

## **Bureau of Developmental Services (BDS)**

### **PDMS Guidance – January 2023**

The following guidance is for all developmental service<sup>1</sup> providers in NH providing service under Participant Directed and Managed Services (PDMS) method of service delivery. BDS supports the utilization of the PDMS service delivery method to offer greater flexibility and choice to individuals and their families in accessing supports and services. Given the flexibility in the PDMS model, there are considerations to ensure no conflict is present in service delivery. This guidance provides an overview of known scenarios in which PDMS services may be rendered and identifies instances of conflict that must be mitigated. Case management entities or Area Agencies should contact BDS for situations outside of this list if concern for conflict arises.

#### **Definitions:**

**Conflict of Interest Requirements:** Under federal conflict-free case management requirements, a case management entity cannot also provide direct service to the same individual.

**Participant Directed and Managed Services (PDMS):** A method of service delivery whereby the individual, representative, or family directs and manages services outlined in the service agreement.

**Fiscal Management Services (FMS):** Fiscal Management Service assists an individual with a self-directed budget by processing and paying invoices for goods and services, tracking and reporting the budget's disbursements and balances, collecting timesheets and processing support workers' payroll, withholding, and filing of applicable federal, state and local taxes, providing periodic reports of expenditures and the status of the participant's budget, and performing other fiscal duties. The FMS is billed as an administrative activity not as a waiver service.

In NH, the only entities that are allowed to provide Fiscal Management Services (FMS) are the ten Area Agencies.

**Budget Authority:** The individual has decision-making authority over a budget for waiver services including but not limited to: distribution of funds among services, wages for direct support professional, reviewing and approving invoices for services and authorizing payment for other goods and services.

**Employer Authority:** The individual has the authority to recruit, hire, supervise, and direct the staff.

**Co-Employer:** When the FMS (Agency with Choice model) and the individual share employment responsibilities.

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<sup>1</sup> Developmental Disabilities Waiver (DD), Acquired Brain Disorder Waiver (ABD), In-Home Supports Waiver (I H S)

**Guidance regarding Conflict of Interest**

Listed below are models, based on inquires the Department has received regarding the interpretation of conflict of interest with the provision of PDMS.

**Scenario 1:** Fiscal/Employer Agent (F/EA) Model

Example: Direct Support Professional (DSP) is employed by the family, case manager is employed by other entity = **allowed**

DSP and Case manager are employed by the family = **not allowed**

The individual (or a representative of their choosing) is the employer of the DSP they hire. The individual or representative of their choosing has 100% employer authority over the DSP and must comply with all Department of Labor (DOL) and Internal Revenue Services (IRS) requirements. The case manager cannot be employed by the same entity as the DSP, in this case, the individual or representative entity.

Under the Fiscal/Employer Agent model responsibilities include, but are not limited to:

FMS Role
• Serves as agent to employer
• Disburse funds
• Process payroll and related taxes
• Employee processing
• Employee background & registry checks
• Invoice processing
• Workers compensation processing
• Ensures DOL & IRS compliance
• Processes IRS Form W2 for DSP

Individual / Representative Role
• Hold employer authority
• Comply with DOL and IRS requirements
• Hire / terminate / train DSP
• Hold Limited Liability Corporation (LLC) designation

**Scenario 2:** Agency with Choice Model (AwC)<sup>2</sup>

Example: The Area Agency as the FMS employs both the DSP and case manager. Individual/family holds co-employer authority over the DSP with Area Agency. Individual/family has no employer authority over the case manager. = **allowed (conflict free)**

The same service provider employs both DSP and case manager; the service provider holds sole employer authority over both staff. = **not allowed**

Separate service providers employ the DSP and case manager. = **allowed (conflict free)**

The FMS entity (Area Agency) may employ the case manager and the DSP because the FMS entity does not hold sole employer authority over the DSP, but rather have a co-employer relationship with the participant or representative. In addition, an individual or representative of their choosing may choose to

<sup>2</sup> [Agency with Choice: A Review of Key Components](#)

[Agency with Choice: Key Components for Practical Implementation while Maintaining Participant Choice and Control](#)

contract out a portion of the individual’s budget to another service provider. The individual or representative has no employer authority over that particular service/DSP because the individual or representative has delegated it to another service provider. That service provider cannot also provide case management services to the same individual.

Under the Agency with Choice model responsibilities include, but are not limited to:

FMS Role	Individual / Representative Role
<ul style="list-style-type: none"> <li>• Hold joint employer of record</li> </ul>	<ul style="list-style-type: none"> <li>• Hold joint employer of record</li> </ul>
<ul style="list-style-type: none"> <li>• Disburse funds</li> </ul>	<ul style="list-style-type: none"> <li>• Serve as "Managing Employer"</li> </ul>
<ul style="list-style-type: none"> <li>• Process payroll &amp; related taxes</li> </ul>	<ul style="list-style-type: none"> <li>• Recruiting &amp; referring staff to AwC</li> </ul>
<ul style="list-style-type: none"> <li>• Employee processing</li> </ul>	<ul style="list-style-type: none"> <li>• Establishing work schedule(s)</li> </ul>
<ul style="list-style-type: none"> <li>• Employee background &amp; registry checks</li> </ul>	<ul style="list-style-type: none"> <li>• Day-to-day employee management</li> </ul>
<ul style="list-style-type: none"> <li>• Invoice processing</li> </ul>	<ul style="list-style-type: none"> <li>• Setting wages</li> </ul>
<ul style="list-style-type: none"> <li>• Workers compensation processing</li> </ul>	<ul style="list-style-type: none"> <li>• Worker evaluations</li> </ul>
<ul style="list-style-type: none"> <li>• Ensures DOL &amp; IRS compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Hire / terminate / train DSP</li> </ul>
<ul style="list-style-type: none"> <li>• Process IRS Form W2 for direct support workers</li> </ul>	<ul style="list-style-type: none"> <li>• Contract with another service provider for direct support (as needed)</li> </ul>
<ul style="list-style-type: none"> <li>• Hire / terminate / train DSP</li> </ul>	

**Scenario 3:** Agency with Choice Model with Agency Management

**Participant Directed and Managed Services under the In-Home Supports Waiver only:**

Example: Separate service providers employ the DSP and case manager. = **allowed**

DSP and Case Manager are both employed by the Area Agency (FMS), and the Area Agency (FMS) holds full employer authority over both positions. = **not allowed**

Under this model, the individual, or a representative of their choosing, chooses to delegate their budget authority to the FMS (Area Agency) to manage all of the individual's DSP(s). The individual/family selects the FMS (Area Agency) entity responsible for staffing and program oversight. The individual/family may recommend a DSP but does not set the rate of pay nor do they manage their schedule, hire, supervise or formally dismiss their DSP(s).

Individual/family has no employer authority because the family has delegated it to an FMS (Area Agency). The DSP may not be employed by the same entity as the case manager in this model.

Under the Agency of Choice Model with Agency Management responsibilities include, but are not limited to:

<b>FMS Role</b>
• Serves as agent to employer
• Disburse funds
• Process payroll and related taxes
• Employee processing
• Employee background & registry checks
• Invoice processing
• Workers compensation processing
• Ensures DOL & IRS compliance
• Processes IRS Form W2 for direct support workers
• Provides back up staffing as needed
• Manages pool of direct support workers
• Serve as "Managing Employer"
• Recruiting & referring staff to AoC
• Establishing work schedule(s)
• Day-to-day employee management
• Setting wages
• Worker evaluations
• Hire / Fire / Train DSP

<b>Individual / Representative Role</b>
• Select FMS entity to manage all responsibilities