

Draft Suggested MaineCare Specifications

Fiscal/Employer Agent to Help MaineCare Members Manage Community Support Services

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Disclaimer

This document is not a formal proposed rule. This document was prepared for the Fiscal/Employer Agent Work Group for informal discussion and feedback from interested parties. This document does not represent a commitment from the Maine Department of Human Services to propose such a rule.

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01. DEFINITIONS

01-1. Agreement means a written document executed by a state agency administering community support services and an FEA.

01-2. Community support services means MaineCare and State-funded home- and community-based long term support services, including those formerly known as Medicaid waiver services.

01-3. Employer means the person who employs a support worker. In a member-directed benefit program, the employer is the member except when a guardian or surrogate has been formally designated to carry out the member’s employer responsibilities.

01-4. Fiscal Employer Agent (FEA) means an organization that acts as an agent to members who employ their own support workers. The FEA provides administrative and payroll services including, but not limited to, withholding, filing and paying federal and state employment taxes and insurances, preparing payroll, processing and paying invoices from suppliers for goods and services and ensuring compliance with state and federal tax, labor and MaineCare program requirements.

01-5. Guardian means a person who has been appointed by a court to exercise specified decision-making responsibilities for a member.

01-6. IRS means the federal Internal Revenue Service.

01-7. Member means a person who receives community support services funded by the MaineCare program.

01-8. Member-directed Benefit means a benefit controlled by a member, guardian or surrogate. The member, guardian or surrogate decides how and when the member receives the benefit by hiring, training, managing and discharging support workers, and by selecting other goods or services.

01-9. Support Broker means an organization or individual working on behalf of and under the direction of a member to help identify, direct, and evaluate services and supports. A support broker assists a member to:

- A. Define support needs;
- B. Gain access to information and services;
- C. Identify paid and unpaid service providers and supports;
- D. Participate in the development of service plans and personal budgets;

and

- E. Evaluate services and supports and make changes as needed.

01-10. Support Worker means a person who is paid to provide personal assistance and community support services provided under a federal Medicaid waiver. Support worker includes, but is not limited to, a person who provides personal assistance, supported employment, housekeeping and meal preparation.

01-11. Surrogate means a person designated by a member or legal guardian to perform specific functions on behalf of the member which may include, but are not limited to, interacting with an FEA. A guardian may be a surrogate.

02. ELIGIBILITY

A member is eligible for FEA benefits when all of the following are met:

1. The program providing community support services to the member includes FEA as a covered service;
2. The member or surrogate has selected and meets the program-specific criteria for receiving member-directed benefits; and
3. The member meets all other applicable MaineCare eligibility requirements.

03. GENERAL PROVISIONS

03-1. Duration. The member may receive FEA benefits for as long as the member continues to meet the eligibility requirements specified in 02.

03-2. Member Choice. If more than one FEA is available, a member may choose an FEA from among those available. A member may terminate an FEA benefit provider. Any program that includes an FEA option must adopt program rules about member choice and termination of FEA service.

03-3. Single Benefit. A member may access only one FEA benefit at any given time.

03-4. FEA Honors all Requests for Service. An FEA must provide benefits to any member who is eligible for FEA and requests them, with the following exceptions:

A. An FEA may close its services to all new members if it has reached its operating capacity and has informed the MaineCare program that it is no longer accepting new members; or

B. An FEA may terminate an individual member for cause, as specified in rules of the member's community support services program.

03-5. Agreement Supplements Rules. The agreement between an FEA and a state program agency may include additional requirements but may not diminish any of the requirements contained in these rules.

04. FEA SERVICES

The FEA acts as an agent of the employer in accordance with Section 3504 of the federal Internal Revenue Service code and Internal Revenue Service Revenue Procedure 70-6 in matters related to the employment of support workers and purchase of other support services or goods.

