

DEPARTMENT OF DEVELOPMENTAL SERVICES

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TDD 654-2054 (For the Hearing Impaired)
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**NOTICE OF PROPOSED EMERGENCY ACTION****SUBJECT: FINANCIAL MANAGEMENT SERVICES REGULATIONS**

The Department of Developmental Services (Department) is proposing to adopt emergency regulations affecting voucher recipients by requiring the use of a Financial Management Services provider under Participant-Directed Services when these services are funded with federal financial participation through Medicaid programs. As a new service in Title 17, California Code of Regulations (CCR), it will have new service codes, new service descriptions for financial management services and rate-setting provisions.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency action to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, the Department will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

Attached to this Notice is the specific regulatory language of the Department's proposed emergency action and Finding of Emergency.

You may also review the proposed regulatory language and Finding of Emergency on the Department's website at the following address:

<http://www.dds.ca.gov>.

If you have any questions regarding this proposed emergency action, please contact Jeffrey Greer at (916) 654-2201.

"Building Partnerships, Supporting Choices"

FINDING OF EMERGENCY

These regulations are being adopted on an emergency basis for the immediate preservation of the public peace, health and safety, and general welfare, within the meaning of Government Code, Section 11346.1(b).

DESCRIPTION OF THE FACTS THAT CONSTITUTE THE EMERGENCY

Section 4648.12 of the Welfare and Institutions Code (WIC) (Stats 2011, C.9; SB74, § 11, eff. March 24, 2011) and Section 4688.21 (Stats 2011, C. 37, §19; AB104, § 19, signed by the Governor on June 30, 2011) provide the authority for the Department of Developmental Services (Department) to promulgate emergency regulations specifically for implementing proposals to meet federal requirements applicable to vouchered services and continue federal funding participation for these services.

AUTHORITY AND REFERENCE

Authority: Sections 4405, 4648(a), 4648.12(c)(1)(B), 4688.21, 4690, 4690.1, and 4690.2, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), 4690, 4690.1, Welfare and Institutions Code; 42 U.S.C. Section 1396n(c) (section 1915(c) of the Social Security Act).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, the Department offers voucher services to consumers and/or to their families. In order for the Department to continue to receive federal funds for respite, day care, nursing, and transportation services, these services, when provided to participants in the Home and Community-Based Services (HCBS) Waiver, must be offered in conjunction with the use of a Financial Management Service (FMS) provider. These services are known as Participant-Directed Services. The Department proposes to amend Sections 50604, 54355 and 58543, and add Sections 58883, 58884, 58886, 58887 and 58888 of Title 17, of the California Code of Regulations (CCR), to add Participant-Directed Services for eligible participants. Regional centers will be required to identify and vendor, under new service codes, providers who have the ability, skills and knowledge to carry out the responsibilities of the FMS provider, which include but are not limited to: assisting a family member or adult consumer in verifying worker eligibility status; collecting and processing timesheets of workers; processing payroll, withholdings, filing and payment of applicable federal, state and local employment-related taxes and insurance; performing billing payments and reimbursements as authorized; and maintaining all source documentation related to the authorized service(s). New service codes will be added to existing service codes to identify when these services are used in conjunction with the Financial Management Services and the rates of reimbursement for these services.

Section 50604(d)(3)(E)

Proposed change will add the phrase “or participant-directed services, as described in California Code of Regulations, Title 17, Section 58884 (a)(1)” to require vendors to maintain records relating to these new services in addition to existing record maintenance requirements.

Section 54355(i)

Proposed new section will require consumers receiving services funded with federal financial participation through Medicaid programs or their vendored family members who currently procure their own services of day care, nursing, respite, and transportation services, to be vendored pursuant to the new participant-directed services, effective October 1, 2011.

Section 58543(a)

Proposed change will add the new participant-directed transportation service to be included in the standard rate schedule.

Section 58883

Proposed new section will effectuate the usual meaning of words unless the definition or context indicates otherwise, defines the use of grammatical tense and grammatical number, and the use of “shall” and “may”.

Section 58884

Proposed new section will add definitions for the new participant-directed services.

Section 58886

Proposed new section will add general requirements for participant-directed services including basic guidelines and requirements for service providers and new service codes related to these services.

Section 58887

Proposed new section will add basic guidelines and requirements for vendors of financial management services (FMS) related to participant-directed services, including descriptions of the duties, related new service codes for FMS vendors, the FMS fiscal/employer agent and FMS co-employer, and basic payment parameters.

