

Vendor Fiscal/Employer Agent Financial Management Services

COMMON LAW EMPLOYER/SURROGATE AGREEMENT FORM

I understand that "Participant Direction" means that the individual or their surrogate has the ability to exercise decision-making authority over some or all of the individual's supports and services authorized in the Person-Centered Individual Support Plan (ISP). The individual participant or surrogate elects and accepts the responsibility for self directing or managing those supports and services and is, therefore, recognized as the "Common Law Employer."

Name of Participant (please print) \_\_\_\_\_  
(Participant Name)

Address: \_\_\_\_\_  
(Number) (Street) (Unit/Apt)  
\_\_\_\_\_  
(City) (State) (Zip Code)

Cell phone: ( ) \_\_\_\_\_ Home phone: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Will the participant have a surrogate acting as the Common Law Employer? YES NO  
(Circle One)

If yes, complete the information below:

Common Law Employer/Surrogate name \_\_\_\_\_  
(Common Law Employer/Surrogate Name)

Address: \_\_\_\_\_  
(Number) (Street) (Unit/Apt)  
\_\_\_\_\_  
(City) (State) (Zip Code)

Cell phone: ( ) \_\_\_\_\_ Home phone: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

## Requirements:

Common Law Employers and surrogates are responsible for working collaboratively to ensure:

- Individuals receive high quality services.
- Individuals receive needed support services from qualified workers.
- Services are provided in accordance with the guiding principles of self-determination, state and federally funded program requirements and in accordance with the approved and authorized ISP.

*I recognize that my involvement in this program as a Surrogate and/or Participant Common Law Employer is contingent upon the participant's enrollment in the Participant Direction Services Program (PDS). If the participant is no longer in the Waiver or the PDS Program, my involvement under this agreement will end. I further acknowledge I have received and understand the orientation, training, and written information provided to me regarding the use of self-directed support services under the Medicaid Waiver. I understand my role as a "Common Law Employer" of qualified Support Service Workers (SSWs) and how to work with Acumen Fiscal Agent (AFA) who is the contracted statewide Vendor Fiscal/Employer Agent Financial Management Services organization (VF/EA FMS). I understand that AFA will make payments on my behalf including required payments for mandatory employment benefits such as Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), Unemployment Compensation and Workers Compensation for workers and for approved and authorized services in accordance with the ISP budget.*

You must meet the following requirements to become a Common Law Employer:

- Be at least 18 years of age or older.
- Must not have been convicted of a felony or a crime that would disqualify you from becoming the Common Law Employer. A list of the disqualifying crimes can be requested by contacting AFA.
- Participate in all required training sponsored by the Office of Developmental Programs (ODP) and AFA.
- Sign all agreements with ODP and the VF/EA FMS organization related to the VF/EA FMS option.
- Agree to perform all the tasks outlined in Policy Section A of the VF/EA FMS Bulletin 00-08-14.
- Agree to work with the Supports Coordinator (SC) to develop and revise the individual's ISP as needed and required and participate in the required ISP monitoring.

## Responsibilities:

As the Common Law Employer, the individual or his or her surrogate assumes full and legal responsibility to:

1. Enroll with AFA and complete all the state, federal and program-required paperwork found in the AFA start-up packet.
2. Recruit, interview, hire and train only qualified Support Service Workers (SSWs). Ensure that all employees meet the requirements to provide support services to the consumer and are qualified to provide the services they are hired to provide.
3. Complete and submit to AFA the SSW Qualifications Form on all SSWs. This form is located in the Employee folder of the AFA start-up packet.
4. Validate and ensure that vendors and small unlicensed providers selected meet the qualification criteria outlined in the approved Waivers.
5. Negotiate the wage and benefit allowance for the Support Service Workers within the established wage ranges and rates and report the wage and benefit allowance, if applicable, to the Supports Coordinator and AFA. (The wage must be developed in accordance with federal and state Department of Labor & Industry rules and regulations.)
6. Determine the work schedule of his or her Support Service Workers up to a maximum of 40 hours per week, based upon the approved and authorized ISP.
7. Determine the tasks to be performed by his or her Support Service Workers, including how and when service-related tasks are to be performed in accordance with the authorized ISP.
8. Orient and train his or her Support Service Workers. No additional training can be prescribed or provided unless identified as needed in the ISP or required to meet the provider qualifications criteria, such as training required to obtain liability insurance coverage. If training is required to meet qualification criteria, written confirmation from the insurance agent is required. This information must be documented and submitted to AFA and kept in the individual's file.

