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>> OPERATOR: Hello. Welcome to today's teleconference, at this time we are currently waiting for all participants to arrive. Thank you for your patience and please continue to hold. Audio recording for this meeting has begun.
>> TIM: This is Tim Fuchs with the National Council on Independent Living. Welcome back to the second part of our new Webinar and teleconference series on CILs as Financial Management Service Providers. Thanks again for joining us today. Of course we are live on the Web and on the phone. I have just got a few housekeeping announcements before I turn it back over to Mollie to take us through today's presentation. Of course this short series is being presented by the xhu communities opportunity centering, independent living research utilization program, ILRU in Houston, Texas, and those of us here at nickel have organized and facilitated the planning of today's Webinar. Support for the presentation was provided by the U.S. Department of Education, RSA, and again we are recording today's call so we can archive it as with last week's call, we will break several times to take your questions. You can ask questions on the phone by pressing star pound and we'll take those questions in the order they appear. And same with the chat on the Webinar. You can enter a question in the chat text box underneath the list of attendees, remember to hit "Enter" after you ask your question. We will see your question but we won't address it until the Q-and-A break but enter it at any time.
There is a separate PowerPoint for Part 2 so if you don't have that, you'll want to open that up. Again if you don't have the PowerPoint or confirmation e-mail, handy, you can e-mail me at Tim@ ncil.org. There is a separate evaluation form for today so please do fill that out. I would really appreciate your input.
Okay. I introduced Molliu and Lucia last week. Molly Murphy is co-founder of Annkissam and specializes in work flow for Financial Management services in self-direction. Molly he enjoyed hearing from you last week. I'll turn the phone over to you and click over to slide two.
>> MOLLIE MURPHY: Thank you so much, Tim, delighted to be here.
Well, if you were here last week and are back again, thank you for coming back. I didn't scare you off too have last week I suppose which I'm glad about.
I'm hoping that we are able to complete some of the FMS picture today and help your organization decide if you would like to pursue providing FMS or Financial Management services. Today is a thick schedule. We'll review the differences between primary models of FMS and those are fiscal employer agent and agent with choice. We'll talk about crucial differences between FMS and payroll. That is a distinction that without -- when folks don't really understand they think, oh, it's payroll. It's not. We'll talk about why and how it's different.
We'll cover what CIL staff skills and expertise you'll need if you decide to pursue providing FMS. We'll discuss investment considerations in your provision of FMS and finally talk about the benefits of FMS. We're saving the best for last.
Next slide, please. Thank you.
Lot's talk about the models of FMS. I referred to this a lot last week. In consumer direction or self-direction we essentially see FMS provided in one of two models. Fiscal employer agent and agent with choice. There's a third model called fiscal conduit but at this point it's all but prohibited so I won't waste your time learning about it. Additionally there is not role for a CIL or other entity. I don't think it's worth our time. We'll just talk about two models, physical/employer agent and agent with choice. These are far and away the majority of the models are those two.
Fiscal/employer agent is a model used about 75% of programs. While agency with choice is used in just about 25%. People often think that you can have only both employee authority and budget authority with an FEA model of FMS but that's not true. Both agency with choice and FEA can have either budget authority or employer authority or both. Speaking of, we talked about budget authority and employer authority last week. Does anyone remember what budget authority is? Hard to actually I think answer the question as I asked it on the phone line but budget authority is when the consumer has control in some way over how his or her budget funds allocations or authorization is used. When the consumer can control how the resources in the allocation or budget or authorization are used even if it's not complete control but if they have some meaningful level of control over that. Then we say the program has budget authority. Employer authority means the consumer has authority over who to hire, how to train him or her, scheduling him or her, or firing him or her. That's, the consumer is able to operate like an employer in the program, then they have employer authority. To make it clear, there are two models of financial management services, fiscal employer agent and agency with choice. Both can have either employer authority or budget authority or both employer authority and budget authority.
Let's talk first about fiscal employer agent because it's more common.
Within fiscal employer agent there are two types of fiscal employer agent. There is government fiscal employer agent and vendor. Government fiscal employer agent or FE A-OK cures when a government entity takes on the role of being the FEA rather than contracting with a provider to be the FEA. Some variations there where you could be a government, could choose to be, then subcontract out certain parts but I don't want to confuse us with those variations right now.
A vendor FEA is when a non-government entity is the F/EA. Most of the time 57or F/EAs are serving government programs and contracted by government agencies but because the vendor is actually operating as the FEA as opposed to government entity that makes them a vendor FEA. If any of you were to pursue providing FEA services you'd be a vendor. You might take on good afternoon contracts most likely would take on government contracts but in so doing you would be a vendor FEA. We would only see a government FEA if the government entity decided itself to be an FEA and do what an FEA does in a self-direction program.
In fiscal employer agent or FEA, the consumer or his or her representative or someone else the consumer appoints, we talked about this last time, is the common-law employer of the direct service workers. So in this role the consumer is going to hire, fire, train, and manage workers. In other words, for the day-to-day activities, consumer does all the tasks you would expect of any employer in regard to his or her employees. The FEA on the other hand handles administrative duties so they will support the consumer to completeness forms to become an employer and then often files those forms for the employer. The FEA will manage the payroll duties on the employer's behalf, handle all tax responsibilities and usually manages all worker's compensation responsibilities. Nerd, an FEA we have the consumer or someone that the consumer has selected, representative, surrogate, family member, friend, but that person the consumer or the person selected is operating as the employer of the workers for all day-to-day activities, they are the employer, and then they're designating fiscal employer agent to handle the administrative duties of being an employer. Sometimes people think that if they are using an FEA model, then the FEA can only pay employees of the consumer. This is not true. If the consumer also chooses to use their budget or allocation or spending plan to get non-employee goods and services, the FEA can pay those entities, too. Typically you'll see FEA exists if we are having consumers hire workers because that's really where the FEA model is helpful. Consumer hires workers and the consumer will be the common-law employer but we need an entity to handle administrative duties. But the FEA can also make payments out of the consumer's authorization or budget for non-employee goods and services.
