Financial Management Services in Participant Direction Programs

By Mollie G. Murphy, Isaac Selkow, and Kevin J. Mahoney

The Community Living Assistance Services and Supports (CLASS) Plan – a groundbreaking component of the Affordable Care Act – creates a voluntary federally-administered insurance program to help individuals pay for needed assistance in a place they call home if they become functionally limited. Implementation will require knowledge translation from various sectors, including research and existing public and private programs. This Technical Assistance Brief Series seeks to answer questions pertinent to developing and implementing the program.

This brief seeks to inform the design and implementation of the CLASS Plan using experience from the provision of Financial Management Services (FMS) in participant direction. Highlighting why FMS are used in participant direction and their challenges, we seek to present strategies for maximizing their benefit in the CLASS Plan.

Introduction and Why Participant Direction Programs Use Financial Management Services

Participant direction programs offer participants choice of and control over their long-term services and supports. As choice and control increase, so too do certain fiduciary responsibilities, including those associated with being an employer, managing funds for services, and handling payroll and employer-related taxes and insurance. To date, existing participant direction programs have often used a Financial Management Services (FMS) function to support employment-related tax and insurance compliance for participants as well as for program fiscal accountability. FMS have also been used to reduce the employer-related task burden for participants, allowing them to focus on managing other aspects of their long-term services and supports. Similar to participant direction programs, designers of the CLASS Plan must grapple with administrators' role in supporting beneficiaries to maintain compliance with tax and labor law when they directly hire workers, as well as how to ensure beneficiary purchases meet CLASS Plan rules.

Employment Regulation Compliance

In participant direction programs, many participants choose to use their program funds to purchase labor services, such as personal assistance services, chore help, and companionship services.[i]

When services are procured, they are sometimes provided by a home health care agency or other organization that employs workers to perform these services. In other instances, participants hire the individuals of their choice, such

[i] For additional information, see The SCAN Foundation's CLASS Technical Assistance Series Brief #8: ("How did Cash and Counseling Participants Spend Their Budgets, and Why Does That Matter for CLASS?").

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as family members, friends, or others they have determined are qualified to provide the needed services. The Internal Revenue Service (IRS) has determined that, in general, when individuals directly hire workers to perform these types of services (i.e., the individual does not contract with a company to provide these services), the workers are considered employees of the individuals who supervise and manage the work.[1] Specifically, participants are considered "household employers" and their workers "household employees." Many participant direction programs offer participants the use of a "representative." The representative is usually someone the participant knows well and trusts and who can support the participant to manage his or her program services. When a participant has a representative, the representative will often serve as the employer of the participant's workers and, with the participant's input, will supervise, schedule, and manage the workers.[2]

When employers pay employees, they generally must do the following:[3]

- Withhold federal income tax from employee pay (optional for household employees)
- Withhold Social Security and Medicare taxes from employee pay
- File and deposit with the IRS withheld employee federal income, Social Security and Medicare taxes and the employer portions of Social Security and Medicare taxes
- File and deposit federal unemployment taxes
- File and deposit state unemployment taxes
- Maintain compliance with any employee state or local income or disability tax rules, including withholding from employee pay as well as filing and depositing with state and local tax agencies, as applicable[3]
- Provide employees with year-end information returns, such as Forms W-2
- Maintain compliance with state workers' compensation statutes
- Verify that employees are authorized to work in the United States
- Maintain compliance with other state rules, such as state pay day requirements
- Maintain compliance with the Federal Fair Labor Standards Act[4]

Like other employers, participants who directly hire their own workers must maintain compliance with employment rules and regulations to avoid penalties. In participant direction programs where state and federal funds are used for participant services, program administrators also have incentives to ensure compliance with state and federal rules and regulations is maintained. In the 1990s, some participant-directed Medicaid programs were found to be out of compliance with IRS rules regarding payment of participant hired workers and the programs were fined.[5]

Participant direction programs have used FMS providers to make payments to participants' workers and to other nonemployee providers of goods and services. When an FMS provider (which can be a contracted vendor or government entity, see *Models of Financial Management Services* below) pays a participant's employees, the provider is responsible for maintaining

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compliance with all federal, state, and local tax and labor rules and regulations, including managing employer tax deposits and returns.[2] In Medicaid-supported participant direction programs, when all program payments are routed through the FMS, the program can assure that publicly funded workers are not being paid "under the table."