9. Develop emergency back-up plans for coverage of Support Service Worker hours. Responsible to complete the Emergency Back-Up Qualified Support Service Worker Designation Form for each qualified worker, vendor and small provider who is willing and able to provide coverage during emergencies. The form can be found in the PA Guide for your use and records. This completed form must be forwarded to the AFA for their records. The signed copies will be maintained in the AFA file and copies will be provided to the individual or their surrogate, the Administrative Entity (AE) or county program, and the individual's Supports Coordinator as requested. The Common Law Employer must maintain their own confidential files for this information.
10. Ensure all outcomes for waiver services are documented by Support Service Workers or Common Law Employer as required in Bulletin 00-07-01, *"Provider Billing Documentation Requirements for Waiver Services."* Although this bulletin refers to Providers or organizations, the same requirements outlined in this bulletin apply to waiver services rendered by individuals providing waiver services (Support Service Workers) through AFA. The Office of Developmental Programs recommends the same documentation occur on outcomes and progress for base-funded individuals.
11. Review, approve and sign timesheets and payment requests to ensure accuracy.
12. Submit Support Service Worker's timesheets, and all other invoices, to AFA for processing in accordance with the published payment schedule found in the AFA start-up packet and in accordance with Labor & Industry standards.
13. Submit payment requests for only those services approved in the ISP and in accordance with the ISP initial and current budget. I understand that if I allow services to be rendered in excess of my approved and authorized ISP services and budget, I will personally be responsible for payment of those services.
14. Manage the day-to-day tasks performed by Support Service Workers, and document services in accordance with Bulletin 00-07-01 regarding progress notes that can be found in the PA Guide.
15. Dismiss Support Service Workers for just cause and notify AFA and the SC immediately of the dismissal.
16. Track utilization of services in accordance with the approved and authorized ISP and contact AFA with any questions.
17. Notify the SC of any changes in need that require a change to the ISP.
18. Notify AFA when the individual or their surrogate suspects or is aware of any issues of Medical Assistance fraud or financial abuse related to the use of ISP funds.
19. To cooperate with my Supports Coordinator in completing supports coordination monitoring at the minimum frequency outlined in the Consolidated or Person/Family Directed Support (P/FDS) waivers.
20. Report incidents to the SC as required in Bulletin 6000-04-01, *"Incident Management."*
21. Respond to surveys regarding satisfaction with AFA.
22. Participate in all required training offered by ODP and AFA.
23. Not cause work to be performed and expect payment through the PDS program before all the required paperwork, including any and all background checks, have been completed.
24. I understand that if I am no longer able to act as the employer, I may be assisted to select a surrogate or another model of service management and that I will fully cooperate with any transition plan so the needs in the ISP continue to be met.
25. I understand that AFA will establish and maintain current participant/surrogate and Support Service Worker files in a secure and confidential manner as required by federal and state rules and regulations and as the Common Law Employer or surrogate I will do the same.
26. I hereby acknowledge that I have received, read, and understand the following information:
  - ODP and PDS program policies and procedures
  - Individual Support Plan
27. I understand and acknowledge that any untruthful submission of services provided in an attempt to obtain improper payment is subject to investigation as Medical Assistance Fraud. Medical Assistance Fraud is a felony and can lead to substantial penalties and/or imprisonment.

By signing below, I attest that I have read this "Common Law Employer/Surrogate Agreement" in its entirety (four pages). I understand that I must sign and return the first and last page as a condition of the program and that I cannot begin enrollment in the Self-Directed Services program until this form is completed and returned to Acumen Fiscal Agent. I further attest by signing below that I understand what is being required of me and agree to abide by its terms and conditions. I further understand and agree that violation of any of the terms and/or conditions of this agreement may result in termination of this agreement.

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*(Common Law Employer/Surrogate)*

*(Signature)*

*(Date)*

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*(Common Law Employer/Surrogate)*

*(Print Name)*

*(Date)*