Next slide, please.
Actually we're two slides ahead, I'm sorry, there we go. The pink and the blue. In FEA the worker is an employee of the consumer. So looking at the chart here, there is a line connecting the employee to the consumer employer. Now, again, the employer can be the consumer. Most of the time the employer IS the consumer but if the consumer wishes, they could appoint someone else close to him or her to actually be the employer of the worker because that's the person who will be managing the worker day-to-day, selecting them et cetera.
FEA works for and supports the consumer so you can see a line between the blue consumer and the yellow FEA in this case but not a line between the employee and FMS provider or the FEA in this case.
The consumer will select, hire, direct, and they might fire his or her worker. FEA might support the consumer in some duties and will certainly handle administrative duties but the employee's primary relationship is with the consumer, not with the FIA. The employee is not an employee of the FEA. Often there's confusion there. But the employee employee is an employee of the consumer, not FEA. In this model, the consumer is really in the driver's seat. FMS provider or FEA is there to support the consumer but the consumer manages the relationship with the employee. The FMS provider is helping the consumer by paying their employee and doing other tasks that help with the hiring of the employee but the consumer is really managing the relationship with the employee, telling them what to do, telling them and helping them complete their time sheets and so that's why we have the line between the employee and the consumer and then again between the consumer and the FMS provider but not a line between the employee and the FMS provider.
Okay. Next slide, please.
Let's talk about the benefits of fiscal employer agent. I'll get to the costs or the cons, too, but starting on the positive side. Some benefits of FEA. It's a very flexible model for consumers that provides consumers with lots of control. You could tell that from the previous slide. The consumer is in the middle. It's the consumer who has the relationship with both parties. In FEA it's structured so it's not easy for the entity managing the funds and the administrative duties to bypass the consumer to manage the employee. That would be very difficult. The consumer is the one who is in charge of what the employee does and who the employee is and when the employee works. That's all about the consumer.
In a program, the FEA model makes it straightforward for contracting entities, that is, programs or states, to contract with one or many FEA providers. In the FEA model there can actually be certain tax cost reductions when and if the consumer hires certain family members. So when certain family members are hired by the consumer, those family members as employees will be exempt from Social Security, Medicare, federal unemployment, state unemployment taxes in some cases. That means that less tax will come out of the employee's paycheck. It also means there's less costs of paying that worker because the -- there are not the employer taxes for those either so the consumer is not paying for those taxes out of their budget when they hire certain family members. Those are spouses, children, and parents of the employer.
Because workers are the consumer's employees, they are not the employees of someone else, they are consumer's employees, the state is not beholden to the provider to -- not beholden to the FEA to allow the consumers to keep workers they like. Said differently imagine we have a program full of consumers and they have identified workers whom they like to work with but the State is having trouble with the performance of the FEA and so the State is thinking, hmm, we're gonna need to end this contract with this FEA and get a new one.
One concern the State doesn't have to consider is, uh-oh, does that mean consumers will have to get all new workers and they'll lose the workers they like because they belong to the FEA? Not the case. Workers do not work for the FEA. They work for the consumer. So if a State was in the position where the FEA just wasn't working out, they could get a different FEA, not that there aren't lots of complications with that, but they could get a different one and transition the consumers to get service from that FEA and the consumers would still keep all workers because the consumer holds the relationship with the worker, not the FEA
I'll also mention the Affordable Care Act. Unlike agency with choice, employees in the FEA model are not likely to fall under the health insurance mandate requirements of the affordable care act. This is because the health insurance mandate applies to employers with 50 or more full-time staff. In the FEA model, a participant would not ever have that many employees themselves, they would not ever have or I certainly can't imagine a situation where a single individual has 50 or more full-time staff working for them individually.
So they would not ever have enough employees to qualify as a large employer to fall under the Act. Therefore, in the FEA model, consumer employers are not likely to fall under the mandate, health insurance mandate and therefore, in the FEA model health insurance does not have to be provided under the Affordable Care Act for the consumer's employees.
Some people will say this is a benefit to the model because the consumer doesn't have to incur costs of health insurance under the model and because the costs of health insurance to employees whose employees do not offer them health insurance is actually less expensive at most wage levels that exist in direct service.
So, in other words, having an employer who doesn't offer the health insurance as an FEA, as a consumer in a FEA model would, can result at most wage levels that happen in direct service in the health insurance actually being less expensive from the health insurance marketplace because of the subsidy that exist for workers whose employers don't offer health insurance.
Some people see the FEA model as a benefit under the Affordable Care Act because there's not the required costs for the employer and the potential cost to employees to get the health insurance is actually less than if the employer offered health insurance.
Some of the challenges of fiscal employer agent model of FMS, one major challenge is that the FEA industry is less mature. This means states, programs, other contracting entities need to take a major role in monitoring quality of service of FEAs and compliance with regulations. Fiscal employer agent as a model of service just has not been around that long. It's been around really since about 1999, 2000, so 14, 15 years which is a long time, but as compared to the traditional provider industry, it's not that long. State and federal tax and insurance regulations can be a challenge so the result here is that in order to ensure that quality is good, and that compliance is maintained, contracting entities, states, programs, really need to make sure they're selecting a good provider and monitor that provider to make sure they're doing a good job.
