tasks (continued)

- Copies of returns filed, including confirmation numbers if e-filed;
  - Records of fringe benefits and expense reimbursement provided to employees, including substantiation;
  - Copies of employees' income tax withholding allowance certificates (Form W-4);
  - Dates and amounts of tax deposits that F/EA FMS provider or its reporting or subagent made and acknowledgement numbers for deposits made by EFTPS;
  - Copies of returns filed, including confirmation numbers if e-filed, and
  - Records of fringe benefits and expense reimbursement provided to employees, including substantiation.
- In addition, the Vendor F/EA FMS provider should maintain all documentation related to obtaining approval to be a Vendor F/EA FMS for individual/representative-employers and the revocation of such approval (IRS Forms 2678, 8821, FEINs) and related correspondence.
  - All records should be kept at least four (4) years for possible IRS review and as long as necessary if they are related to a matter currently being addressed with the IRS.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

- US Citizenship and Immigration Services (CIS) requires that the USCIS Form I-9, *Employment Eligibility Verification and Instructions* be retained:
  - Three (3) years after the employee is hired, or
  - One (1) year after the date the employer or employee terminated employment, whichever is later.
- USCIS Forms I-9 may be retained in paper, electronic or microform.
- Information on the US CIS Form I-9 may be found in USCIS Publication M-274, *Handbook for Employers* (rev 7/31/09) is available on the USCIS website.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

- **Key Components of a Disaster Recovery Plan for Computerized Record**
  - A disaster recovery plan for computerized records should address:
    - The rapid return to limited operation.
    - The accuracy of software and data at return to operation, and
    - The ability to return to full capacity as soon as possible.
  - Disaster recovery plans should be tested at least annually.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** *(continued)*

- **Processing and Paying Invoices for Individual-directed Goods and Services**
  - State and local agencies/entities implementing self-directed support service programs, and in particular those that implement the "Cash and Counseling" approach, often offer "budget authority" and have the Vendor F/EA FMS provider verify, process and pay invoices for individual-directed goods and services that are approved in the individual's service plan and budget.
  - Some state/local self-directed service programs allow for the purchase individual-directed goods and services including equipment that *reduce a program participant's need for physical assistance* (i.e., purchase of washer and dryer and/or microwave).
  - It is recommended that Vendor F/EA FMS providers have a system for and written policies, procedures and internal controls for verifying, processing, paying and tracking the purchase of individual-directed goods and services and maintain the required documentation in an accurate and timely manner, in accordance with individuals' approved service plans and budgets, by program participant and type of goods and services purchased, and in accordance with program rules.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- Vendor payments for individual-directed goods and services that are returned to Vendor F/EA FMS providers must be processed in accordance with Ohio Unclaimed Property Law, as appropriate.
- **Brokering Workers' Compensation Insurance**
  - Ohio Rev. Code §4123.01(A)(1)(b)(1) states that "household workers who earn \$160 or more in cash wages in any calendar quarter from a single household and casual workers who earn \$160 or more in cash wages in a calendar quarter from a single employer" are covered employees under the Ohio Worker's Compensation Act.
  - The Ohio Workers Compensation Law does not specifically define domestic service. Classification 8989, *Domestic Workers: Residences*, which is used exclusively for domestic service, includes both part-time and full-time workers including companions.
  - Ohio narrowly defines "employee" in light of *Skaggs v Mayfield* because they do not want to allow voluntary coverage for workers who do not meet the wage threshold.
  - Whether or not a worker is considered under domestic service would be determined via a worker's compensation claim appeal.

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- **Implementing a Continuous Quality Management System**
  - A Vendor F/EA FMS provider should develop a continuous quality management system that includes:
    - Developing and implementing an effective customer service system;
    - Having effective policies, procedures and internal controls for staying up-to-date with federal, state and local program, tax, labor and workers' compensation insurance requirements;
    - Developing an effective, state specific, *Vendor F/EA FMS Provider Policies and Procedures Manual* that includes policies, procedures and internal controls for all Vendor F/EA FMS provider tasks and is updated at least annually, and more often, as needed;
    - Developing and implementing a system for being a mandatory reporter (fiscal/fraud, abuse, neglect and exploitation related issues);
    - Conducting individual/representative satisfaction surveys, analyzing data collected and generating key reports (i.e., developing benchmarks);

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**X. Review of Key Vendor F/EA FMS Provider**

**Tasks** (continued)

- Developing and implementing internal controls to monitoring the performance of all Vendor F/EA FMS provider tasks (i.e., developing benchmarks);
- Monitoring the preparation and distribution of required individual/representative enrollment and support worker employment packets and reports that the Vendor F/EA provider produces for the state program agency, Medicaid single state agency (if different) and individual/representative-employers;
- Developing and implementing effective training programs for Vendor F/EA provider staff;
- Communicating effectively with individual/representative-employers' service coordinator or case manager, and
- Providing the state program agency/Medicaid single state agency staff (if different) with the information and data it needs to link with and support its overall quality management system.