Participant Budget Management, Fiscal Accountability & Reporting

Participant direction programs have also used FMS to improve program oversight, including for purposes of supporting participant budget management, for program fiscal accountability, and increasing program access to relevant spending and service data. FMS providers are often tasked with ensuring participant expenditures are within authorized funding allotments or that funds are used in accordance with the plan of care or spending plan.[6] FMS providers also ensure that payments are not made for prohibited goods or services or under prohibited circumstances.

Since FMS providers make payments on a participant's behalf and usually collect information on what is being purchased, they have rich program data that can be useful to program administrators and researchers. In addition to submitting various reports to program administrators and providing data as requested, FMS providers usually provide participants with at least monthly reports, similar to a bank statement, about how participants are using their program funds.

Participant Preference for Payment, Recordkeeping and Compliance Support

In the Cash and Counseling program, one of the most flexible models of participant direction, early program designers sought to maximize participant choice and control over services.[7] Designers intended for program participants to fully manage even the financial aspects of their program, including making payments to workers and for other goods and services and managing all employer tax, insurance and recordkeeping responsibilities. However, early program preference studies revealed that a majority of participants preferred a professional service provider to perform financial and administrative services.[7] Empirically, when given the choice, Cash and Counseling participants chose a Financial Management Services provider to manage all employer-related payroll, tax and insurance responsibilities.[ii]

[ii] For additional information, see The SCAN Foundation's CLASS Technical Assistance Series Brief #11: ("Options for Getting Purchasing Power into the Hands of Participants: Lessons from Participant-Directed Programs").

Benefits and Limitations of Financial Management Services in Participant Direction

In existing publicly-funded participant direction programs, most programs (approximately 97% based on preliminary data results) utilize FMS.[8] Some of the benefits and limitations of FMS, as used in participant direction, are compared below. (See Table 1).

TABLE 1 Benefits and Limitations of FMS

Benefits of FMS	Limitations of FMS
• Ensures program funds are only used for authorized services, except when cash is disbursed directly to participants. • Ensures employees are paid in compliance with tax and labor laws. • Supports timely and accurate payment of employees. • Supports participants to hire only those workers who are authorized to work in the United States. • Data on how participants use program funds are recorded by professional organizations; getting data on how funds are spent is straightforward. • Reduces participant employer burden; allows participants to focus on managing their long-term services and supports. • Supports participants to manage their program funds. • Supports program fiscal accountability. • Can help detect and prevent program fraud and abuse.	• Having an FMS make payments for services is significantly less effective when participants must make purchases with limited notice or must use cash for the purchase • Using an FMS does not alleviate a participant from all employer responsibility. While an FMS provides significant support, participants are still ultimately the employers of their staff. • Even with FMS in place, it is still possible for fraud and abuse to occur. • Participants may perceive that the use of an FMS restricts their control of their services and supports.

Financial Management Services and Counseling: A Partnership

Most participant direction programs offer participants counseling (some programs use terms such as "support brokerage," "consulting," "advising," or "flexible case management"). The primary function of counseling is to help participants develop the skills necessary to manage their long-term services and supports.[9] FMS and counseling are both supports intended to help participants maximize their program benefits, but each plays a different and complementary role. While FMS focuses on administrative and "back-office" support related primarily to service payments, employment compliance, and fiscal accountability, counseling focuses on empowering participants with the skills to successfully manage their budgets and workers to meet individual support needs. Ideally, these functions work in harmony, with participants ultimately directing their services.