In FEA, it can actually be difficult for a consumer to transition from being publicly funded or partially in their direct care services to being fully privately funded. The way the I.R.S. has revenue procedures for the FEA model, the revenue procedures are specifically for consumers in part of the publicly funded programs or fully funded programs. In the event that someone goes from being partially or fully publicly funded to being privately funded but they want to keep working with the same FEA and keep the same workers it can actually be something of a sticky transition because of the way the I.R.S. revenue procedures work. It's not impossible. It's done, you know, all the time. But it's not seamless. Another challenge in fiscal employer agent is that since the FEA is not the employer of workers, the FEA is limited in how much direct oversight of workers it can provide. In general the FEA can provide employer skills training to the consumer but cannot provide oversight or control itself. In other words, FEA could help the consumer be an employer, could help the consumer manage their workers but could not really manage the workers himself, itself. This can be a good thing because it means you are not worrying about the FEA jumping in and managing a consumer's employees when really the consumer wants to do that. It can be not a good thing for those consumers who want some of the tasks of -- some of the control and responsibility of managing the workers but not all of them. For example, sometimes we'll learn of consumers who are happy to hire and select and train but don't like giving negative feedback to their employees or don't like firing them. They might like to call on the FEA to do that, to fire them or give negative feedback.
But the FEA really can't do it without itself risking looking like an employer which it does not want to do in this model.
Next slide, please. First question break. We covered a lot of material there. Tim might talk about how to get your questions in but we are open for questions no
>> TIM: Sounds good. So again if you have a question on the telephone, press "star pound"and if on the Webinar, type your question in the chat. We'll keep an eye on the phones and the web and give you all a chance to type those in. Ample time for questions so don't pass up the opportunity. First question comes from Sara. Sara asks. How common are the government F/EAs?
>> MOLLIE MURPHY: Great question. The government F/EAs that's the model when the government entity decides to be the fiscal employer agent and take on these responsibilities itself to delegate these administrative duties to the government. Not very common. It does not happen that often.
There are, off the top of my head, off the top of my head I can think of five instances where that's the case out of about 256 programs, might be more than that potentially but not very much more than that. Really uncommon. Now, if the government F/EA model there is something the entity can do to have it be something of a hybrid and that's where the government F/EA can say we want to be the F/EA. We want the consumer or employer to delegate the responsibilities to us as their agent and we'll do these administrative responsibilities. So they're sort of on the hook technically for doing that.
Then the government F/EA can then delegate that responsibility to a vendor. That is called a government F/EA with a subagent. And so they can delegate those responsibilities to the vendor. Vendor then is also on the hook for doing all the tax filings and doing everything correctly so you have two people on the hook for doing everything appropriately for the consumer. The government F/EA and the government F/EA subagent which is a vendor.
>> TIM: Okay. Again, star pound if you are on the phone or type your question in the chat. I'll give another 30 seconds for you. Sara has a follow-up question, asking if the subagent would also have to be an F/EA.
>> MOLLIE MURPHY: Yeah, the subagent would have to be an F/EA and also operate under the section of the internal revenue code that exists for F/EA, section 35 oh 4 and there's a revenue procedure, 70-6 and 80-4 and really a notice now from the I.R.S., notice 2013-39, super seeds those other procedures I just mentioned although they still apply. It's easier to go to 2013 -- a subagent would have to be an F/EA. I didn't mention it because it adds additional complexity.
Another option the government agent can do is they can be a government agent and would have all this responsibility for being the government agent, I.R.S. is going to see them as operating under Section 3504 and therefore hold that government agent on the hook for tax filings.
Government agent could then hire a payroll provider to do just the payroll portion of their agent responsibilities.
A little later in the presentation we'll get into how F/EA services are more than payroll. So the government entity would still have plenty of responsibilities as a government F/EA but they could subcontract out just the payroll portion to a payroll provider and that would be called a reporting agent. I.R.S. would call that a reporting agent. When we have a government entity acting as government F/EA and then subcontracting out payroll we'd say that's a government F/EA with reporting agent. Normally the reporting agent would be an established payroll company, sometimes it will be an F/EA who happens to also just be serving a role as a reporting agent in this case just doing payroll, not doing everything else. But the entity doing that job would have to do the payroll. They would also have to uphold the specific household employer rules and all of the F/EA rules for the government F/EA so it would not be something where the government entity would be the F/EA and then when they do payroll it would just be payroll as usual. It would still be payroll and F/EA model.
I'll talk more about that later on, too.
>> TIM: Great, thanks, Molly. Okay. We're still pretty early in the conversation here so why don't I go ahead to slide 10. More breaks later in the conversation when we get into more depth so we'll save the time for those.
>> MOLLIE MURPHY: Great. Next slide, models of FMS: As with choice. This is the other type
(Agency with choice)
In agency with choice the agency and consumer have a joint or co-employment relationship of the workers who provide services to the consumer. So we'd say the agency with choice has joint employment or has a co-employment relationship with the workers. The agency is often called the primary employer while the consumer is the managing employer. So in this scenario with agency with choice, the agency would hire the worker and manage all duties related to tax, labor, and workers compensation rules and regulations. The consumer might select a refer and refer the worker to the agency for hire, consumer might participate in training the worker, and have some control over scheduling and dismissing the worker. It's a lot like F/EA but the major difference is that the consumer is a co-employer of the workers rather than common-law employer. That means the agency has a lot of employer responsibility also, not just operating as sort of the agent happened ling the administrative functions for the consumer.
(Handling)
Next slide, please.
In our pink and blue slide here, we see that the employee is in the middle and there are lines from the employee to the FMS provider, an agency with choice, and a line to the consumer. The employee is employed by both of them, both consumer and the FMS provider. It's employed by the consumer for day-to-day management, employed by the FMS provider for kind of final alcohol and management and also for all of the administrative duties. In agency with choice the agency is the primary employer and essentially, usually the final say at any employment related matter. So the consumer has a lot of input, absolutely, but the agency does also as opposed to F/EA where when it comes to the employee, the consumer is really the one making decisions.