04-1. Customer Service. The FEA must be able to communicate effectively with members who have a wide variety of disabilities. The FEA must have a Customer Service System that includes:

- A. A toll-free number;
- B. TTY line;
- C. Internet/e-mail communication;
- D. Foreign language and American Sign Language capabilities;
- E. Materials available in alternative formats needed by members such as, but not limited to, large print;
- F. A method for receiving, responding to and tracking complaints from members and support workers within 48 hours.

04-2. Information and Orientation for New Members. The FEA must provide new members and support workers with standard information and an orientation to FEA services that includes, but is not limited to:

- A. FEA services brochure;
- B. In-person orientation session;
- C. A member enrollment packet which includes, but is not limited to:
 - 1. Introductory letter;

2. A description of FEA services, hours of business and key contact information;
3. Member contact information including emergency contact information;
4. Member rights;
5. IRS Form SS-8, *Determination of Employee Work Status for the Purpose of Federal Employment Taxes and Income Tax Withholding* for members to use if they believe a support worker may qualify to be an independent contractor;
6. Semi-completed IRS Form SS-4, *Application for Employment Identification Number*, for signature;
7. Semi-completed IRS Form 8821, Tax Information Authorization Form, to obtain tax information on behalf of members;
8. Semi-completed IRS Form 2678, *Appointment of Agent*, for signature;
9. Semi-completed state tax and unemployment insurance registration form;
10. Semi-completed State Unemployment Insurance Form granting FEA authority to act as an employer agent of the member (if required);
11. Semi-completed state New Hires Form;
12. An agreement to be signed by the member that lists the role and responsibilities of the member, surrogate or guardian, support worker, FEA and state program agency; states that the member understands each party's role and responsibilities, and states that the member agrees to abide by the policies and procedures of the FEA and the state program agency;
13. An Authorized Surrogate Designation Form signed by the member's surrogate that lists the role and responsibilities of the surrogate related to the member and the FEA and any limitations, states that the person agrees to be the member's surrogate and will abide by the policies and procedures of the FEA and state program agency;
14. An agreement to be signed by the member and the support worker stating that the member is the support worker's employer, the support worker has the necessary knowledge, skills and experience to meet the member's support service needs and has received orientation and training sufficient to meet the member's needs;
15. An agreement to be signed by the member's back-up support worker that lists the back-up worker's role and responsibilities, times available and any limitations, and states that the person agrees to be the member's back-up support worker;
16. Instructions for the completion of all forms;
17. Information about recruiting, hiring, training, managing and discharging support workers;

- D. A support worker employment packet which includes, but is not limited to:
1. Introductory letter;
 2. An employment application;
 3. Bureau of Citizenship and Immigration Services Form I-9, *Verification of Citizenship and Alien Status*;
 4. IRS Form W-4, *Employee's Withholding Allowance Certificate* with instructions and completed example;

5. IRS Form W-5, *Earned Income Credit Advance Payment Certificate* with instructions;
6. A confidentiality policy;
7. Grievance procedure for disputes between members and their support workers;
8. Payroll schedule indicating the days when worker timesheets are due at the FEA and the days when the FEA will issue support workers' paychecks;
9. Payroll time sheet with instructions;
10. Instructions for the completion of all forms; and
11. An agreement to be signed by the support worker that lists the role and responsibilities of the member, support worker, FEA and state program agency; states that the support worker understands the roles and responsibilities; and understands and agrees to abide by the FEA's and state program's policies and procedures.