Table 2 below outlines some common supports often provided by the two functions.[10]

TABLE 2 Common Duties of the Counseling Function and Financial Management Services Function

Common Duties of the Counseling Function	Common Duties of the Financial Management Services Function
• Provide the participant with information about the concepts of participant direction and participant rights and responsibilities. • Assist the participant in identifying his/her own goals and needs using a participant-centered-planning process. • Assist the participant in developing his/her spending plan. • Provide clarification and explanation about allowable program expenditures and documentation/record keeping. • Assist the participant in developing a back-up plan for when planned services may not be available. • Provide training and assistance to participants/ representatives on recruiting, hiring, training, managing, evaluating, and dismissing participant-directed workers. • Assist the participant in obtaining services included in spending plan. • Instruct and assist participant in problem solving, decision-making, and recognizing and reporting critical events. • Coordinate activity among support entities, participants/representatives, and state program. • Help participant make changes to spending plan as needed.	• Provide information to assist the participant in monitoring expenditures under his/her spending plan. • Provide the participant with information to support revising his/her spending plan. • Establish the participant (or participant's representative) as an employer with Federal, State and Local tax agencies. • Procure workers' compensation insurance coverage for participant's employees. • Provide and review employee paperwork for new hires. Perform background checks on workers, as requested. • Process payroll for directly hired workers in accordance with federal, state, and local tax, labor, and workers' compensation laws for domestic service employees. • Process and make all payments for goods and services in accordance with rules, regulations and participant's spending plan. • Issue easily understood reports of budget balances to participants/ representatives and counselors periodically and upon request. • Issue programmatic and financial reports to government program agency periodically and upon request.

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Models of Financial Management Services

FMS are provided in participant direction programs using one of three primary models. (See Table 3).

- **Fiscal/Employer Agent (F/EA)** — In the F/EA model, the participant or his/her representative is the common law employer of workers hired, trained, and managed by the participant or representative.[11] The F/EA serves as the employer's agent under a specific section of the Internal Revenue Code[12] and takes on joint federal tax liability with the employer. The F/EA pays workers and vendors on the participant's behalf and manages all federal, state, and local employer tax responsibilities, including withholding, filing, and paying those taxes. Two models of F/EA exist: Government Fiscal/Employer Agent and Vendor Fiscal/Employer Agent. The F/EA model generally affords the participant ample authority with his or her workers, services, and supports.
- **Agency with Choice** — This is a co-employment model of service delivery.[13] In this model, an agency is the primary employer of workers who provide service to the participant. The program participant or representative serves as the "managing employer" of workers and refers workers to the agency for hire, participates in worker training, may have a role in setting the worker's schedule and supervising the worker's activities, and can stop receiving services from the worker by notifying the agency that the participant no longer wishes for the worker to visit. As the primary employer, the agency performs all human resource, payroll, and insurance duties. In the Agency with Choice model, the participant may not exercise the level of management control over his or her workers that he or she can with the F/EA model because ultimately the Agency is the employer of the worker.
- **Fiscal Conduit** — With a Fiscal Conduit model, a government entity or vendor disburses public funds via cash or vouchers to participants or representatives. If the participant chooses to directly hire workers and serve as a common law employer, the participant is responsible for managing all payroll-related duties, including paying wages, tax withholding, calculating, depositing, and filing and for doing so in compliance with Federal, State, and Local tax, wage, and hour rules and regulations. In some Fiscal Conduit models, a vendor or government agency may periodically review participants' records to ensure workers are being paid in compliance with rules and regulations and that taxes and insurances are properly paid and managed.[14] In this model, a participant has ample choice and control over services, including hiring, managing, and discharging workers. However, this model also puts the most administrative burden on participants and requires that participants maintain compliance with federal, state, and local employment regulations themselves.