Go to the next slide. Talking about benefits of the agency with choice. This can be a great option if you want parts of employer authority or parts of self-direction but you want support with other parts. So it's a good option for consumers who want to choose and schedule workers but do not want other employer responsibilities like hiring, disciplining or discharging workers. Since the agency is employer of workers the agency can provide ample worker-related assistance to consumers. Rather then in the F/EA model where the F/EA really can coach the consumer on how to be an employer, in the agency with choice model, the agency can step in and act like the employer whenever it chooses because the agency is an employer. So if the consumer says my worker just isn't doing a good job, worker is not doing this, this, this, but I don't really want to tell her the agency can jump in and provide feedback to the worker, can help the consumer find another worker if that's what they want to do. The agency can have a much bigger role in worker-related assistance with agencies with choice. It's also a good option with workers who will switch from being at least partially funded or -- to being fully privately funded. I talked before about how F/EA if someone goes from being fully or partially publicly funded to be totally privately funded it's not totally seamless to make that transition because of I.R.S. rules. Those don't exist in agency with choice. If you go from using agency with choice model in a particular provider, with your public funds and then for some reason you lose eligibility and don't have public funds but you want to keep using the same provider and using the same worker, same agency with choice provider and using the same worker you can do that and then just seamlessly start privately paying for those services without there being an Internal Revenue Service to issue.
Great, next slide, please.
Some of the challenges of agency with choice. Unlike the F/EA model the consumer choice and control is not inherent in the agency with choice model. That does not mean it doesn't exist. It often exists and there's lots of consumer choice and control in many, many, many agency with choice situations. But standards and monitoring are a good idea to ensure the agency with choice model remains consumer-directed. Some agencies may have liability concerns about the joint employer relationship. Agency is primary employer but with the consumer ace managing employer the agency cannot always effectively manage the risk without infringing on consumer choice and control so this can be a tough line to walk where the agency has some skin in the game being the employer but the consumer is making a lot of day-to-day decisions and maybe the agency wants to support the consumer to make the decisions he or she wants to make but the agency with some skin in the game also worries about the decisions that might be made that the agency might be liable for. That can be tricky to navigate sometimes. Conflicts of interest can arise for those agencies with choice who both manage budget funds and provide services that consumers could choose to purchase from those budget funds. Technically that could also happen with F/EA although it tends not to because most F/EAs don't also provide services that might be purchased with budget funds but say a consumer has or is an agency with choice and they have an individual budget. And the agency with choice also provides, I don't know, occupational therapy as part of their other business.
We could see situations where the agency with choice is working with the consumer on a regular basis. When the consumer is trying to consider how to use their budget funds for occupational therapy the agency with choice steers the consumer towards getting their occupational therapy from the agency with choice.
To be honest I don't see this happen a lot based on in reality how things tend to be structured but it could happen and is a concern that some have about agency with choice.
Next slide, please. Okay. This is a chart showing in general in each of these models who we might see doing different or having different responsibilities. Each program can be different and may have some variation on who does these responsibilities but this is a common breakdown of responsibilities between F/EA and agency with choice. Who is the employer of workers?
In fiscal employer agent the common-law employer is the participant, the consumer. In agency with choice, we say the agency is the primary employer, consumer is the managing employer, and so the agency is sort of the employer on paper and for other purposes, but the consumer would have plenty of input on employment duties.
Payroll duties. Who is performing payroll? In both these models, it's the hired entity, FMS, so the fiscal employer agent doing the payroll. And the agency doing payroll in agency with choice.
Who is helping to ensure that compliance with employment rules is maintained? Of course the consumer will need to have a role in that to some degree. But the fiscal employer agent and agency in both cases are responsible for the majority of compliance with employment rules.
Who sets the worker rate of pay? This is certainly impacted by program rules but in an I deal ideal situation -- well, in many situations with fiscal employer agent it's the consumer who sets worker rate of pay for fits call employer agent and the agency with participant input sets it with agency with choice. We definitely see variation with this. We see situations where in the state program the rate of pay is set and neat her consumer, or physical agent or agency of choice have any control over the rate of pay. We also see situations in agency with choice where the agency is able to offer the consumer a range of pay rots and the participant or consumer makes the decision themselves.
Who sets the workers' schedules? This is another one where you can have variation. In fiscal employer agent it's just about exclusively consumer or participant who sets the schedule. In agency with choice, there is certainly plenty of agency with choice models where it is absolutely the consumer who is setting the worker's schedule. We like to see that. But as primary employer the agency certainly can set the worker schedule. Whereas in F/EA the F/EA really can't set the schedule as agent of employer. In agency with choice they could if they wanted to.
Who pays for the non-employee goods and who pays for the non-employee services providers? In both models it's FMS provider, fiscal and agency would normally pay for those. You could have other parties make payments but usually it's the fiscal employer that makes those payments. Next slide, please.
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>> TIM: I've clicked over but the Q&A sessions have been quiet and we have another break at fwent so do you just want to go ahead to slide 16.
>> MOLLIE MURPHY: Sounds great. We'll keep on going.
>> TIM: Thanks.
>> MOLLIE MURPHY: This is my FMS is not just payroll slide. I have logos from some of the biggest providers, ADP and Paychex, they and other providers like them are not F/EAs. There are a lot of similarities in duties they provide but they are not the same. An F/EA actually takes on liability under the special section in the Internal Revenue Code. When a payroll company does payroll for another organization they do not take on this liability under this section of the Internal Revenue Code. It's a special section of the code reserved for agents which a payroll company does not become an employer agent when they do their job as payroll provider.
