

Key Components of Self-directed Services

Home and Community-based Services (HCBS) Self-direction Series

HCBS Self-direction Series

This briefing paper series is designed for policymakers and stakeholders, to inform conversation and policy regarding HCBS self-direction and the direct service workforce. This brief is the second of four in the series, and focuses on the key components of self-directed services, including person-centered planning, service plans, information and assistance in support of self-direction, including financial management services, systems of continuous quality assurance, individualized budgets in self-directed programs with budget authority, and employing family members as direct service workers.

The Centers for Medicare & Medicaid Services (CMS) requires key components of self-directed service delivery, regardless of funding authority. These include: (1) a person-centered planning process, (2) a service plan, (3) information and assistance in support of self-direction, (4) financial management services (FMS), (5) a system of continuous quality assurance and improvement, and (6) an individualized budget, if in a self-directed program with budget authority.¹ These guidelines help states to ensure appropriate safeguards are in place to protect individuals who self-direct and direct service workers, including family members employed as direct service workers, assure financial accountability, and facilitate community living.

Person-centered Planning Process

A person-centered planning process is directed by the individual, with assistance as needed or desired by a representative of the individual's choosing, and results in a written service plan. The process is intended to identify the strengths, capacities, preferences, needs, and desired measurable outcomes for the individual.¹

The person-centered planning process may include other persons, freely chosen by the individual, who are able to serve as important contributors to the process. It also must include planning for contingencies, such as when a needed service is not provided due to a direct service worker not reporting for work for any reason. As part of the contingency planning process, an assessment of risks to the individual and a discussion of how the risks will be addressed must be conducted. The contingency planning process must result in a written contingency or "back-up" plan that becomes a part of the individual's written person-centered service plan.¹

Use of Representatives

Most state Medicaid HCBS waiver programs and state plan options that offer a self-directed service option permit individuals to designate a representative of their choosing to assist them in managing their self-directed services and individual budgets. In most cases, this representative cannot also serve as a paid direct service worker or be paid for their role as representative. Representatives are particularly beneficial for individuals with significant cognitive impairments who might have difficulty managing their services and individual budgets themselves, but benefit from having the choice, control, and flexibility self-directed services provide, and this is considered a best practice. It is important for a representative to have a strong commitment to the individual's wellbeing, to be actively involved in the individual's life, to be willing and able to carry out the responsibilities associated with self-directed services, and to comply with requirements. Self-directed service option requirements can vary by state, such as whether:

- A legally responsible adult, such as a spouse, parent, guardian, or conservator, may serve as a representative;
- Representatives may be required to sign an authorized representative designation form to attest to their responsibilities; and
- Representatives may be permitted to serve as the common law employer of individuals' direct service worker(s).

Person-centered Service Plan

A person-centered service plan is a written document that reflects an individual's goals and preferences and addresses their health and long-term services and support needs. The plan results from a person-centered planning process, which is directed by the individual and may include a representative or others chosen by the individual. Person-centered planning assists an individual to achieve their personal outcomes in the most integrated community setting, ensure services are delivered consistent with individual preferences and choices, and assure health and welfare.²

Individualized Budget

An individualized budget refers to the amount of funds under the control and direction of the individual. Through the person-centered planning process, a budget plan is developed in accordance with the individual's needs and preferences as established in the service plan. States offering budget authority must describe the method for calculating the dollar values of individual budgets based on reliable costs and service utilization, define a process for adjusting budgets when changes occur in participants' person-centered service plans, and define a procedure to evaluate participants' expenditures.¹

Information and Assistance in Support of Self-direction

CMS requires states implementing a self-directed service option to provide or arrange for the provision of a system of information and assistance that is responsive to an individual's needs and desires in developing a person-centered service plan and budget, managing their services and direct service workers, and performing the responsibility of an employer. Two types of these supports are information and assistance in support of self-direction, and FMS. Services in support of self-direction can be provided as Medicaid services or as a Medicaid administrative activity.³

Typically, information and assistance supports are provided by support brokers (also referred to as person-centered counselors or consultants), who may work independently or through an agency. Information and assistance services can include, but are not limited to, providing information on how a self-directed service option works, individual rights and responsibilities, and how to access resources; counseling; training; and access to an independent advocacy system available in the state. The amount and use of information and assistance supports can vary by person and circumstance.¹

Information and assistance may benefit individuals and their representatives as well as direct service workers. For example, providing information, such as available resources, counseling, and employer-related skills training can result in the individual and representative, as applicable, becoming more educated and effective users of self-directed services. The work experience of direct service workers can be enhanced by working with individuals and representatives with greater access to information and assistance.

FMS Models

CMS defines FMS as a “service/function that assists the family or participant to: (1) manage and direct the disbursement of funds contained in the participant-directed budget; (2) facilitate the employment of staff by the family or participant, by performing as the participant’s agent (employer responsibilities include processing payroll, withholding federal, state, and local tax, and making tax payments to appropriate tax authorities); and (3) performing fiscal accounting and making expenditure reports to the participant or family and state authorities.”⁴ The provision of FMS reduces the employer-related burden for an individual or their representative and state Medicaid agency staff who oversee the provision of self-directed services, but is often the most complex component of self-directed services to implement. There are four FMS models used by state Medicaid agencies to implement self-directed services:

- **Government Fiscal/Employer Agent (GF/EA):** In the GF/EA model, a state or local government human service agency serves as the agent to the common law employer and the individual or their representative is the common law employer. The participant or their representative is the common law employer when they are the legally responsible employer of workers whom they hire, supervise, and discharge directly.⁴
- **Vendor Fiscal/Employer Agent (VF/EA):** In the VF/EA model, a private vendor entity serves as the agent to the common law employer and the individual or their representative is the common law employer.
- **Agency with Choice (AwC):** AwC uses a joint employer model in which the agency serves as the “primary” employer and the individual or their representative serves as the “secondary” or “managing” employer.
- **Public Authority (PA):** PA is a multiple-employer model in which the individual or their representative serves as the employer for hiring, managing, and discharging workers, the PA serves as the employer for collective bargaining purposes, and a third-party entity (e.g., state or county department) administers the HCBS program and acts as a third-party payer for payroll processing, goods, and service vendor invoice payment and Medicaid billing. Recently the term PA has been replaced in some cases by a new operating entity called “Workforce Council.”