Table 3 below presents important components of each model.*

TABLE 3 Models of Financial Management Services

	Fiscal/Employer Agent	Agency with Choice	Fiscal Conduit
Employer of Workers	Participant	Co-employment shared between Agency and Participant	Participant
Payroll Duties Performed By	Fiscal/Employer Agent	Agency	Participant
Compliance with Employment Rules Maintained By	Fiscal/Employer Agent	Agency	Participant
Sets Worker Rate of Pay	Participant	Agency (participant may have input)	Participant
Sets Worker Schedule	Participant	Agency (participant may have input)	Participant
Pays Nonemployee Goods/Services Providers	Fiscal/Employer Agent or Participant**	Agency or Participant***	Participant

* Individual programs may customize the roles performed by FMS providers and participants. For example, even with a Fiscal/Employer Agent model, the program may not allow the participant to set the rate of pay for a worker or may have a range within which a rate of pay can be set. This chart is a general guideline.
** The Fiscal/Employer Agent can pay nonemployee providers of goods and services or the participant may use a debit card or cash for these purchases
*** The Agency with Choice can pay nonemployee providers of goods and services or the participant may use a debit card or cash for these purchases.

Section 3210.b(A) of the CLASS Act calls upon states to assess their existing infrastructure related to entities that can serve as fiscal agents in the CLASS Plan. See appendix for information on models of Financial Management Services by state.

Cost of Financial Management Services

In participant direction programs, FMS providers may charge for their services via a variety of methods. The most common is the "per member, per month" (PMPM) approach, where the FMS charges a fixed fee for each participant every month regardless of work the FMS does for an individual participant.

Other models exist, but for purposes of comparison, this paper examines costs using the PMPM method. The cost of FMS ranges from approximately $40 PMPM to upwards of $175 PMPM. Based on preliminary data, the average cost is $95 PMPM.[8] Many factors influence the cost of FMS (see Table 4 below).

Fiscal/Employer Agent and Agency with Choice models tend to have similar costs, while the Fiscal Conduit model is generally less expensive because the provider performs much fewer and less complex services. Due to significant fixed costs, generally the more participants an FMS provider serves, the lower the cost per participant.

TABLE 4 Factors Influencing the Cost of FMS

Factors Influencing the Cost of FMS
Model of FMS: F/EA, Agency with Choice or Fiscal Conduit *Responsibilities of the FMS provider in the Fiscal Conduit model are generally fewer than with F/EA or Agency with Choice, so costs for this model are usually lower.*
Volume and type of Customer Service provided by FMS
Volume of participants served *Economies of scale are an important cost determinant in FMS.*
Complexity of payment rules that FMS must enforce
Working capital requirements *Does the FMS use its own funds to pay participants' workers and vendors prior to being reimbursed by the program?*
Data exchange requirements and reporting requirements
Requirements for FMS provider to have a physical presence in the planned service area(s)

Procuring Financial Management Services

In participant direction, program administration agencies have overwhelmingly taken the approach of procuring FMS services for participants, rather than having participants procure the services themselves.[2] Program administration agencies generally enter into a contract or provider agreement with one or many FMS providers that provide services to participants enrolled in the program. The agencies monitor the services, and if quality falters, may develop corrective action plans with providers or terminate the contract. Participant direction programs have generally provided FMS program-by-program, with each program administration agency going through its own procurement process, entering into its own agreement with the provider, and monitoring the quality of FMS separately from other programs or program administration agencies. This means that each program has incurred the procurement and monitoring costs individually. Programs most often procure services using Request for Proposal, Invitation to Bid, or Request for Qualifications processes, with most procurement processes lasting at least several months.

Considerations for CLASS Plan Design and Implementation

A Financial Management Services function has been employed in most participant direction programs to:

- Support participants, while assuring compliance with tax and labor laws, especially because public funds are used to employ workers.
- Ensure fiscal accountability and collection of participant expenditure data.

Like participant direction program designers, CLASS Plan designers may determine that utilizing professional FMS providers is an efficient method of ensuring workers who provide services to participants are paid in compliance with federal, state, and local tax and labor law, while balancing the administrative burden placed on participants.

CLASS Plan designers must balance the benefits of making FMS available to or required for program participants with the expense to procure and provide such services, while ensuring quality of those services. Unlike participant direction programs, CLASS will serve a national population in a single program. The cost of administration of CLASS cannot exceed 3% of all premiums paid during the year.[15] CLASS Plan designers may consider the following approach to providing FMS to maintain tax and labor compliance, while supporting a quality, cost-effective provision of services.