An F/EA performs a variety of services that a payroll company usually does not. An F/EA gets budgets or spending plans or authorizations from the program. They actually get time sheets folks fill out, they compare those to the budgets, they do quite a bit of work in providing customer service to consumers, employees, and family members in a way that payroll companies usually do not. Payroll companies are usually focused on doing payroll portions of the work, doing check-cutting based off of perfect time sheets date they get. Not doing things like comparing time sheets against budgets. Consumers in F/EA are household employers. So they are not regular employers as the I.R.S. would call them, like a non-profit is or a for-profit is or LLC or corporation or even a government employer. They have slightly different tax rules than regular employers. Payroll companies rarely have processes to deal with the household employer rules. Household employer rules are not drastically different than the regular employer rules but they are different enough that they require different processes and they require different controls and off be times payroll companies are not structured to be able to deal with those. So it's important to remember that when you hear F/EA it does not mean it's the same as payroll. It doesn't mean you've done F/EA, we'll just hire ADP or Paychex and now we're doing F/EA. Not the same thing.
Next slide, please. On this slide where you see F/EA, that should actually say AWC for agency with choice. If any of you have this printed out, cross that out and reflect it with AWC.
Agency with choice is also not just payroll. Agency with choice provider is a joint employer of a consumer's employees. Most payroll companies would not ever want to take on the responsibility and liability of being a joint employer with the employers they serve. An agency with choice performs a variety of services that a payroll company cannot or will not.
There are some issues in paying in consumer direction that are quite different than normal payroll. Some are you get time sheets in and you need to compare those time sheets to budgets or the program has a rule that says that a single employee cannot provide service to multiple consumers at once so there has to be controls in the software or process to be able to make sure that for any time sheets that come in we're making sure that employee that is on that time sheet did not also provide service to another employee I'm sorry another consumer at the same time. These are not duties most payroll companies would do in in providing payroll. Agency with choice we do not want to think of that as just payroll either. You are operating as a joint employer and also taking a program in fiscal management role in the programs you are serving.
Next slide, please.
When a program uses the fiscal employer agent model of FMS, consumers or whomever is the designated employer of workers are considered household employers and their workers considered household employees. There are different federal and state tax and reporting rules for household please. There are different rules when you are paying a household plea than when a regular employer is paying their employee. Employers of household employs must come mril with tax regulations different in some areas for those, than those rules for businesses, non-profits, and governments. There are certain aspects of payroll and tax withholding, depositing and withholding, filing, different procedures are required to withhold and remit tax for household employees than regular employees. So because of this some payroll companies just won't manage payroll for household employers because it means they have to change their normal processes to such degree it does not make sense. But I'm seeing this change some as consumer direction gross.
There are some benefits of classifying workers as household. There are higher thresholds for paying unemployment and FICA. There can be exemption from workers compensation but the household employ classification does complicate pal role in that payroll is not business as usual. Because these different procedures are used to pay workers of consumer directing employers, paying is not as simple as integrating them into an organization's payroll process for their office, employees or other employees. . Next slide, please.
All right. So if you take two things away from this week's presentation and last week's presentation I want one of them to be way mentioned last week: FMS is not easy to don't make the decision to start providing it lightly.
I want the other thing you take away if nothing else to be a solution to simplifying FMS is not just paying all the workers as independent contractors. The I.R.S. is quite wise to that, well, solution, and is not a good way or I'm sorry it is a good way to get your and the state you serve's pants fined off. It's really, really risky to decide to pay a bunch of direct care workers or direct service workers in self-direction programs as independent contractors instead of employees. The I.R.S. has determined that in general most workers in consumer-directed programs are employees, they are not independent contractors. You can see this in I.R.S. notice 2003-70. This is really important. I can't count the number of times that I have talked to organizations and they have said oh yeah we'll be the provider but all that paying household plea stuff seems really complex, boy, that's going to be hard to have the systems and processes, we have a solution, we're just gonna pay them all as independent contractors. Not okay.
The funding entity, the state or the program, consumer, and the FMS can be held liable for paying workers as independent contractors when they should be paid as employees. We have had situations where states have been -- states and the FMS providers have been fined huge amounts in backs taxes and penalties for paying as independent contractors when they should be paying as employees. That does not mean there are legitimate contractors in self-direction. There are. There are certainly workers that provide services to consumers in seven direction that really are independent and they meet all the criteria to be them. An example might be if the consumer has environmental modification and they hire someone to in stall a ramp and they hire someone who has expertise in ramp building and they install that ramp quite likely I would almost guarantee that worker is an independent contractor, not an employee, but the problem comes in when you are treating workers that really should be employees and those are often direct service workers, personal care attendants, workers in the home that are doing what the consumer has asked them to do. When they all get paid as an independent contractor, we start to see problems in a lot of risk for the programs
(And a lot)
. All right. Next slide, please. We're up to questions. Any questions?
>> TIM: Thanks, Mollie. Again, star pound if you have a question or type it out in the chat. We'll give y'all about 30 seconds to do so.
(Pause)
One more time star pound if you have a question on the phone or type it in the chat. I don't see any questions yet.
(Pause)
Okay. I'm a little surprised we've gotten into more depth here. We'll have another Q-and-A break before the end of the call so I hope you all will take advantage of that before we break. But since there are no questions I'll go ahead to slide 21 and turn the floor back over to you.
