

Pennsylvania Association of Resources
Autism • Intellectual Disabilities

1007 North Front Street
Harrisburg, PA 17102
Phone 717-236-2374
Fax 717-236-5625

May 16, 2008

Mr. Kevin Casey, Deputy Secretary
Office of Developmental Programs
Department of Public Welfare
P.O. Box 2675
Harrisburg, PA 17105-2675

Via email: ra-ODPComment@state.pa.us (Subject: Vendor Fiscal/Employer Agent)

Re: Comments on the Draft Bulletin “Vendor Fiscal/Employer Agent Financial Management Service” (VF/EA FMS)

Dear Mr. Casey,

As you know, the Pennsylvania Association of Resources for Autism and Intellectual Disabilities (PAR) is a statewide association whose members provide the full range of supports and services to more than 45,000 individuals with intellectual disabilities as well as 8,000 people living with autism in over 5,600 residential locations as well as non-residential and in-home supports.

Following is a summary of PAR’s main issues regarding the draft bulletin “Vendor Fiscal/Employer Agent Financial Management Service”:

- Costs and New Service Definitions
- Important Unaddressed Tasks
- Training and Support
- Uniform Statewide Policies and Procedures
- Compliance
- Workers Compensation, Wages and Dispute Resolution

In addition to these main issues, we also offer these general comments. Many consumers, or their surrogates, have never been employers of record. Moreover, these consumers and their representatives may lack the necessary skills to recruit, interview, select, train, hire, supervise,

manage and terminate their employees, if necessary. While some consumer/employers may be proficient in some of these tasks, PAR believes that many self-directing individuals will need assistance with some or all of these activities. Moreover, it is well-known that finding and retaining direct service workers and having sufficient back-up workers to manage a suitable coverage plan can be extremely difficult. There needs to be a responsible party available to provide supports and services when workers are sick, are taking vacation, do not report, or suddenly quit without notice. In order to provide service continuity, consumers and their surrogates need support and assistance in these critical areas and the draft Financial Management Service (FMS) document does not address these concerns. Importantly, the state-wide FMS is clearly not responsible for supports coordination activities or maintaining a roster of potential workers to be hired by consumer/employers. There is no call center or 24 hour emergency contact system for consumers to obtain support. A system without these essential support elements will not provide the continuity of assistance necessary.

PAR's detailed comments and recommendations follow:

Costs and New Service Definitions

Section:

April 17, 2008 letter transmitting the draft bulletin "Vendor Fiscal/Employer Agent Financial Management Service."

Discussion:

The April 17, 2008 letter transmitting the draft bulletin "Vendor Fiscal/Employer Agent Financial Management Service" acknowledges that:

- "There are some outstanding issues related to the creation and approval of new service definitions that are currently in the development stage,"
- "These service definitions, if approved by the Centers for Medicare and Medicaid Services (CMS), will support the training time and cost associated with training for the support service workers and the administrative costs associated with becoming the common law employer," and
- "We are not able to provide details on those service definitions at this time but wanted to assure you we are attempting to address these issues."

PAR appreciates that ODP is aware of these important issues related to supporting the training time and costs related to training support service workers as well as administrative costs related to becoming the common law employer. PAR looks forward to having an opportunity to review and comment on these service definitions.

Recommendation: Continue to work on these key service definition issues and reach out for comments from stakeholders, including providers, when the definitions are developed. A workable resolution related to supporting the training time and costs related to training support service workers as well as administrative costs related to becoming the common law employer is critical. PAR will comment when ODP releases these service definitions.

Important Unaddressed Tasks

Section:

Draft Bulletin, pages 5 and 10-14.