Third Party FMS Certification and Beneficiary Choice of Provider

Using an FMS procurement process like those used in participant direction is likely not efficient or cost-effective for the CLASS Plan. CLASS Plan designers may consider using a “Certified Provider” approach to providing FMS.

The CLASS Plan administration agency may develop or contract with a third party FMS certification entity. This entity would be responsible for developing a set of FMS provider certification standards. Based on the model of FMS, these would include, at minimum, standards for compliance with applicable tax and labor law, data security, reporting, and customer service. FMS providers interested in becoming CLASS-certified would pay a certification review fee to the FMS certification agency to initiate a review. The fee should be developed to cover the cost of certification and ongoing administration of the certification agency. Those FMS providers that are deemed by the entity to be "CLASS-Certified" would then be available for CLASS beneficiaries to choose to provide FMS. On some periodicity (e.g., every two years), FMS providers would be required to be re-certified to continue providing services through the CLASS Plan. FMS providers would pay a re-certification fee to the FMS certification entity and a re-certification would be performed. For those entities that do not pass a re-certification, CLASS beneficiaries using that entity would have some time period to use that provider while they choose a new provider and before the uncertified provider services are terminated. Certain providers may choose to serve certain geographic areas, while others may operate nationally. Participants could choose any FMS provider that serves their geographic area. FMS providers would have to pass certification for state and local requirements for any geographic area in which they will provide services.

Unlike participant direction program approaches to procuring and monitoring FMS, this approach transfers the expense of those important functions from the program administration agency to the FMS providers themselves. CLASS Plan designers must determine, however, if FMS (at least to pay beneficiaries' employees) will be a program requirement or option (e.g., if a beneficiary directly hires a worker, the beneficiary must use the services of an FMS). Additionally, program designers must determine if FMS providers would be paid for their services out of beneficiaries' CLASS benefits or via CLASS administration funds.

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APPENDIX Models of Financial Management Services by State

The information presented below has been collected as part of an ongoing effort of the National Resource Center for Participant-Directed Services (NRCPDS) at Boston College to assemble information about participant direction programs.[8] NRCPDS has collected and continues to amass extensive data on participant direction programs throughout the United States.

The data presented in this appendix is that collected by NRCPDS through February 28, 2011. This data may not represent every participant-directed program in the U.S. NRCPDS continues to collect additional, and refine existing, data.

In the table below, “State” refers to the U.S. state of which participants in the program are residents. “Programs” are generally designated by a distinct funding source and/or population served. In order to be included in this data, the program must offer participants an option to individually manage and direct their own services. Two distinct authorities have been identified by which to manage services: 1) employer authority (a participant has the ability to select/hire and manage individual workers); and 2) budget authority (a participant has the ability to purchase permissible goods and services through the use of an individual budget). A program having either or both authorities is considered participant-directed for the purposes of this data. “Individuals Participant Directing in State” is the sum of individuals in the state who choose a participant direction option. “Model(s) of FMS in State” are those models of Financial Management Services currently being utilized in one or more programs in the state. Some programs may use just one model even if multiple models are active in the state.

State	No. of Programs in State with Participant Direction	Individuals Participant Directing in State	Model (s) of FMS in State
Alabama	4	89	• Vendor Fiscal/Employer Agent
Alaska	1	3,688	• Agency with Choice
Arizona	2	2,140	• Government Fiscal/Employer Agent using a Vendor Sub-Agent • Agency with Choice
Arkansas	4	4,928	• Vendor Fiscal/Employer Agent
California	1	480,000	• Public Authority operating as Statutory Employer
Colorado	6	19,550	• Agency with Choice
Connecticut	8	2,429	• Vendor Fiscal/Employer Agent • Agency with Choice
Delaware	1	35	• Agency with Choice moving to Vendor Fiscal/Employer Agent
District of Columbia	1	1	• Vendor Fiscal/Employer Agent
Florida	8	1,984	• Government Fiscal/Employer Agent using a Vendor Sub-Agent • Billing Agent