>> MOLLIE MURPHY: Okay great. All right. Let's assume I haven't frightened you off FMS yet, that's good. You're brave and thoughtful. If you are still considering the provision of Financial Management services of course you'll need staff expertise, if you are doing F/EA, doing F/EA, that's the most common model of FMS, you'll need slightly different expertise than if you are dogs agency with choice. If you are doing just F/EA you'll need slightly different expertise than agency with choice. You'll need expertise in payroll and accounts payroll, of course, lot of that as a fiscal employer agent. Because it's fiscal employer agent and the consumer is the common-law employer of workers, you will need knowledge of I.R.S. and statehouse hold employer tax and labor rules. You'll need knowledge of workers' compensation rules, specifically as they apply to domestic or household employees. You'll need someone to understand the rules for operating as an I.R.S. section 3504 agent under revenue procedure 20- -- between-39. Of course you'll need knowledge of the program that you are serving, what that program's rules are that that program wants you to enforce. An example of that, one I gave before, program might have a rule that says a single employee cannot provide service to two consumers at one time. So if any hours of service overlap across two consumers, then that time worked would need to be questioned or followed up on or potentially not paid for a consumer. That's a program rule. Lots of other examples. Another one is any workers that are driving consumers must show proof of a driver's license to the F/EA.
You'll need experience in understanding of consumer individual budgets and allocations and rules that go along with that. If it's a Medicaid program and the program wants you to submit claims for reimbursement then you'll need knowledge of Medicaid billing. You'll need knowledge of fair labor standards act rules and regulations and you'll want someone who can do contract review in the event you'll be holding contracts that you have to uphold and of course you need familiarity with self-direction. Now, any minute we are expecting that the Department of Labor is going to be issuing some subregulatory guidance on what makes a state a joint employer of workers in Medicaid programs. Talked a lot about how in fiscal employer agent the consumer is the common-law employer. Consumer is the common-law employer in the I.R.S.'s view regardless of what happens with the subregulatory guidance expected any minute from the Department of Labor. That is actually talking about who is a joint employer under the fair labor standards act, not with the I.R.S. so you could certainly have a situation where you have a consumer who is the common-law employer for I.R.S. purposes and a state or other entity that is a joint employer with the consumer for fair labor standard acts purposes and that means the consumer has all control we've talked about here under fiscal employer agent but that the state or other joint employer is on the hook for making sure that overtime and minimum wage are appropriately paid. There are other implications, too, but it's beyond the scope of this call. All right. Next slide, please.
If you are considering FMS and you think you might do agency with choice, again you need staff expertise in payroll and accounts payable. The great news here is you need staff expertise in regular payroll and regular accounts payable. You need someone who has done payroll and accounts payable for just about any other business. It doesn't have to be the specific household employer or fiscal employer agent or Section 3504 payroll experience. You need someone who understands joint employment rules and liability because the agency of choice will be a joint or co-employer with the consumer. Of course you need understanding of the program rules again, you need understanding of the consumer individual budget allocations and rules. If you are doing Medicaid claiming or billing you need that understanding. Again, fair labor standards act rules and again contract review. So if you are doing agency with choice, honestly there is still a steep learning curve but it's not as high as if you were doing F/EA.
The reason is in agency with choice the consumers' employees are your employees so the payroll operations for those employees are the same as payroll for your organization now. That means that you don't have to have specialized payroll expertise but you will still need payroll expertise. Great. Next slide.
Let's say you are still considering financial manages services and provision of financial manage services and let's talk about infrastructure. You'll need systems and processes in place to manage enrollment of consumers. If you are doing fiscal employer agent, you will need systems and processes in plate to set up the consumer's or representative, whoever is the employer, as the employer, with you as the agent. Do everything that the program requires for consumers to do in order to be enrolled in the program as a consumer or employer. You will need systems and processes in place to manage the enrollment of workers as employees, to manage the enrollment of vendors who provide service to consumers. If you are doing F/EA, you need processes in place to be able to manage individual payroll and tax accounts so in F/EA each consumer is their own employer. Each consumer has their own FEIN, each consumer has to have record-keeping for their own pay minlts, their own taxes. This is a pretty big deal because most payroll systems are structured as though there is one employer who has many employees. In fiscal employer agent there is one agent who serves many employers and those many employers each have their own employees. So that can be kind of complex.
If you are considering FMS you need systems and processes in place to process time sheets and invoices while enforcing complex program rules so you have to have a mechanism for, for example, making sure that the same employee is not providing service to multiple consumers simultaneously and keeping in mind you might get a time sheet from that employee this week for work from last week and you might get a time sheet from that employee next August for work from last week and you would still need to be able to make sure that on the time sheet from August there wasn't any overlapping time with the time sheet from last week.
The time sheet you got in August for last week there wasn't any overlapping with the other time sheet you got from last week so that can be complex to manage those operations.
Next slide, please. On the systems and processes and infrastructure, you'll also need to be able to manage -- how large a volume depends how large the program is that you are serving but a volume of phone calls and other inquiries. Certainly consumers, family members, employees and others have questions about the program and they will be calling you to ask those questions. To manage if it's a Medicaid program the claiming and remittance if anyone has done Medicaid claiming you know that can seem simple and straightforward but can be a hassle so you need infrastructure to deal with that. To track consumers' individual budgets, including providing reports to consumers, their families, to service coordinators or support brokers or case managers about a consumer's individual budget and how it's been spent so far and what remains.
Next slide, please.
Perhaps the least fun thing to talk about that you'll want to consider if you are considering providing financial management services, you'll need capital. You'll need money. Often in FMS, payments must be made by the FMS provider to the consumer's employees before the FMS provider is reimbursed for that.
Let me talk about what that means. Say a consumer has an employee, employee provides services, they complete that on a time sheet, they submit the time sheet to you. FMS provider. You now have to pay the employee within the time frame established by your state's payday rules or payday laws. So usually it's something like employees have to be paid every two weeks and they have to be paid within seven days of a properly completed time sheet. So you have to then pay the employee with some kind of funds and then after you have paid the employee, you then seek to get reimbursed from the Medicaid provider. You have this on -- this happens across the board for many consumers you are serving so you are making these payments for consumer services before you get reimbursed by the Medicaid provider or agency for making those payments. So depending on how long it takes Medicaid agency to pay you, you may have even made several rounds of payroll before you got reimbursed which means you have to have access to money to be able to pay those employees even before you get reimbursed.