Section 58888

Proposed new section will add basic provisions for rate-setting and reimbursements for the participant-directed services and the FMS, including rate guidelines for the new service codes.

LOCAL MANDATE AND FISCAL IMPACT DETERMINATIONS

The Department has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) significant costs or savings to any state agency, 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, 4) other nondiscretionary costs or savings imposed on local agencies, or 5) costs or savings in federal funding to the State.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 1 - General Provisions
Subchapter 6 - Service Provider Accountability
Article 1 - General Provisions

§50604. Service Provider Record Maintenance Requirements.

(a) Service providers shall maintain financial records which consistently use a single method of accounting. These financial records shall clearly reflect the nature and amounts of all costs and all income. All transactions for each month shall be entered into the financial records within 30 days after the end of that month.

(b) Subsection (a) shall apply to residential facilities for the purposes described in subsection (c), day programs, transportation companies, and other non-medical service providers which provide ongoing services to regional center consumers on a regular basis each month, except that the following service providers shall be exempt:

(1) Residential facilities in which regional center consumers represent less than ten percent of the total consumers served by the facility during the last 12 month period.

(2) Residential facilities in which regional center consumers represent more than ten percent of the total consumers served by the facility; however, no Departmental funds are received for the care and services provided to those consumers.

(c) Subsection (a) shall apply to residential facilities not exempted pursuant to subsections (b)(1) and (2) only for the following purposes:

(1) To facilitate residential cost studies performed by the Department or authorized agency representative;

(2) To ensure that staffing schedules in conformance with staffing level requirements, if any, are supported by payroll records and source documents;

(3) To ensure that revenue and cost information are available to support administrative overhead allocations of parent organizations, if applicable; and

(4) To ensure that revenue and cost information are available to support intercompany transactions with affiliate or commonly-owned organizations, if applicable.

(d) All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program. Service records used to support service providers' billing/invoicing shall include, but not be limited to:

(1) Information identifying each regional center consumer including the Unique Consumer Identifier and consumer name;

(2) Documentation for each consumer reflecting the dates for program entrance and exit, if applicable, as authorized by a regional center.

(3) A record of services provided to each consumer. The record shall include:

(A) For the purchase of medical equipment and/or supplies, and/or other merchandise, the date of the purchase, name of the entity/individual from whom the equipment, supplies, and/or merchandise is purchased, the item(s) purchased, and the cost of each item; or

(B) For transportation services, the dates of service, city or county where service was provided, and the number of miles driven or trips provided; or

(C) For community-based day programs, the dates of service, place where service was provided, the start and end times of service provided to the consumer, and the daily or hourly units of service provided. For community-

based day program services provided solely in natural environments, the city and county where service was provided shall be reported as the place where service was provided. For community-based day programs whose services are provided at the facility only or at both the facility and in the community, the street address of the facility shall be reported as the place where service was provided; or

(D) For all other services, the date, the start and end times of service provided to the consumer, street address where service was provided, and daily or hourly units of service provided.

(E) For goods and/or services purchased utilizing a voucher or Participant-Directed Services, as described in California Code of Regulations, Title 17, Section 58884(a)(1), in addition to the information specified above, the name of the actual provider of the goods and/or services. For services provided by an individual selected by the consumer or family member, the date of birth, social security number (or a copy of any document accepted by the federal government which establishes identity and employment eligibility which has been compared to the original by the vendored family member and declared under penalty of perjury to be a true and correct copy), address, and telephone number of the individual who actually provided the service must also be maintained.

(F) For contracts reimbursed based on units of service other than as specified above, units of service shall also be maintained pursuant to (A), (B), (C), or (D) above, as applicable.

(e) All service providers' records shall be supported by source documentation.

(f) Nothing specified in this section shall be construed as superseding other record maintenance requirements set forth in statute or regulation.

Authority cited: ~~Chapter 157, Statutes of 2003; and Sections 4631(a)(2) and 4648.2, and 4648.12(c)(1)(B)~~, Welfare and Institutions Code.

Reference: Sections 4631, ~~and 4648.1~~, and 4648.12(c), Welfare and Institutions Code.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 2 - Vendorization
Article 3 - Vendor Numbers and Service Codes

§54355. Vouchers.