Discussion:

Pages 5 and 10-14 of the draft bulletin list the tasks of the FMS; however, the listed tasks do not include the following activities currently provided including:

- Assisting the consumer in managing Workers Compensation claims.
- Processing Unemployment Compensation claims and assisting consumers with hearings, appeals and disputes.
- Handling wage verifications.
- Maintaining a grievance and appeals process and local Advisory Committees consisting of service recipients.
- Monitoring consumer satisfaction.
- Providing communication supports through TTY, toll-free telephone and web site.
- Providing safety information and training to maintain a safe work place.
- Developing and maintaining instructions on safe transfers and special use of Durable Medical Equipment.
- Managing a verification process for goods and services included in the ISP.
- Managing individual participants' budgets and sending monthly statements of YTD spending to all stakeholders.
- Providing ongoing orientation and training support to consumers, surrogates and direct care workers.

It is imperative that ODP decide who will perform these critical tasks and communicate this information in the bulletin and other collateral materials, such as the training curriculum.

Recommendations:

- **Make decisions about who will perform the enumerated tasks.**
- **Communicate this information in the final bulletin and other collateral materials, such as the training curriculum.**

Training and Support

Section:

Draft Bulletin, pages 8-10 and 19.

Discussion:

Page 8 of the draft bulletin states that, "The FMS must fully orient and inform an individual's surrogate of their rights and responsibilities in performing this role and in using FMS services." Given the complexity of the scope of activities, regulations, and responsibilities encompassed by this draft bulletin, this orientation and information process will be critical to the success of self-direction in Pennsylvania. Moreover, the individuals and surrogates involved are a diverse lot with diverse levels of knowledge and skills.

This draft bulletin does not adequately address the training and support needs of these individuals and surrogates.

Likewise, this draft bulletin does not adequately address how these immense training and support needs will be met. A strong curriculum will need to be developed, vetted, and tested. Additionally, methods for verifying employer competency will need to be developed and implemented. It is imperative that a well-designed training and support plan be developed, tested, and offered to employers and their families to ensure that they can succeed in this challenging new environment. In short, if ODP is to succeed in orchestrating this complex process change, ODP must invest heavily in a well-designed change management process.

Pages 9 and 10 of the draft bulletin list a series of over 20 tasks under the clause, "As the common law employer, the individual or his or her surrogate assumes full and legal responsibility to. . ." Again, however, this draft bulletin does not adequately address the training and support needs of these individuals and surrogates. These new employers will need both significant training and necessary support to perform these essential tasks. Informing people about their new roles will not suffice— training, assistance and support must be made readily available so that individuals and surrogates can successfully perform in their new roles.

Finally, page 19 of the draft bulletin addresses "Supports Coordination Entity Responsibilities" and training and support are critical here, too. While it seems that Supports Coordinators are to provide information on the self-direction process they do not furnish direct support. Moreover, it

also seems that Supports Coordinators will have responsibilities such as service coordination and assistance to employers. Clearly, service coordination assistance is essential to the success of this program. While Supports Coordinators have a limited role, they must be adequately trained so that they can assist consumers and surrogates in making informed choices. The draft bulletin should address how they will be trained for their critical role.

Recommendations:

- **Assess the training and support needs of individuals and surrogates and develop an adequate training and support plan to help them meet the demands of their new roles and responsibilities.**
- **Assess the training and support needs of Supports Coordinators and develop an adequate training and support plan to help them meet the demands of their new roles and responsibilities.**
- **Offer a call center or develop an emergency contact system for consumers to obtain help and support 24 hours a day and 7 days a week.**

Uniform Statewide Policies and Procedures

Section:

Draft Bulletin, pages 17-18.

Discussion:

On pages 17-18 of the draft bulletin, under County Program Responsibilities, there is a list of items that requires the counties to develop a wide variety of policies and procedures that:

- impact Supports Coordination entities,
- validate employer status,
- provide tracking,
- perform monitoring, and
- take corrective action.

Counties are also responsible for developing safeguards and procedures that reflect ODP policies. PAR is concerned that safeguards and procedures be developed in a uniform way by individual counties across Pennsylvania to ensure consistent application of ODP's policies across the state. This statewide consistency is necessary to conduct uniform FMS services with one statewide vendor. Moreover, while we spell out the need for training and support in our comments, above, we reiterate here that it will be critical for employers in each county to receive adequate training on the relevant county safeguards and procedures.