Now, it's not always the case that is the flow, that you have to have money on hand to pay the employees and then seek reimbursement. There are certainly programs that provide accounts that have the program funds in it and you actually make payments from those accounts and you don't have to seek reimbursement. That exists. There are also programs that will provide advances where they will advance the funds so you have working capital to make payments and then you also seek reimbursement so you are able to have funds on hand to make the ongoing payments.
Depending on how big the program is that you are serving, in order, if it's a program where you do have to make payments and then seek reimbursement you may require access to hundreds of thousands, to potentially tens of millions of dollars of capital. Tens of thousands, hundreds of thousands, to sometimes millions and tens of millions, you need access to, depending on the size of the program. This can be a really serious barrier to entry for FMS, for would-be FMS providers.
Next slide, please. So when organizations decide not to pursue providing FMS, where they decide to get out of providing FMS, the general reasons are those on these slides. This slide, of course there can be other reasons, too, but these are the reasons I think are the most common and most generalize sabl. First is what I mentioned, capital. Having cash on hand to pay for services before you get reimbursed by Medicaid. That's probably the biggest barrier to entry. How will we have 100,000 on hand to pay these employees and then we have to week a wait a week to get reimburses or wait two weeks to get reimbursed that 100,000? That's the biggest barrier to entry probably.
Another big barrier is software, managing complexity of budget rules. If you are doing F/EA, managing complexity of household payroll and enrolling participants in these programs, that means demand for complex software. That can be something of a barrier to entry. I would say of these 3, that's the smallest barrier to entry. Next is getting experience. This is a chicken and egg problem, buyers of FMS often want to work with experienced FMS providers. But it's difficult to get experience without having experience already. You can have trouble getting FMS contracts when you have not already been providing FMS
That's why we liken it to the chicken and egg. Certainly of the barriers the biggest are the capital requirements. If you are able to land a program that does not have those capital requirements, either they give you funds to make the payments or they give you access to a program account to make payments, that is certainly a good situation because you don't have to worry about the access to capital and the immense costs of capital and then seeking reimbursement.
Next slide, please. Other considerations, legal risk. You are having a role in being an employer or co-employer of these workers. You are dealing with Medicaid funds if you are serving a Medicaid program, you are dealing with other public funds and that program. You are dealing with HIPAA data because usually consumers are receiving these services as part of a long-term care service and therefore it qualifies under HIPAA.
So you are working in an area where there is a lot of regulated data and a lot of regulations that you have to comply with. You are talking about employment law. Medicaid, public funds. HIPAA. So lots and lots of rules and regulations to navigate and therefore there is legal risk.
Often large you up-front investments required where you to have spend time and money to get the work toshtion write a proposal, to otherwise try to get the work. You have to develop staff who can do the project who can do the operations. You have to invest in software. There is work to be done there that can have large upfront investments and not necessarily guaranteed revenue which we'll talk about. Great. Next slide.
We'll talk about one of the upsides, revenue. There are many different payment mechanisms in FMS. One is used most often so I'll discuss that one first. Direct cost, let's see, usually FMS is paid for in the following way. FMS provider as I described before is reimbursed directly for consumer services. Say we have please provides services and the employ submits a time sheet such that the employee would earn $150. On that $150, say there's $25 in employer tax costs and then say $4 in worker's compensation costs. So for the services of the employee provided the total cost would be $179 to the consumer's budget or for the consumer. That's the cost of paying the employee, tax costs and worker's compensation cost. FMS provider would submit a claim for those costs so in this example it's $179. The idea behind that piece where if there's consumer services and cost loaded into it is FMS is reimbursed directly for those costs. Then the FMS provider is paid for their own services with a per member per month mechanism or per consumer per month mechanism where the FME provider in being able to employ the employee $150 and file all taxes and get the paycheck and answer the consumer's question, they have plenty of work that are not in the wages to the employee or tax costs or workers' comp. FMS provider is doing a whole lot and they ought to be compensated. That is done in a per member per month mechanism. The average per member per month right now we're seeing in the U.S. is about $90 a month so each consumer that an FMS provider serves, program pays FMS provider $90 per month for serving that provider. Now, there is a range there. And depending on what the provider is asked to do, the FMS provider may be paid more or less. The $90 is F/EA and agency with choice, we see a broader range of reimbursement rates of PMPM with agency with choice than we do with F/EA but the average is about $90 per month. Usually, this is not always the case but aside from the per member per month fees there are not other -- such as startup fees or lump sum payments. That's not always the case. There are mechanisms. Sometimes there are other revenue approaches where you are being paid for your services in a different way but the per member per month is the most common. Next slide, please.
We'll do back in the envelope calculations to get the point across. Imagine you serve a program that has 50 consumers a month in year 1, won00 in year 2 and 200 a month in year 3, you would have 54,000 of revenue, this is at the average rate of $90 a month per consumer which could certainly be different depending on the program you serving but if we use that, $54,000 216,000 in year 3 so the total revenue from the three-year contract would be about $378,000. Using the example of the $90 an hour -- not $90 an hour but per consumer per month. The national average right now. Next slide, please. PMPM can vary. Volume of consumers served cab vary. What you do is can vary very much program to program. Something of a Catch-22. If you are just starting out, there are many reasons why you want to start with a small volume of consumers while you determine how to perform. If you have a smaller volume you are not getting run over by the operations while you figure out exactly how you want to approach operations. But it can be hard to have funds for the investment in your operations with a small volume of consumers served. So something of a Catch-22 of what sized program to start with when you are going to start a program.