(a) A regional center may offer vouchers to family members or adult consumers to allow the families and consumers to procure their own diaper/nutritional supplements, day care, nursing, respite, and/or transportation services. When vouchers are issued they shall:

- (1) Be used in lieu of, and shall not exceed the cost of services the regional center would otherwise provide; and
- (2) Be issued only for services which are unavailable from generic agencies.

(b) The regional center shall provide prospective voucher recipients with information to assist them in determining liabilities they may incur by participating in a voucher program. Information provided shall include, but need not be limited to:

- (1) Identification of the following areas of potential impact:
 - (A) Impact of vouchers on Supplemental Security Income (SSI) and/or other benefits;
 - (B) Voucher recipient's status as an employer and employer responsibilities;
 - (C) Impact of vouchers on personal taxes;
 - (D) Potential increase in insurance needs; and
 - (E) Voucher recipient's responsibility for worker's compensation; and
 - (F) Voucher recipient's responsibility to withhold and pay the appropriate Federal, State and local taxes; and

- (2) Identification of the appropriate agency(ies), including the Internal Revenue Service and the Employment Development Department, which the voucher recipient may contact to obtain information and/or technical assistance regarding the areas of potential impact specified in (1)(A) through (F) above.

- (3) The requirement to maintain records for at least 5 years, pursuant to Section 50604 (d)(3)(A) through (E), as applicable.

- (4) The requirement to submit to the regional center on form DS 1811, Respite Services Billing Form (7/04) data as specified in (A) through (O) below with billings/invoices for the billing period:

- (A) Name and Unique Client Identifier (UCI) number of consumer receiving respite service;
- (B) Vendored family member name;
- (C) Vendor number;
- (D) Vendor address;
- (E) Vendor phone number;
- (F) Date of service;
- (G) Address where respite services were provided;
- (H) Start and end times of service provided;
- (I) Number of hours respite worker worked;
- (J) Amount billed to the regional center;
- (K) Name of respite worker, agency or facility used;
- (L) Respite worker's social security number or any document pursuant to Section 50604 (d)(3), if individual worker is used;
- (M) Respite worker's address, if individual worker is used;

(N) Respite worker's phone number, if individual worker is used; and

(O) Respite worker's signature, if individual worker is used.

(5) The requirement of the vendored family member to sign, with original signature, and date Form DS 1811 (8/04), which includes a certification that the information provided on the form is true and correct, and that the person signing the form is the only person who employed, supervised, and assigned duties to the respite worker(s) listed on the form, in addition to having read and followed all respite service program requirements and the terms and conditions pursuant to Title 17, Sections 50604 (a), 50604(d), 54326(a)(10), 54355(b)(1) through (3), 54355(g)(4)(B) 54355(g)(4)(C)1. and 54355(g)(4)(C)2.

(c) If a family member or adult consumer accepts a voucher to procure their own service, the regional center shall assist the consumer or family member, as appropriate, in identifying providers of services and supports.

(d) Voucher recipients shall be legally responsible for the selection and supervision of the services provided under any voucher issued pursuant to this section. It is the responsibility of the voucher recipient to ensure that the requirements specified in (g)(1) through (5) below for the actual provider of the vouchered service are met by the individual/entity selected to provide the service.

(e) If a family member or adult consumer accepts a voucher to procure their own service, as listed in (a) above, the regional center shall vendor either:

(1) The vouchered family member or adult consumer pursuant to (g) below; or

(2) The provider of the vouchered service pursuant to Section 54342.

(3) The regional center shall not vendor the voucher recipient and the voucher service provider for the same service.

(f) Family members or adult consumers to whom the voucher is issued shall only be vendored as the provider of the service for which the voucher is issued if specifically authorized pursuant to (g)(1) through (5) below.

(g) If the vouchered family member or adult consumer is to be vendored to procure their own service, the family member or adult consumer shall meet the specified criteria and be vendored pursuant to the following:

(1) Day Care -- Family Member -- Service Code 405.

(A) A regional center shall classify a vendor as day care - family member if the vendor:

1. Is a family member;

2. Is not the direct provider of the day care service; and

3. Selects the day care service for the consumer from:

a. An individual who possesses the skill, training, or education necessary to provide the day care service; or

b. An agency that meets the criteria specified in Section 54342 (a)(4) or (a)(15)(A), (B), or (C).

(B) Vouchers for day care for children shall only be issued by regional centers for day care costs and/or hours exceeding the cost of providing day care services provided to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the children to remain in the family home.

(2) Diaper and Nutritional Supplements -- Family Member -- Service Code 410.

