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www.disabilityrightscalifornia.org  
Toll Free: (800) 776-5746  
TTY: (800) 719-5798

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## **2011 Fact Sheet # 11, Pub #F060.01**

### **California's Budget Cuts to Developmental Disability Services & Programs Effective October 1, 2011**

#### **Financial Management Services/Participant-Directed Services 2011<sup>1</sup>**

#### **HOW THE LAW CHANGED**

The Lanterman Act was changed to require adult consumers (“you”) or family members who use some vouchered services to instead use a Participant-Directed Services model including a Financial Management Services agency. You are affected by this change if you are on the Medi-Cal Home and Community-Based Services Developmental Disabilities Waiver (DD Waiver). If you are not sure whether or not you are on the waiver, please look at the top of your Individual Program Plan (IPP) and talk to your regional center service coordinator. The reason for this is to ensure compliance with federal requirements and to preserve funding. To implement this change, the Department of Developmental Services has adopted emergency regulations.

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<sup>1</sup> The changes are part of the Budget Trailer Bill (TBL) SB 74. You may find the law at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_0051-0100/sb\\_74\\_bill\\_20110324\\_chaptered.html](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0051-0100/sb_74_bill_20110324_chaptered.html). The changes related to Financial Management Services/Participant Directed Services are found in Welfare and Institutions Code section 4648.12(c). The related regulations that are amended and/or adopted can be found at California Code of Regulations, title 17, sections 50604, 54355, 58543, 58883-4 and 58886-8.

In the past, services that were vouchered allowed you or a family member to receive reimbursement directly from the regional center to obtain your own services. Under the new law as of October 1, 2011, if you or a family member uses the services that are listed under Section A below, you or a family member will be vended under a “Participant-Directed Services” model; you or a family member no longer will be reimbursed directly; and you or a family member will also be required to use a Financial Management Services (FMS) provider.<sup>2</sup>

You or a family member cannot be charged for the cost of the Financial Management Services and the amount of hours that is authorized in your Individual Program Plan (IPP) should not change.<sup>3</sup>

### **A. What Services Are Affected by the Changes in the Law?**

The changes in the law will affect you if you are on the DD Waiver and receive or choose the following as a vouchered service:

- Day care
- Nursing service
- Respite service
- Transportation
- Community-based training service.<sup>4</sup>

### **B. What Is Financial Management Services (FMS)?**

Providers of Financial Management Services (FMS) assist you or a family member with general payroll and billing functions. For example, a FMS provider can do the following: verify worker eligibility status; collect and process worker timesheets; process payroll and withholdings; file and pay employment-related taxes; and perform bill payments and reimbursements.

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<sup>2</sup> California Code of Regulations, title 17, sections 54355, 58886(a)-(b)

<sup>3</sup> California Code of Regulations, title 17, section 58888(b), Welfare & Institutions Code section 4646, *et seq.*

<sup>4</sup> California Code of Regulations, title 17, sections 54355(i), 58886(a)

There will be two types of FMS provider models from which you or a family member can choose: FMS Fiscal/Employer Agent or FMS Co-Employer.<sup>5</sup> Under the first type, FMS Fiscal Employer Agent (F/EA), you or a family member is the sole employer that has independent authority to hire and fire the workers you or a family member chooses.<sup>6</sup> The FMS F/EA provider acts as your or the family member's agent.

Under the second type, FMS Co-Employer, you or a family member is a co-employer and has the authority to make recommendations (instead of independent authority) to the FMS Co-Employer for hiring and firing of workers.<sup>7</sup>

### **C. What Are the Duties of FMS Providers?**

Regardless of the type of FMS provider, both the FMS F/EA and the FMS Co-Employer are responsible for the following duties:

1. Collect and process timesheets of workers providing Participant-Directed Services;
2. Assist you or a family member in verifying the worker's eligibility for employment (i.e., have a copy of the Social Security number or other document);
3. Process payroll, withholding, filing and payment of federal, state and local employment related taxes (i.e., Social Security, federal and state income tax, and Medicare tax) and legally required insurance (i.e., unemployment and disability insurance) for authorized services;
4. Track, prepare and distribute monthly expenditure reports to you or a family member (either as the employer or co-employer) and the regional center;
5. Maintain all source documents related to the authorized services and expenditures;

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<sup>5</sup> California Code of Regulations, title 17, section 58884(a)(4)-(5)