Exhibit 1 summarizes benefits and challenges associated with each FMS model. State Medicaid agencies that offer an array of FMS options for their self-directed service option(s) afford individuals and representatives the ability to use self-directed services across their lifespans as their desires and need for supports change.

Exhibit 1. Benefits and Challenges of FMS Models

FMS Model	Benefits	Challenges
<p>Government Fiscal/Employer Agent (GF/EA) or Vendor Fiscal/Employer Agent (VF/EA)⁵</p>	<ul style="list-style-type: none"> ▪ Highest level of choice and control for individuals and representatives while reducing employer-related burden through government or vendor management of payroll, bill payment, and fiscal accounting tasks ▪ Adaptability for both employer and budget authority ▪ Availability of financial safeguards for individuals, representatives, and direct service workers by ensuring that all required taxes are withheld and paid and that all labor and workers' compensation insurance law requirements are met ▪ Service and fiscal accountability for the state Medicaid agency that offers a HCBS self-directed option using a GF/EA or VF/EA 	<ul style="list-style-type: none"> ▪ Joint liability for federal tax withholding between the GF/EA or VF/EA FMS entity and the individual/representative-employer; the Internal Revenue Service can seek to collect unpaid employment taxes from both the employer and the authorized employer agent⁶ ▪ Few supports for direct service workers, resulting in reduced opportunities for workers to identify and raise collective concerns (e.g., wages, benefits, working conditions, training) ▪ Lack of a clear employment infrastructure, which may lead to difficulties for direct service workers who need timely assistance with issues, such as obtaining an office letter of employment status or seeking medical attention for an occupational injury
<p>Agency with Choice (AwC)</p>	<ul style="list-style-type: none"> ▪ Ease of implementation for states, which may lead to increased service and financial accountability ▪ Support for individuals and representatives who are unable or unwilling to be the common law employer but who still wish to exercise choice and control over HCBS ▪ Increased supports to direct service workers compared to the GF/EA, VF/EA, and PA models, such as training opportunities and other worker-related supports ▪ Clearer employment infrastructure, possibly leading to opportunities for direct service workers to raise concerns to a single employer 	<ul style="list-style-type: none"> ▪ Reduction in choice and control for individuals and representatives if the AwC performs like a traditional agency-based provider, which may conflict with the fundamental goal of self-directed services
<p>Public Authority (PA)⁷</p>	<ul style="list-style-type: none"> ▪ Opportunities for direct service workers to unionize and collectively bargain for wages, benefits, training, workers' compensation, and other job quality improvements ▪ Access to voluntary training opportunities through the PA and state third party agency for workers and employers 	<ul style="list-style-type: none"> ▪ Complexity of a multiple-employer model with each employer having different roles and responsibilities, which can be confusing for individuals, representatives, or direct service workers

Employing Family Members

Most Medicaid and other public HCBS programs that offer a self-directed service option permit relatives of program participants to be paid direct service workers. Medicaid formerly did not allow legally responsible relatives (e.g., spouses, parents, and legal guardians of minor children) to be paid direct service workers, but now this is permitted in section 1915(c) HCBS waiver programs when the state identifies an “extraordinary need” (such as when other direct service workers are not available) and with section 1915(i), (j), and (k) state plan option programs. However, the Medicaid statute still prohibits the hiring of legally responsible relatives in consumer-directed services under the Medicaid State Plan Personal Care Services option authorized under section 1905(a).

For more information, please view the other briefs in this HCBS self-direction series:

Origins and Benefits of Self-direction

Operational Considerations for Self-directed Service Delivery Models

Self-direction Research Compendium

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References

¹ Centers for Medicare & Medicaid Services. *Self-Directed Services*. Department of Health and Human Services. Retrieved from <https://www.medicaid.gov/medicaid/long-term-services-supports/self-directed-services/index.html>.

² Centers for Medicare & Medicaid Services. (2014). *Fact Sheet: Home and Community Based Services*. Department of Health and Human Services. Retrieved from <https://www.medicaid.gov/sites/default/files/2019-12/final-rule-fact-sheet.pdf>.

³ The exception to this is FMS provided under a §1915(j) Self-Directed Personal Assistance Services state plan, which must be an administrative activity.

⁴ Centers for Medicare & Medicaid Services. (2019). *Application for §1915(c) Home and Community-Based Waiver Instructions, Technical Guide and Review Criteria*. Department of Health and Human Services. Retrieved from <https://www.hhs.gov/guidance/document/application-ass1915c-home-and-community-based-waiver-instructions-technical-guide-and>.

⁵ Due to the similarity of GF/EA and VF/EA, they are combined for the purpose of Exhibit 1.

⁶ As specified in §3504 of the Internal Revenue Code, an employer agent performs acts such as the withholding, reporting, and paying of employment taxes. The agent files one return for each period on behalf of all the employers it represents.

⁷ California Association of Public Authorities, personal communication, November 17, 2021.