(A) A regional center shall classify a vendor as diaper and nutritional supplements -- family member if the vendor is a family member who is authorized by the regional center to directly purchase diapers and/or nutritional supplements for a consumer in the family member's home.

(B) Vouchers for diapers shall only be issued for the procurement of diapers for children three years of age or older. A regional center may purchase diapers for

children under three years of age when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

(3) Nursing Service -- Family Member -- Service Code 415.

(A) A regional center shall classify a vendor as nursing service - family member if the vendor:

1. Is a family member; and
2. Selects, assigns, and monitors an individual who provides nursing services for a consumer.

(B) The family member may be the direct provider of the nursing service if the service is not intended to provide respite to the family member.

(C) The individual or family member who provides the nursing service shall possess the qualifications specified in Section 54342(a)(46), (51), or (66).

(4) Respite Service -- Family Member -- Service Code 420. A regional center shall classify a vendor as respite service - family member if the vendor:

(A) Is a family member;

(B) Is not the direct provider of the respite service; and

(C) Selects the respite service for the consumer from:

1. An individual who:
 - a. Is at least 18 years of age. Individuals currently providing in-home respite service shall have 90 days from the effective date of these regulations to comply; and
 - b. Possesses the skill, training, or education necessary to provide the respite service. The vendored family member shall be responsible for ensuring that the individual selected to provide the respite service will possess the skill, training, or education necessary to provide the respite service. In addition, the vendored family member is responsible for ensuring that the person providing respite care is familiar with the consumer's daily routines and needs, and is trained in any specialized supports necessary for the consumer. To the extent that these specialized support needs require additional training or certification in such things as First Aid, Cardiopulmonary Resuscitation (CPR), etc., these needs and requirements will be included as part of the description of respite care needs in the consumer's Individual Program Plan (IPP) or Individualized Family Service Plan (IFSP); or
2. An agency that meets the criteria specified in Section 54342 (a)(38); or
3. For out-of-home respite services, a facility which meets the standards specified in Section 54342(a)(58) or (72). A relative who provides out-of-home respite in the relative's own house is exempt from licensure pursuant to Title 22, California Code of Regulations, Section 80007.

(5) Transportation -- Family Member -- Service Code 425.

(A) A regional center shall classify a vendor as transportation - family member if the vendor secures the transportation to and/or from authorized services identified in the consumer's IPP and the vendor:

1. Is a family member or adult consumer. The family member or adult consumer may either provide the transportation service or secure an individual to provide the transportation services identified in the consumer's IPP;

(B) The individual who is actually providing the transportation service shall:

1. Possess a driver's license which is valid in California; and
2. Have evidence of maintenance of adequate insurance coverage pursuant to Welfare and Institutions Code, Section 4648.3.

(C) Vouchers for transportation shall only be issued by regional centers to cover transportation costs which exceed the transportation costs that the family member would

incur for a minor child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the consumer to remain in the family home.

(h) The voucher recipient shall maintain records of services provided to the consumer pursuant to Section 54326(a)(4).

(i) Effective October 1, 2011, for the services in (g)(1), (3), (4), and (5) above, when funded with federal financial participation through Medicaid programs, the consumers and family members of consumers shall :

(1) Be vendored for the services pursuant to California Code of Regulations, Title 17, Section 58886; or

(2) Use another vendored service provider.

Authority cited: ~~Chapter 157, Statutes of 2003; Sections 4405, and 4648(a), and 4648.12(c)(1)(B),~~ Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, ~~and 4648(a),~~ and 4648.12(c), Welfare and Institutions Code.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 18 - Transportation Service
Article 5 - Noncompetitive Procurement

§58543. Standard Rate Schedule.

(a) A regional center may enter into a contract for the provision of transportation service in which the rate of payment, including the rate for transportation aide services, if any, is based upon a Standard Rate Schedule (SRS). The regional center may enter into such contracts only with an individual or entity vendored as a Transportation - Additional Component - Service Code 880, pursuant to Section 54342 (a)(78), Transportation - Auto Driver - Service Code 890, pursuant to Section 54342 (a)(80), ~~or Transportation - Family Member - Service Code 425, pursuant to Section 54355 (g)(5)-, or Participant-Directed Transportation -- Family Member -- Service Code 470, pursuant to 58886(e)(4).~~