Next slide, please.
Other benefits. Aside from the revenue, one of the biggest I think is for sill was opportunity to weave independent living philosophy and benefits into self-direction. Self-direction is supposed to be all about independence and having organizations provide FMS that understand that so well and understand how to support that so well. I think is a really major benefit of CILs providing FMS.
Programs benefit from CIL expertise on consumers directing their lives and services. Rather than me go on and on I would definitely when we get to the question piece be interested in hearing these from the audience so if you can think of other benefits of providing FMS I would sure love to hear those. Next slide, please.
Next steps if you are considering providing FMS. Talk to sills who do it. On the last meeting I talked about two CILs who I know who do it really well. One is Stavros, and another is northeast center in Pennsylvania. I know there are others who do it. I would expect they do it well because they've had their contracts for a long time. If anyone is on the phone and wants to offer to talk to other organizations about it certainly it would be welcomed. Explore this website participantdirection.org, that's the national resource center for participant-directed services and there are sections there on financial management services, lots and lots of information there on Financial Management services. It's good to read as much as you can before you jump in with both feet.
Consider a service like FMS Turbo, a subject describe shown service made available for FMS providers and people interested in it to get updates usually two to three times a month of the latest regulatory changes, to get information on best practices, impact self-direction. It's provided by my company actually which is AnnKissam, sites like government bids. There are other government RFP aggregator websites other than government bids, I don't particularly like one of them more than another but I gave governmentbids as the example where you can identify RFPs and other bid opportunities. To red up on what's required, and you can see what these RFPs look like and what programs are asking for, so you can look at those to think about whether or not you would want to do this before you even bid. Then of course consider the possible capital requirements. If you were to pursue a program that required you to make payments and then seek reimbursement, would you have the capital to do that or the access to capital? Great. Next slide, please. Other next steps. Talk to your leadership about managing FMS operations. Is this something which the organization has interest and skills? As you learn more about FMS operations consider how you perform them within an organization. Review software packages, keep an eye on opportunities, develop relationships so managed care organizations seeking FMS providers that can be a good place to develop relationships, often Medicaid managed care self-direction Medicaid managed care starts with smaller programs than some of the other. Check out veteran-directed HCBS in your area. That can be good to follow, they also start small and then get bigger. Keep an eye on RFPs and RFQs and so you can see those that come out and consider whether or not you might like to respond.
Next slide, please. All right. So we're at our final question-and-answer phase. I also put up some links here. These have lots of great information. I'm happy to help if people have questions. There's my e-mail and my cell phone number and I'll open it up for questions.
(Pause)
>> TIM: Thanks, Molly. So I'm sure you all remember at this point I will still say it if you have a question, press "star pound" on the phone. You could type your questions in the chat as well.
One question came in during the last section. Gloria asks, if you have any information or suggestions for software to use?
>> MOLLIE MURPHY: That's a good question. It depends on exactly for what. There's not a lot of product software out there. If you are looking at payroll, and you are just talking about the payroll side of things, there are some I have seen some organizations manage to use quick books to do payroll. I have seen some use a product called Accufund to do payroll in this. Then I have seen plenty of organizations build their own payroll system to do this. There is one payroll provider that if you wanted to do
(QuickBooks rr)
If you wanted to do everything else except for payroll you could outsource just payroll to this payroll provider because they are really good at handling household employer rules and regulations and tax filings. They are called pay choice not to be confused with Paychex but called paychoice, and if anyone is interested in their contact information shoot me an e-mail and I can provide that.
For other software my company, Annkissam provides software, that's a big part of our business so we are certainly happy to help. Then after that, I'm actually not terribly aware of a lot of other providers that focused on FMS. I have seen many when they are just starting out FMS do really well with managing the data in Excel and access while they get started and work out how they want to approach their business and approach the operations and managing data and then after they have got a little bit of volume and their processes worked out then they seek a software solution that will fit for them.
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>> TIM: Good tips. Thanks, Mollie. All right. Well, I'm very surprised as we got into more depth here with revenue, reimbursement and the different models that we haven't had more questions. So at the end of this two-part series don't be shy if there are things you're wondering about. I'm sure Mollie can answer them. We have plenty of time here, too.
(Silence)
While we're waiting to see if anyone has additional questions I'll just like last time remind you that you are welcome to reach out to me as well with any questions that you would like for me to forward. If you don't have Molly's e-mail mine is Tim@ ncil.org. Fits related to content I'm happy to pass it along to Mollie or about the program I'll get back to you.
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(Silence)
I'll keep an eye on that chat while I start to wrap up the call. Don't be shy, we'll make sure to take it before we break. Here on slide 33 is the evaluation form. This is just for Part 2. So please do fill this out. If you are participating in a small group today, that's great but do fill it out individually, please.
Just the project information for new community opportunities center on slide 36. Well, folks, I'm surprised there aren't more questions but fair enough, Molly, you did an excellent job of making this simple to understand so I suppose that's what I'll assume.
>> MOLLIE MURPHY: I hope so!
>> TIM: Yeah. And but really, folks, this is complex and I understand that as some of you consider taking this step and work through issues with your board or staff, origin to respond to RFPs you may have questions and we welcome them.
Maybe that is the issue, if your questions won't arise for several weeks or several months please don't hesitate to reach out to us, we are here to help.
With that, Molly I want to thank you for a wonderful job. This and the past Wednesday. Really enjoyed hearing from you. Lucia, thank you for your support as well. And thanks to all of you for joining the series and we hope to hear from you all soon. Have a wonderful afternoon, bye-bye.
>> MOLLIE MURPHY: Thanks so much, honor to be her
>> TIM: Bye