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## XI. Agency with Choice FMS Provider

- Under the **Agency with Choice (AWC) FMS** model, a variety of types of agencies (i.e., centers for independent living, social service agencies, home health and area agencies for the aging or developmental disabilities, and organizations developed specifically to fulfill the role), provide services to individuals in a self-directed manner.
  - The agency and the individual/caregiver enter into a **joint/co-employer arrangement** (e.g., agency typically is the **primary employer** or **employer of record** for human resources, payroll, and Medicaid provider requirements and individual/representative acts as the **secondary** or **managing employer** for recruiting/selecting workers and referring them to the agency for hire, participating in training workers and determining the terms and conditions of work, supervising workers' activities and discharging them from the work site).
    - Both the primary and secondary employers are equally responsible for any issues and related liability that may occur as a result of employing a support worker.

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## XI. Agency with Choice FMS Provider (continued)

- State program agencies must review the state's unemployment insurance law to determine how co-employment is defined and whether AWC.
- The agency also may provide employer supports (i.e., establishing and maintaining a support worker registry, assisting with/providing regular and emergency back-up staff, providing individual/representative-employer and support worker training, providing worker management supports, when requested by the individual/representative and processing and paying invoices for approved goods and services).

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## XII. What Are The Advantages and Challenges of the Agency with Choice Option?

### ■ Advantages

- Agency with Choice FMS option is beneficial for individuals/representatives who may not want to be the common law employer of their support workers and may want to receive a range of self-directed supports while having choice and control over the services received and the individuals who provide them.
- Since Agency with Choice FMS is a joint/co-employer model, the agency can provide worker-related assistance (i.e., establishing and maintaining a support worker registry, assisting with/providing regular and emergency back-up staff, providing individual/representative and support worker training and providing worker management supports, when requested by the individual/representative).
- Can be used by individuals/representatives who pay for services with private or a combination of private and public funds seamlessly. Helps maintain continuity of services and federal and state tax and labor law compliance should an individual/representative transition from receiving public funds to using all private funds to finance their support services.

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**XII. What Are The Advantages and Challenges of the Agency with Choice Option?**  
*(continued)*

■ **Challenges**

- State department of labor laws vary in whether/how they recognize joint employment.
- Agency with Choice FMS providers that do not implement the philosophies of self determination and self direction effectively are just operating as traditional agency providers.
- This option may not be ideal for the receipt and distribution of individuals' budget funds due to a potential conflict of interest of being both a "provider of direct care services" and an "a funds manager" and the concern about "service steering."
- Some Agency with Choice FMS providers have expressed concerns about potential liability, actual or perceived, including labor law compliance when individuals/caregivers are allowed to establish the rate of pay for their support workers and eligibility for benefits (i.e., health insurance, 401(k) under ERISA.
- Monitoring the performance of large numbers of Agency with Choice FMS providers can be labor intensive and costly, however, it is essential to provide effective Agency with Choice FMS consistently throughout a state.

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**XIII. Review of Key Agency with Choice FMS Provider Tasks**

■ **Key Tasks performed by an Agency with Choice FMS Provider include:**

- Establishing and maintaining a state-specific Agency with Choice FMS Provider Policies and Procedures Manual;
- Staying up-to-date with federal and state program, tax, labor, immigration and workers' compensation insurance laws;
- Effectively implementing the philosophy of self determination and self-directed support services affording individuals and their representatives a high level of choice and control over services and the individuals who provide them;
- Being culturally sensitive in all business practices in order to communicate effectively with a diverse population of all ages and with a variety of needs, disabilities and chronic conditions.
- Preparing and distributing individual enrollment and worker employment packets and collecting and processing required information;
- Managing individual's budget funds and invoicing government agencies for services rendered;

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**XIII. Review of Key Agency with Choice FMS Provider Tasks**  
*(continued)*

- Processing support workers' payroll including the withholding, filing and payment of federal and state income tax withholding and employment taxes and end of year filings (no FICA refunding in this model) and any benefits;
- Processing and paying invoices from qualified vendors of individual-directed goods and services including qualified independent contractors, when appropriate;
- Preparing and maintaining a customer service system;
- Providing both individual/representative-employer skills training and support worker training, as requested and/or needed;
- Providing other employer-related supports as requested and/or needed;
- Managing records and files;
- Preparing and submitting required reports to state/county government agencies and individual/representative-employers; and
- Implementing and maintaining a continuous quality improvement system including conducting, analyzing and reporting the results of an individual/representative satisfaction survey conducted at least annually.

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**XIII. Review of Key Agency with Choice  
Provider Tasks (continued)**

■ **Implementing a Continuous Quality Management System**

- An Agency with Choice FMS provider should develop a continuous quality management system that includes:
  - Developing and implementing an effective customer service system;
  - Having effective policies, procedures and internal controls for staying up-to-date with federal and state program, tax, labor, immigration, and workers' compensation insurance requirements;
  - Developing an effective, state specific, *Agency with Choice FMS Provider Policies and Procedures Manual* that includes policies, procedures and internal controls for all Agency with Choice FMS provider tasks and is updated at least annually, and more often, as needed;
  - Developing and implementing a system for being a mandatory reporter (fiscal/fraud, abuse, neglect and exploitation related issues);
  - Conducting individual/representative-employer satisfaction surveys, analyzing data collected and generating key reports (i.e., developing benchmarks);

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**XIV. Questions/Discussion**

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