(1) The SRS shall be established by the regional center based upon the cost effectiveness of providing specific transportation services. The regional center shall also adopt a Standardized Contract, to be used with the SRS, which complies with Sections 58500 through 58525 of these regulations;

(2) The regional center shall submit the proposed SRS, the Standardized Contract, and a written explanation of the cost effectiveness of the SRS and Standardized Contract to the Department for review and approval. Within 30 days after receipt of the information, the Department shall:

(A) Review the information and approve the SRS and Standardized Contract only upon a showing by the regional center that the transportation service, procured pursuant to the SRS and Standardized Contract, will be provided in a cost-effective manner and that the Standardized Contract complies with Sections 58500 through 58525 of these regulations ;

(B) Notify the regional center of the approval or denial of the SRS and Standardized Contract. If approved, the notification shall include the effective date of the SRS or, if denied, the reason for the denial.

Authority cited: Chapter 722, Statutes of 1992, Section 147; Sections 4405, 4631, 4648.12(c)(1)(B), and 4690.1 and ~~4791(i)~~, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648.12(c), and 4690.1 and ~~4791~~, Welfare and Institutions Code.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 22 – Participant-Directed Services
Article 1 - Definitions

§58883. Meaning of Words.

Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense. Words used in the singular form include the plural form. Use of the word “shall” indicates conduct that is required, and “may” indicates conduct that is permitted.

Authority cited: Sections 4405, 4648(a), 4648.12(c)(1)(B), and 4688.21(d), Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), and 4688.21, Welfare and Institutions Code.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 22 – Participant-Directed Services
Article 1 – Definitions

§58884. Definitions.

(a) The following definitions shall apply to the language contained in Subchapter 22 of these regulations:

(1) Participant-Directed Services means those services described in California Code of Regulations, Title 17, Section 58886(a) and includes the adult consumer or family member exercising decision-making authority over specified services.

(2) Co-Employer means the vendored adult consumer or family member who manages employees that provide specified Participant-Directed Services and who works with the Financial Management Service Co-Employer. The Co-Employer makes recommendations to the Financial Management Services Co-Employer on who to hire to perform a specified Participant-Directed Service.

(3) Employer means the vendored adult consumer or family member who hires and engages an employee or procures an entity to perform a specified Participant-Directed Service.

(4) Financial Management Service Co-Employer (FMS Co-Employer) means a vendored entity that functions with the Co-Employer to hire an employee pursuant to the Co-Employer's recommendation and pays the employee to perform the Participant-Directed Services.

(5) Financial Management Service Fiscal/Employer Agent (FMS F/EA) means the vendored entity that functions as the adult consumer's agent or family member's agent in performing payroll duties according to IRS regulations, processing payments for the reimbursement of goods and services, and performing other employer responsibilities that are required by federal and state law. Under this arrangement the adult consumer or family member is the employer.

(6) Individual Family Service Plan (IFSP) has the meaning specified in California Code of Regulations, Title 17, Section 52100.

(b) As used in this subchapter, the following terms shall have the meanings specified in California Code of Regulations, Title 17, Section 54302:

(1) Adult;

(2) Consumer;

(3) Family member

(4) Individual Program Plan (IPP); and

(5) Vendor.

Authority cited: Sections 4405, 4648(a), 4648.12(c)(1)(B), and 4688.21(d), Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), and 4688.21, Welfare and Institutions Code; 42 U.S.C. Section 1396n(c) (Section 1915(c) of the Social Security Act).

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 22 – Participant-Directed Services
Article 2 - General Requirements for Participant-Directed Services

§58886. General Requirements for Participant-Directed Services.

(a) Effective October 1, 2011, for consumers and family members of consumers receiving the services in Section 54355 (g) (1), (3), (4), and (5), when these services are funded with federal financial participation through Medicaid programs, the regional center may offer Participant-Directed Services to allow the adult consumer and/or family member to procure their own community-based training service, day care, nursing, respite, and/or transportation services.

(b) When an adult consumer or family member makes the decision to use Participant-Directed Services the regional center shall:

(1) Provide information regarding their responsibilities and functions as either the Employer or Co-Employer;

(2) Provide information about the requirements regarding the use of a FMS Co-Employer or FMS F/EA;

(3) Assist the adult consumer or family member to identify and choose an FMS Co-Employer or FMS F/EA as follows:

(A) An adult consumer or family member who chooses to be the Employer as described in Section 58884(a)(3) shall make use of a FMS F/EA vendor pursuant to Section 58884(a)(5);

(B) An adult consumer or family member who chooses to be a Co-Employer as described in Section 58884(a)(2) shall make use of a FMS Co-Employer pursuant to Section 58884(a)(4); and

(C) Neither the adult consumer nor the family member shall be the FMS Co-Employer nor the FMS F/EA.