<sup>6</sup> California Code of Regulations, title 17, sections 58884(a)(3), 58886(d)(1)(A)-(B)

<sup>7</sup> California Code of Regulations, title 17, sections 58884(a)(2), 58886(d)(2)

6. Ensure payments do not exceed the amount and rates authorized by the regional center.<sup>8</sup>

#### **D. What Are Your Duties or A Family Member's Duties as an Employer or Co-Employer?**

Either as an employer (under FMS F/EA) or co-employer (under FMS Co-Employer), you or a family member has the following duties and authority over workers:

- Recruit workers and verify worker qualifications;
- Specify any additional worker qualifications based on your needs and preferences;
- Determine worker duties;
- Schedule, orient and instruct workers in duties;
- Supervise workers and evaluate worker performance; and
- Verify time worked and approve time sheets.<sup>9</sup>

#### **E. What Are Regional Center Duties?**

When you or a family member makes a decision to use Participant-Directed Services for services listed under Section A above, the regional center has to do the following:

1. Provide information regarding your or a family member's responsibilities and functions as either the employer under the FMS F/EA or co-employer under the FMS Co-Employer;
2. Provide information about the requirements regarding the use of a FMS F/EA or FMS Co-Employer;
3. Assist you or a family member to identify and choose an FMS F/EA or FMS Co-Employer;

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<sup>8</sup> California Code of Regulations, title 17, section 58887(a)(1)-(7)

<sup>9</sup> California Code of Regulations, title 17, section 58886(c)

4. Vendor you or a family member acting as the employer or co-employer for Participant-Directed Services. A family member of more than one consumer is only required to be vendored once.<sup>10</sup>

#### **F. Will I Have to Pay for Financial Management Services?**

No, you or a family member will not have to pay and cannot be charged for Financial Management Services. The regional center pays for this service.<sup>11</sup>

#### **G. Can the Regional Center Change the Hours That Are Authorized in My Individual Program Plan?**

No, the changes in the law do not alter the number of hours or amount of services that you are authorized to receive in your IPP. You should continue to receive the same hours or amount of services.<sup>12</sup>

#### **H. What Are My Options If I Do Not Want to Use a Financial Management Service?**

If you receive vouchers for the services listed in Section A above and you are on the DD Waiver, you are required to use a Financial Management Service provider. However, the changes in the law do not affect you if you receive services through an agency. For example, if you receive respite services and you use a vendored respite care agency instead of receiving a voucher, you will not be affected by the change in the law and you will not be required to use a Financial Management Service.

#### **I. What Will Happen If the Regional Center Wants to Change My Services?**

If your regional center wants to change or deny your request for services or the type of FMS services you want, the regional center must either hold an IPP meeting and reach agreement with you about the change or give you a

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<sup>10</sup> California Code of Regulations, title 17, section 58886(b)

<sup>11</sup> California Code of Regulations, title 17, section 58888(b)

<sup>12</sup> Welfare and Institutions Code section 4646, *et seq.*

written notice.<sup>13</sup> The notice must be given 30 days before the change begins.<sup>14</sup> The notice must give you the following information:

- the action the regional center is taking;
- the basic facts about why the regional center is making its decision;
- the reason for the action;
- the effective date; and,
- the specific law, regulation or policy that supports the action.<sup>15</sup>

If you are already receiving the service and you disagree with the regional center's decision and want to continue to receive it, you must request a fair hearing within 10 days of receiving the notice.<sup>16</sup> Otherwise, the request must be made within 30 days.<sup>17</sup> If exemptions are available and you think you meet an exemption, remember to additionally put "I meet an exemption" into your fair hearing request.

For more important information on how to appeal decisions by the regional center, read our fact sheet, Regional Center Due Process and Hearing Rights at <http://www.disabilityrightscsca.org/pubs/F02601.pdf>.

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<sup>13</sup> Usually, decisions about the services you need must be decided by an IPP team. Welfare and Institutions Code section 4646.4(a)-(c). However, the law says if a regional center wants to reduce, end or change a service in your IPP without your consent, it has to give you a 30 day notice first. Welfare and Institutions Code section 4710

<sup>14</sup> Welfare and Institutions Code section 4710

<sup>15</sup> Welfare and Institutions Code section 4701. The information must also be in the language you understand.

<sup>16</sup> Welfare and Institutions Code section 4715

<sup>17</sup> Welfare and Institutions Code section 4710.5(a)