04-3. Payroll Services. The FEA acts as a fiscal agent for each member in accordance with Section 3504 of the IRS code and IRS Revenue Procedure 70-6. The FEA must:

- A. Obtain IRS and state approval to be an Employer Agent;
- B. Obtain authorization from the state unemployment insurance agency for the limited purpose of managing unemployment taxes for each member;
- C. Prepare and file IRS Form SS-4, Application for Employer Identification Number, and obtain separate FEIN for the sole purpose of filing IRS forms 941, Employer's Quarterly Federal Tax Return, W-2, Wage and Tax Statement, and W-3, Transmittal of Wage and Tax Statement, as an Employer Agent;
- D. Prepare and file IRS Form SS-4, Application for Employer Identification Number (FEIN), and obtain an FEIN for each member;
- E. Assist members in verifying support workers' citizenship/legal alien status by verifying social security number with the Social Security Administration and completing the Bureau of Citizenship and Immigration Services Form I-9;

F. Ensure that wages paid to support workers are in compliance with federal and state labor laws;

G. Compute, withhold, file and deposit federal Medicare and Social Security (FICA) and federal income tax as required by law. In carrying out this function, the FEA must:

1. Use IRS Form 941 or its successor forms;
2. File quarterly in the aggregate for all members represented using the employer agent's separate FEIN; and
3. Deposit FICA and federal income tax withholding in accordance with IRS depositing rules.

It is recommended that the FEA withhold, file and deposit federal and state income taxes for workers even when federal and state tax rules make this optional for domestic service workers.

H. Refund over-collected FICA withholding to support workers and employers (or state) when support workers do not earn the FICA wage threshold for a particular calendar year;

I. Compute, withhold, file and deposit federal unemployment taxes (FUTA) individually for each member annually using the member's FEIN to match state unemployment tax (SUTA) filing process. The FEA must:

1. Use IRS Form 940, 940 EZ or successor forms;
2. File annual IRS Form 940, 940 EZ or successor form for each member the FEA represents; and
3. Deposit FUTA in accordance with IRS rules.

J. Refund over-collected FUTA withholding to employers (or state) when employer's support workers in the aggregate do not earn the FUTA wage threshold for a particular calendar quarter in the current or previous calendar year, as necessary;

K. Manage Federal Advance Earned Income Credit;

L. Compute, withhold, file and deposit state income taxes individually;

M. Compute, withhold, file and deposit state unemployment insurance taxes (SUTA) individually and refund over-collected SUTA to employers or State as necessary;

N. Apply judgments, garnishments and levies to workers' paychecks, as applicable;

O. Prepare and file IRS Form W-2, Wage and Tax Statement in accordance with current IRS instructions for agents;

P. Prepare and file IRS Form W-3, Transmittal of Wage and Tax Statements, annually in the aggregate in accordance with current IRS instructions for agents;

Q. Retire a member's IRS Form 2678 and IRS Form 8821 when the member is no longer an employer represented by the FEA;

R. Retire a member's FEIN and state tax registration number(s), and terminate federal and state tax filings when the member is no longer an employer;

S. Carry out any other payroll and tax function necessary to ensure compliance with federal and state laws and program rules;

T. Process payroll from timesheets signed and submitted by support workers and members and ensure payment within one week of the end of each payroll period, with payroll issued at least every two weeks;

U. Provide members and support workers with timesheet forms and pre-addressed, pre-stamped envelopes for signature and submission; and

V. Assist members in determining the wage and hour categories with respect to minimum wage, overtime pay, and taxes due for each support worker.

04-4. Workers' Compensation Insurance Coverage. The FEA must advise members about their obligations and options for compensating support workers in the event of a work injury. In carrying out this provision, the FEA must:

A. Explain coverage available through individual standard workers' compensation insurance policies and home owners' or tenants' insurance policies; and

B. Broker worker's compensation insurance coverage in some form on behalf of members and assure payment of worker's compensation insurance premiums. The FEA must attempt to negotiate volume discounts with insurers to make individual policies as affordable as possible to members.

04-5. Invoices. The FEA must process and pay authorized invoices within 2 weeks of the FEA's receipt of the invoice; and

04-6. Criminal Background Checks. The FEA must ensure that community support services program rules regarding criminal background checks for support workers are met. The FEA must conduct Maine criminal background checks for any member that requests them, regardless of program rules.