Recommendations:

- **Ensure that safeguards and procedures are developed in a uniform way by individual counties to ensure consistent application of ODP's policies and procedures necessary to conduct uniform FMS services with one statewide vendor.**
- **Ensure that employers in each county receive these uniform safeguards and procedures.**
- **Provide training for counties, administrative entities, and employers on these uniform safeguards and procedures.**

Compliance

Section:

Draft Bulletin, page 19.

Discussion:

An array of federal, state and local rules and regulations apply to household employers and their fiscal agents. Unfortunately, this section of the draft bulletin on page 19 provides no information about the compliance process. At a minimum, the draft bulletin should address compliance authority and frequency for monitoring the FMS contractor, Administrative Entities, Supports Coordinators, and the records of household employers. It is well understood that this constellation of rules and regulations is as critical as it is complex. Given the criticality and complexity of this array of compliance requirements, ODP should provide strong guidance and training on this important issue.

Recommendations:

- **Provide clear, easy to understand guidance on complying with the array of federal, state, and local regulations.**
- **Offer training on regulatory compliance.**

Workers Compensation, Wages and Dispute Resolution

Section:

Draft Bulletin, page 20.

Discussion:

Page 20 of the draft bulletin discusses the Individual Support Plan; however, it is not at all clear how Workers Compensation and the employer's share of taxes and fringe benefits are included in the budgeting process. ODP needs to clarify how the cost of Workers Compensation premiums will be added to the budget and how increases during the year for these costs will be used to re-budget. Likewise, ODP needs to clarify how Workers Compensation rebates for unused premiums are to be processed and, also, how this is to be handled in the budgeting process. ODP also needs to address what entities are responsible for ensuring that wage payments to workers or contractors are made in a timely fashion in cases when individuals/surrogates exceed approved hours or services and are responsible for payments in excess of authorized funding limits. Moreover, ODP must spell out how disputes in this area will be managed and clearly assign responsibility for dispute resolution.

Recommendations:

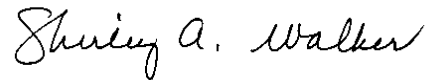
- **Clarify how Workers Compensation and the employer's share of taxes and fringe benefits are included in the budgeting process.**
- **Clarify how the cost of Workers Compensation premiums will be added to the budget and how increases during the year for these costs will be used to re-budget.**
- **Clarify how Workers Compensation rebates for unused premiums are to be processed and how this is to be handled in the budgeting process.**
- **Address what entities are responsible for ensuring that wage payments to workers or contractors are made in a timely fashion in cases when individuals/surrogates exceed approved hours or services and are responsible for payments in excess of authorized funding limits, spell out how disputes in this area will be managed, and clearly assign responsibility for dispute resolution.**

While the draft bulletin supports the goals and values of self-determination and participant-directed services, the overall system design is highly complex and it lacks essential coordination and support. Assessing training and support needs, developing and testing training and support systems, and implementing these systems statewide are all critical. Moreover, it is important to note that the administrative and coordination responsibilities of a state-wide FMS provider have been significantly diminished but also that the system supports coordination and administrative burden has been shifted to Supports Coordination and Administrative Entities.

Successful participant-directed services require a continuum of highly coordinated technical support services, delivered continuously and seamlessly by entities that are highly trained with well-defined roles and integrated communication systems. In summary, the fragmentation and lack of coordination of the FMS system outlined in this draft bulletin falls short of meeting the needs of consumers and families who struggle with managing their homes, careers and special circumstances and the FMS services described in this bulletin will increase the burden on consumers and their families.

PAR encourages ODP to work to decrease the burden on consumers and their families by addressing the recommendations identified in this paper. As always, we appreciate the opportunity to offer our assistance and experience.

Sincerely,



Shirley A. Walker
President and CEO