Georgia	7	2,849	• Vendor Fiscal/Employer Agent • Agency with Choice • Billing Agent
Hawaii	2	2,271	• Vendor Fiscal/Employer Agent • Agency with Choice
Idaho	4	1,178	• Vendor Fiscal/Employer Agent • Agency with Choice
Illinois	7	8,327	• Vendor Fiscal/Employer Agent
Indiana	3	905	• Vendor Fiscal/Employer Agent • Agency with Choice
Iowa	6	3,095	• Vendor Fiscal/Employer Agent
Kansas	7	3,416	• Vendor Fiscal/Employer Agent • Agency with Choice
Kentucky	3	4,332	• Vendor Fiscal/Employer Agent • Government Fiscal/Employer Agent (performed by quasi-governmental agencies)
Louisiana	6	2,235	• Vendor Fiscal/Employer Agent • Agency with Choice
Maine	8	930	• Vendor Fiscal/Employer Agent • Agency with Choice
Maryland	5	7,175	• Vendor Fiscal/Employer Agent • Agency with Choice
Massachusetts	6	19,460	• Vendor Fiscal/Employer Agent using a Reporting Agent • Vendor Fiscal/Employer Agent • Agency with Choice
Michigan	4	9,355	• Vendor Fiscal/Employer Agent • Agency with Choice
Minnesota	10	5,736	• Vendor Fiscal/Employer Agent • Agency with Choice • Fiscal Conduit
Mississippi	2	3,750	• Agency with Choice
Missouri	5	15,270	• Vendor Fiscal/Employer Agent
Montana	4	4,832	• Agency with Choice
Nebraska	3	2,346	• Government Fiscal/Employer Agent
Nevada	4	1,238	• Vendor Fiscal/Employer Agent • Government Fiscal/Employer Agent • Agency with Choice
New Hampshire	4	1,770	• Agency with Choice
New Jersey	6	2,587	• Vendor Fiscal/Employer Agent

New Mexico	2	4,400	• Vendor Fiscal/Employer Agent • Stipend Program without FMS
New York	3	10,252	• Agency with Choice
North Carolina	3	70	• Vendor Fiscal/Employer Agent (new program currently under development) • Agency with Choice
North Dakota	3	432	• Vendor Fiscal/Employer Agent
Ohio	5	1,082	• Vendor Fiscal/Employer Agent • Vendor Fiscal/Employer Agent using a Reporting Agent • Agency with Choice
Oklahoma	4	953	• Vendor Fiscal/Employer Agent • Government Fiscal/Employer Agent using a Sub-Agent • Agency with Choice
Oregon	10	23,512	• Public Authority operating as Statutory Employer • Fiscal Conduit
Pennsylvania	5	19,157	• Vendor Fiscal/Employer Agent • Government Fiscal/Employer Agent using a Sub-Agent • Agency with Choice
Rhode Island	3	1,642	• Vendor Fiscal/Employer Agent • Agency with Choice
South Carolina	5	1,786	• Vendor Fiscal/Employer Agent • Government Fiscal/Employer Agent
South Dakota	2	1,036	• Agency with Choice
Tennessee	2	1,186	• Vendor Fiscal/Employer Agent
Texas	15	7,964	• Vendor Fiscal/Employer Agent • Agency with Choice
Utah	4	2,875	• Vendor Fiscal/Employer Agent
Vermont	5	4,310	• Government Statutory Employer with Reporting Agent
Virginia	6	7,809	• Vendor Fiscal/Employer Agent
Washington	6	22,585	• Government Statutory Employer with Vendor Payment Agent(s)
West Virginia	2	690	• Government Fiscal/Employer Agent with Sub-Agent • Stipend Program
Wisconsin	5	9,563	• Vendor Fiscal/Employer Agent • Agency with Choice
Wyoming	2	506	• Vendor Fiscal/Employer Agent
Totals	**233**	**739,488**	

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