(4) Vendor the adult consumer or family member acting as Employer or Co-Employer for one or more participant-directed services pursuant to (c), and a family member of more than one consumer shall only be vendored once.

(c) The Employer or Co-Employer duties and authority over workers include, but are not limited to, the following:

(1) Recruits workers;

(2) Verifies worker qualifications;

(3) Specifies additional worker qualifications based on consumer needs and preferences;

(4) Determines worker duties;

(5) Schedules workers;

(6) Orients and instructs workers in duties;

(7) Supervises workers;

(8) Evaluates worker performance; and

(9) Verifies time worked by employees and approves time sheets.

(d) The Employer or Co-Employer has the following additional responsibilities:

(1) The adult consumer or family member in the capacity as an Employer pursuant to

(b)(3)(A) above has independent authority to:

(A) Hire workers; and

(B) Terminate workers.

(2) The adult consumer or family member in the capacity as Co-Employer pursuant to (b)(3)(B) above has authority to make recommendations to the FMS Co-Employer for hiring and terminating workers.

(e) The regional center shall vendor the Employer and Co-Employer in accordance with vendor application requirements contained in California Code of Regulations, Title 17, Sections 54310 and 54326, in addition to the following requirements:

(1) Participant-Directed Day Care Service -- Family Member -- Service Code 455.

(A) A regional center shall classify a vendor as Participant-Directed Day Care Service -- Family Member if the vendor:

1. Is a family member;
2. Is not the direct provider of the day care service; and
3. Selects the day care service for the consumer from:
 - a. An individual who possesses the skill, training, or education necessary to provide the day care service; or
 - b. An agency that meets the criteria specified in California Code of Regulations, Title 17, Section 54342(a)(4) or (a)(15)(A), (B), or (C).

(B) Participant-directed day care services for children shall only be authorized by regional centers for day care costs and/or hours exceeding the cost of providing day care services provided to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the children to remain in the family home.

(2) Participant-Directed Nursing Service -- Family Member -- Service Code 460.

(A) A regional center shall classify a vendor as a Participant-Directed Nursing Service -- Family Member if the vendor:

1. Is a family member; and
2. Selects, assigns, and monitors an individual who provides nursing services for a consumer.

(B) The family member may be the direct provider of the nursing service if the service is not intended to provide respite to the family member.

(C) The individual or family member who provides the nursing service shall possess the qualifications specified in California Code of Regulations, Title 17, Section 54342(a)(46), (51), or (66).

(3) Participant-Directed Respite Service -- Family Member -- Service Code 465.

(A) A regional center shall classify a vendor as Participant-Directed Respite Service -- Family Member if the vendor:

1. Is a family member;
2. Is not the direct provider of the respite service; and
3. Selects the respite service for the consumer from an individual who is at least 18 years of age and possesses the skill, training, or education necessary to provide the respite service. The vendored family member shall be responsible for ensuring that the individual selected to provide the respite service will possess the skill, training, or education necessary to provide the respite service. In addition, the vendored family member is responsible for ensuring that the person providing respite care is familiar with the consumer's daily routines and needs, and is trained in any specialized supports necessary for the consumer. To the extent that these specialized support needs require additional training or certification in such things as First Aid, Cardiopulmonary Resuscitation (CPR), etc., these needs and requirements will be included as part of the description of respite care needs in the consumer's IPP or IFSP; or
4. An agency that meets the criteria specified in California Code of Regulations, Title 17, Section 54342(a)(39); or

5. For out-of-home respite services, a facility which meets the standards specified in California Code of Regulations, Title 17, Section 54342(a)(58) or (72). A relative who provides out-of-home respite in the relative's own house is exempt from licensure pursuant to Title 22, California Code of Regulations, Section 80007.

(4) Participant-Directed Transportation -- Family Member -- Service Code 470.

(A) A regional center shall classify a vendor as Participant-Directed Transportation -- Family Member if the vendor secures the transportation to and/or from authorized services identified in the consumer's IPP and the vendor:

1. Is a family member or adult consumer. The family member or adult consumer may either provide the transportation service or secure an individual to provide the transportation services identified in the consumer's IPP;

(B) The individual who is actually providing the transportation service shall:

1. Possess a driver's license which is valid in California; and

2. Have evidence of maintenance of adequate insurance coverage pursuant to Welfare and Institutions Code, Section 4648.3.