05. ADDITIONAL FEA REQUIREMENTS

05-1. Data. All data generated by the FEA is the property of the state. The FEA must:

A. Provide to state agencies access to all member and support worker records in a format specified in the agreement. If the FEA stops providing services, all data and member records must be transmitted to the state upon request;

B. Generate standardized reports for state agencies and members as specified in the agreement;

C. Comply with all state and federal laws and regulations relating to confidentiality and security of data, including the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA);

D. Maintain all member and support worker records for 5 years; and

E. Have a disaster recovery plan for computerized data.

05-2. Program Materials. The FEA must develop and maintain a policies and procedures manual that reflects the philosophies of member direction and self determination. The FEA must develop and maintain orientation materials and all forms necessary to carry out its functions.

05-3. Budget Accountability. The FEA receives information regarding each member's individual budget from an entity designated by the state program agency. The FEA must ensure that payroll and other payments made on behalf of a member do not exceed the member's individual budget.

05-4. Surrogates. If a surrogate has been designated in writing, the FEA must interact directly with the surrogate, but remains the agent of the member.

05-5. Current Federal and State Policy and Procedures. The FEA is responsible for monitoring federal and state policy and procedures and modifying its procedures as needed.

06. RELATIONSHIP TO OTHER PARTS OF SYSTEM

An FEA operates as part of Maine's community support services system. The FEA must have clear and effective procedures for communicating with other organizations in the system. The agreements that an FEA enters into with State agencies will specify the nature of the relationship between the FEA and other organizations which may include, but are not limited to health care coordinating agencies, case managers, support brokers and needs assessment organizations.

07. FEA CAPACITY AND QUALIFICATIONS

07-1. General Qualification. An FEA must qualify to serve as a fiscal agent for each member in accordance with Section 3504 of the IRS code and IRS Revenue Procedure 70-6.

07-2. Statewide Capacity. An FEA must have capacity to offer its services to members in multiple state programs statewide.

07-3. Disability Experience. An FEA must have demonstrated experience working with members with disabilities.

07-4. Member Input. An FEA must have a process for regularly receiving input from members and surrogates and using the input to improve its operations.

07-5. Readiness Review. Before receiving final approval as an FEA, an applicant must complete a readiness review process to the satisfaction of the state. The readiness review process will be developed by state agencies and may include submission of written materials and an on-site review by state agencies or their designated agents. The readiness review will address the requirements contained in these rules and in agreements. If the state determines that the FEA is not ready to provide services, it may, at its option, work with the FEA to prepare a plan of readiness and conduct a second review at a mutually agreed upon time. The state may place a moratorium on readiness reviews when existing FEAs provide adequate capacity for statewide delivery of FEA services.

08. QUALITY ASSURANCE

Members will have access to existing state quality mechanisms, including the Long Term Care Ombudsman Program and the Adult Protective System. In addition, quality assurance specific to FEA services will be undertaken jointly by the state agencies that enter into agreements with the FEA. Quality assurance mechanisms may include, but are not limited to, the following:

1. An on-site review of services and records approximately six months after the FEA begins providing services, and annually thereafter;
2. Member, surrogate and support worker satisfaction surveys, which the state may ask the FEA to conduct or which the state may conduct through other agents;
3. Home visits, phone calls, or other means of monitoring services; and
4. Data analysis, including outcomes analysis.

09. PAYMENTS

09-1. Operating Fees. Payment rates for FEA operating fees will be established by each state agency and specified in agreements. Payment rates may be different across state programs, based on differences in the agreements negotiated by the agencies, but all payments for operating fees must be based on a fee per member per month.

09-2. One-time Covered Costs. At its discretion if funds are available, a state agency may provide one-time funding to an FEA to develop a policies and procedures manual, member enrollment packet, support worker employment packet, computer software and an FEA services brochure. If a state agency offers one-time funding, it will be included in the agreement.

09-3. Community Support Services Costs. The agreement will specify standards for timeliness of state reimbursement to the FEA for the costs of community support services, including wages of support workers and invoices.