

Q and A
KDADS Response to Questions from Financial Management Services (FMS) Providers
November 30, 2015

1. Question: Please address and provide documentation from your discussion with the United States Department of Labor (DOL) that our current Vendor Fiscal model eliminates the risk of FMS providers or the State being considered joint employers.

Answer: The Kansas Department for Aging and Disability Services (KDADS) and the State of Kansas will not receive this level of feedback from the DOL. Each FMS provider and Managed Care Organization (MCO) is encouraged to consult with its attorney and perform its own legal review of the issues.

2. Question: FMS providers have addressed concerns that participants/consumers must be allowed more oversight. Current State guidelines, policies, and procedures show strong indicators the state may be a joint employer.

Answer: It is the State's position the self-directing participant/consumer is the sole-employer. Over the past year, the State has worked to revise and update the Agency with Choice model to the new Vendor Fiscal/Employer Agent (F/EA) model together information and assistance. Policies, procedures and guidelines are currently under review. A timeline for the release of updates, changes, and revisions is provided at the end of this Q and A.

3. Question: KDADS' website currently states that "The Agency with Choice FMS is the employer option model Kansas is making available to individuals who reside in their own private residences or the private home of a family member and have chosen to self-direct their services." (FMS Facts found on website www.selfdirect.ks.gov). However, the FMS Manual that went into effect in April, 2015 states that "Kansas operates a hybrid model between the Agency with Choice FMS model and the Vendor Fiscal Employer Agent (F/EA) model of financial management services."

Answer: The website containing the language referenced in the question –www.selfdirect.ks.gov– was last updated in 2011. The website has been removed. The FMS Manual, dated April 10, 2015 contains the most recent policies and procedures applicable to FMS providers. As indicated, Kansas operates a hybrid Fiscal/Employer Agent (F/EA) model together with information and assistance.

4. Question[Concern expressed]: Policies and procedures for grievance (FMS Manual, page 8-7) and power point from July training on KDADS website.

Answer: FMS providers are to provide information and assistance to participants/employers. Part of that role includes information concerning employee grievance policies.

5. Question: Concerned State will require FMS providers to pay for Direct Service Workers (DSWs) travel between participants/consumers.

Answer: Providers and participant/employers must comply with state and federal requirements however, pay for travel will not likely be an issue because a self-directing participant/consumer is a sole-employer.

6. Question: The State/KDADS has set the range for the rate of pay (FMS Manual 8-3) and FMS providers allege this rate is not sufficient for participant/consumer control (who is employee ultimately economically dependent upon) based on information provided at national settings.

Answer: The State/KDADS does not agree with this statement. The participants/consumers have the discretion to set the rate of pay from the range provided.

7. Question: Required use of Electronic Visit Verification (EVV) system.

Answer: The State/KDADS implemented the use of the EVV system (Authenticare) to aid the State in its oversight obligations as required under CMS regulations. The system assists with detection and prevention of Medicaid fraud and misuse of federal and state funds.

8. Question: How can FMS providers enforce the 40 hour work week without becoming the co-employer?

Answer: The FMS provider is required to provide information and assistance to the self-directing participant/employer about FLSA requirements so that the participant/employer can make scheduling decisions.

9. Question: How can a participant/consumer living in a rural area comply with over-time regulations if there are not sufficient DSWs?

Answer: A participant/employer who has concerns about his/her care should consult with his/her Managed Care Organization (MCO). The MCO will ensure the member's plan of care continues to meet their needs.

10. Question: How will reimbursement rates be adjusted for the payment of over-time?

Answer: Payment for services is based on the participants needs specified in the plan of care. Additional information concerning reimbursement rates and residual funds is contained within the 2016 FMS agreement.

11. Question: What, if any liability does the MCO have?

Answer: The State/KDADS cannot answer this question. As previously stated, each FMS provider and MCO will need to consult with its attorney and perform its own legal review of the DOL issues.

12. Question: Will the State consider switching the plan of care from units to dollar amounts?

Answer: Yes, the State will always consider FMS provider suggestions and requests. However, the current model does not provide authority to switch the plan of care from units to dollar amounts.

13. Question: Until background check policy is finalized, FMS providers seek additional guidance, regarding what background checks are required, when to start on new hires, when are current employee background checks required, and when are providers obligated to conduct annual checks?

Answer: General information concerning background check requirements and process is posted on the KDADS website. The background check policy completion date is specified below. For additional information see:

[http://kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-educational-summits/hcbs-provider-updates-policy-training-july-2015](http://kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-educational-summits/hcbs-provider-updates-policy-training-july-2015);

Section 6201(a) of the Affordable Care Act- Pub. L. 111-148;

Section 6401(a) of the Affordable Care Act-Pub. L. 111-152;

42 C.F.R. Part 455 subpart E.

14. Question: FMS providers would like to find out more information about “enhanced care services.”

Answer: For more information concerning enhanced care services, please reference the “Proposed changes to Kansas HCBS Programs” document located at <http://www.kdads.ks.gov/docs/default-source/CSP/HCBS/specific-proposed-changes-to-kansas-hcbs-programs-open-for-public-comment.pdf?sfvrsn=2>.

FMS providers can also view the specific amendment for IDD, PD, FE, and TBI at the following location: [http://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-program-renewal-information](http://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-program-renewal-information). Click on the waiver amendment application for the respective program area.

15. Question: FMS providers cannot fully implement the FMS manual without receiving clarification regarding, enhanced care services, the EVV system, and criminal background checks.

Answer: KDADS has identified policies impacted by DOL requirements as high priority for review and revision including: Enhanced Care Services, PCS and PCS limitations, EVV policy, and the FMS and KMAP manuals for all HCBS programs. We expect all applicable policies and updates to be completed as specified in the timeline

16. Question: There are inconsistencies between the FMS manual posted on KDADS website, dated April 10, 2015, and the KMAP manual posted on KDHE’s website, dated September 2015.

Answer: The FMS manual posted on KDADS website, dated April 10, 2015 is the most current version of the procedures applicable to FMS providers. Updates and consistency review and revisions are underway for the FMS and KMAP manuals as listed on the timeline below.

17. Question: Will KDADS consider updating the FMS manual to pay DSWs even though authorization isn’t in Authenticare?

Answer: Yes, KDADS/the State will always consider FMS provider suggestions and requests. However, at this time, FMS providers may not pay DSWs without receiving prior authorization within Authenticare.

18. Question: FMS providers request that standards and indicators be provided in order to be in compliance.

Answer: FMS provider requirements are contained within the FMS Agreement, FMS Manual and applicable policies. KDADS does not have a policy concerning “standards” or “indicators”.

19. Question: FMS providers are concerned that in virtually all past reviews and audits, the audit team was not familiar with FMS and not adequately prepared to review programs.

Answer: KDADS does not agree that the audit team was not familiar or adequately prepared to review FMS providers and programs. The audit teams are trained and familiar with the FMS manual and FMS provider programs.

Updates, changes, or revisions to the following guidelines, policies, and procedures are anticipated to be posted to the KDADS website within the following timeline:

- **Background check Policy:** On or before 2/1/2016.
- **Authenticare updates:** On or before 1/21/2016.
- **KMAP Manual:** On or before 12/15/2015 (FMS); 1/1/2016 (all program manuals)
- **Enhanced Care Services Policy:** On or before 1/1/2016.
- **FMS Manual:** On or before 1/1/2016.