(C) Participant-Directed Transportation shall only be authorized by regional centers to cover transportation costs which exceed the transportation costs that the family member would incur for a minor child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the consumer to remain in the family home.

(5) Participant-Directed Community-Based Training Service for Adults -- Service Code 475, as established in Welfare and Institutions Code Section 4688.21(c)(1) through (12) is an adult day program service that assists the adult consumer in the development of skills required for community integrated employment and/or participation in volunteer activities and to secure employment and/or volunteer positions or pursue secondary education.

(A) A regional center shall classify a vendor as a Participant-Directed Community-Based Training Service for Adults if the vendor:

1. Is an adult consumer, family member, or conservator;

2. Is not the direct provider of the community-based training service for adults. A parent or conservator shall not be the direct support worker employed by the community-based training vendor; and

3. Selects the community-based training service for adults from an individual who is at least 18 years of age and possesses the skill, training, or experience necessary to provide the community-based training service for adults in accordance with the IPP. If the selected individual is required to transport the consumer, meets the requirements in (e)(4)(B) above.

(B) The Participant-Directed Community-Based Training Service for Adults shall be provided in natural environments in the community, separate from the consumer's residence.

(f) By September 30, 2011, adult consumers or family members vendored pursuant to California Code of Regulations, Title 17, Section 54355(g)(1), (3), (4) and (5) who choose to be an Employer or Co-Employer are not required to be re-vendored. The regional center shall:

(1) Ensure that the adult consumer or family member continues to meet vendor requirements in accordance with (b), (c), (d) and (e) above;

(2) Provide the adult consumer or family member with information regarding the requirements to use an FMS Co-Employer and/or FMS F/EA pursuant to (b) above when these services are funded with federal financial participation through Medicaid and about the requirements for the applicable participant-directed services, pursuant to (e) above;

(3) Assist the adult consumer or family member to identify and choose an appropriate FMS Co-Employer or FMS F/EA pursuant to (b) above;

(4) Assign the applicable participant-directed service code pursuant to (e) above, with services to be effective no sooner than October 1, 2011; and
(5) Continue to pay the existing rate of the voucher service(s) for the corresponding participant-directed services as described in (e) above.

Authority cited: Sections 4405, 4648(a), 4648.12(c)(1)(B), and 4688.21(d), Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), and 4688.21, Welfare and Institutions Code.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 22 – Participant-Directed Services
Article 2 - General Requirements for Participant-Directed Services

§58887. Service Components for Participant-Directed Services.

(a) Effective on filing with the Secretary of State, the FMS F/EA, pursuant to (b) below, and the FMS Co-Employer, pursuant to (c) below, shall be vendored to provide the following services to support the adult consumer or family member with the employment of workers to carry out authorized Participant-Directed Services:

- (1) Collect and process timesheets of workers providing Participant-Directed Services;
- (2) Assist the family member or adult consumer in verifying the worker's eligibility for employment as evidenced by a copy of the social security number or any document pursuant to Section 50604(d)(3), if individual worker is used;
- (3) Process payroll, withholding, filing and payment of applicable federal, state and local employment related taxes and insurance for authorized Participant-Directed Services;
- (4) Track, prepare and distribute monthly expenditure reports to the Employer or Co-Employer and the regional center;
- (5) Maintain all source documentation related to the authorized service(s) and expenditures;
- (6) Maintain a separate accounting of funds used for each adult consumer or family member Participant-Directed Service; and
- (7) Ensure payments do not exceed the amounts and rates authorized by the regional center subject to the limits of California Code of Regulations, Title 17, Section 58888.

(b) FMS F/EA – Service Code 490.

(1) A regional center shall classify an applicant as an FMS F/EA if the applicant meets vendorization requirements described in California Code of Regulations, Title 17, Sections 54310 and 54326, and demonstrates the ability, skills, and knowledge to carry out both the responsibilities in (a) above and the following additional requirements of an FMS F/EA to assist an adult consumer or family member functioning as an Employer:

(A) For the purposes of processing payroll, apply for and obtain authorization under Section 3504 of the Internal Revenue Code to be an agent for each adult consumer or family member that the FMS F/EA represents;

(B) During the period from when the FMS F/EA makes application to the Secretary of the Internal Revenue Service (IRS) until receiving IRS approval, the FMS F/EA shall be responsible for applicable federal, state and local employment-related taxes and insurance; and

(C) Process payments for reimbursements to entities providing goods and services in accordance with applicable IRS regulations.

(2) The FMS F/EA may process payroll for services provided by individual workers, and reimbursements for services provided by other entities.

(c) FMS Co-Employer – Service Code 491.

(1) A regional center shall classify an applicant as an FMS Co-Employer if the applicant meets vendorization requirements described in California Code of Regulations, Title 17, Section 54310 and demonstrates the ability, skills, and knowledge to carry out both the responsibilities in (a) above and the following additional requirements specific to assisting an adult consumer or family member functioning as a Co-Employer:

(A) Hiring of individual employees who have been selected by the adult consumer or family member to provide participated-directed services;

(B) Providing other employer-related supports to the Co-Employer as specified in the consumer's IPP.

(2) The FMS Co-Employer shall process payroll for services provided by the employees.

(d) The FMS Co-Employer and the FMS F/EA shall submit billings/invoices to the regional center for reimbursement for expenditures for authorized Participant-Directed Services in accordance with the requirements of California Code of Regulations, Title 17, Section 50604.

(e) The FMS Co-Employer and the FMS F/EA shall reimburse the worker(s) who provide(s) the authorized Participant-Directed Service(s) at a rate not to exceed the specified rates in California Code of Regulations, Title 17, Section 58888.

Authority cited: Sections 4405, 4648(a), 4648.12(c)(1)(B), and 4688.21(d), Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), and 4688.21, Welfare and Institutions Code.

California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations
Chapter 3 - Community Services
Subchapter 22 – Participant-Directed Services
Article 3 – Participant-Directed Services Rate-Setting Provisions

§58888. General Provisions for Rate-Setting and Reimbursements

(a) The Participant-Directed Service(s), and units of service shall be determined through the IPP process pursuant to Welfare and Institutions Code Sections 4646 and 4646.5. The rate of payment for the service shall not exceed the maximum rate of reimbursement as specified below:

(1) Participant-Directed Day Care Service -- Family Member -- Service Code 455 - the usual and customary rate, as defined in Section 57210(a)(19), which the direct provider of the service charges or, if the direct provider of the service does not have an established usual and customary rate, a negotiated rate pursuant to Section 57300(e);

(2) Participant-Directed Nursing Service -- Family Member -- Service Code 460 - the Schedule of Maximum Allowances for the Home and Community Based Services, In-Home Medical Care Waiver Program, as developed by the Department of Health Care Services;

(3) Participant-Directed Respite Service -- Family Member -- Service Code 465 - the rate established pursuant to Section 57310(b)(3);

(4) Participant-Directed Transportation -- Family Member -- Service Code 470 - the standard rate schedule developed by the regional center pursuant to California Code of Regulations, Title 17, Section 58543; and

(5) Participant-Directed Community-Based Training Service -- Service Code 475 - \$13.47 per consumer per hour up to a maximum of 150 hours per quarter. The rate includes employer-related taxes and all transportation needed to implement the service, except that the consumer shall also be eligible for a regional center-funded bus pass, if appropriate and needed.

(b) The regional center shall authorize a rate of payment for the FMS F/EA and FMS Co-Employer as follows:

(1) For FMS FE/A services as described in Section 58887(a) and (b):

(A) A rate not to exceed a maximum of \$45.00 per consumer per month for one Participant-Directed Service; or

(B) A rate not to exceed a maximum of \$70.00 per consumer per month for two or three Participant-Directed Services; or

(C) A rate not to exceed a maximum of \$95.00 per consumer per month for four or more Participant-Directed Services.

(2) For FMS Co-Employer services as described in Sections 58887(a) and (c) a rate not to exceed a maximum of \$95.00 per consumer per month for one to four Co-Employer services.

(c) The regional center shall name the FMS Co-Employer -- Service Code 491, and/or the FMS F/EA -- Service Code 490, as the vendor of record for the purchase of service authorizations for the Participant-Directed Services identified in the consumer's IPP. The authorization shall have an effective date for services or payments no sooner than October 1, 2011.

Authority cited: Sections 4405, 4648(a), 4648.12(c)(1)(B), 4688.21 (d), and 4690, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), and 4648.12(c), Welfare and Institutions Code.