

Participant Name: _____

Participant Email Address: _____

The Participant/Representative-Employer and the Vendor Fiscal/Employer Agents (F/EA) Financial Management Service (FMS)-Support Broker entity are responsible for working collaboratively to ensure that:

1. The Participant receives needed participant-directed services (PDS).
2. The Participant receives needed supports from the Vendor F/EA FMS-Support Broker entity.
3. PDS are provided in accordance with the guiding principles of participant direction, *Services My Way* Program and the Medicaid §1915 (c) EPD Waiver rules and requirements and in accordance with the Participant's approved and authorized person-centered service plan and PDS budget.

Will the Participant have an Authorized Representative acting as the Common Law Employer of his/her qualified Participant-Directed Workers (PDWs)?

Yes No

If "Yes," please complete the *Authorized Representative Designation Form*.

I. Requirements

To become a Common Law Employer, I the Participant/Representative-Employer understand:

1. That the *Services My Way* Program allows me (or my Authorized Representative) to exercise decision-making authority over the PDS (i.e., participant-directed community supports (PDCS) and individual-directed goods and services) authorized in my person-centered service plan and PDS budget, which are both person-centered.
2. That the Participant/Representative-Employer elects and accepts the responsibility for self-directing the Participant's PDS and is, therefore, recognized as the "Common Law Employer" of those PDWs hired to provide the Participant's PDS.
3. That involvement in this program as a Participant or Representative-Employer is contingent upon the Participant's enrollment in the *Services My Way* Program. If the Participant is no longer enrolled in the Medicaid §1915(c) EPD Waiver or the *Services My Way* Program, the Participant/Representative-Employer's involvement in the *Services My Way* Program will end.

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4. The role as a “Common Law Employer” of PDWs and how to work with the Vendor F/EA FMS-Support Broker entity under contract with DHCF.
5. That the Vendor F/EA FMS-Support Broker entity will make payments on my behalf including
 - a. Preparing and issuing PDW’s payroll checks,
 - b. Filing and paying federal and state income tax withholding and unemployment insurance taxes (e.g., District income tax withholding and unemployment insurance taxes and Federal Medicare and Social Security taxes (FICA) and unemployment insurance taxes (FUTA)),
 - c. Paying workers’ compensation insurance premiums, and
 - d. Managing related tasks and process and pay invoices from individual-directed goods and services vendors that are authorized services in accordance with the Participant’s person-centered plan and PDS budget.
6. The Participant/Representative-Employer authorizes the Vendor F/EA FMS-Support Broker entity to submit Protected Health Information (PHI) electronically or on paper to Omnicaid, the Medicaid Fiscal Agent for the District of Columbia, for the purposes of transmitting claims for approved personal-directed services (participant-directed community support services (PDCS) and individual-directed goods and services) that the Participant receives through the program. The Vendor F/EA FMS-Support Broker will handle PHI in accordance with their published Privacy Practices, and consistent with the requirements of the DHCF Business Associate Agreement (BAA).
7. That the Participant/Representative-Employer has received and understand the orientation, training, and written information provided to me regarding the use of PDS and supports provided by the Vendor F/EA FMS-Support Broker entity under the Medicaid §1915(c) EPD Waiver.
8. That the *Services My Way* Program is a Medicaid-funded program. If I lose eligibility for Medicaid I will inform the *Services My Way* Program and the Vendor F/EA FMS-Support Broker entity and not direct any PDWs to work or incur any individual-directed goods or services from the date I lose Medicaid eligibility.
9. That if I am no longer able to act as the Common Law Employer, I may be assisted to select an authorized representative or access another model of service management and that I will fully cooperate with any transition plan so the needs described in my person-centered service plan continue to be met.

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10. That the Vendor F/EA FMS-Support Broker entity will establish and maintain current Participant/Authorized Representative-Employer and PDW files in a secure and confidential manner as required by federal and District rules and regulations and the Participant/Representative-Employer will do the same, as necessary.
11. That any untruthful submission of PDW's time sheets or individual-directed goods and services vendor invoices provided in an attempt to obtain improper payment may be referred to the DC Office of the Inspector General Medicaid Fraud Control Unit for investigation as Medicaid Fraud. Medicaid Fraud is a felony and can lead to substantial penalties and/or imprisonment.
12. That I must maintain compliance with federal and state tax, insurance, DHCF *Services My Way* Program and Medicaid §1915(c) EPD Waiver rules and requirements and Vendor F/EA FMS-Support Broker entity requirements.
13. If I should not perform in compliance with federal, state or DHCF *Services My Way* Program, and Medicaid §1915(c) EPD Waiver rules and requirements, I will be referred for the DHCF Remediation, Training and Termination process.

To become a Common Law Employer, the Participant/Representative-Employer must:

1. Be at least 18 years of age or older.
2. Participate in all required orientation and training.
3. Sign all required agreements with the DHCF and the Vendor F/EA FMS-Support Broker entity.
4. Agree to perform all the tasks outlined in the *Authorized Representative Designation Form*, if the common law employer is the Authorized Representative.
5. Agree to work with the Participant's waiver case manager to develop and revise the Participant's person-centered service plan.
6. Agree to work with the Participant's Support Broker to develop, revise, and monitor the Participant's PDS budget, as needed.

To become a Common Law Employer, the Participant/Representative-Employer must assume full and legal responsibility to:

1. Enroll with the Vendor F/EA FMS-Support Broker entity and complete all the state, federal and program-required paperwork found in the *Participant/Authorized Representative-Employer Enrollment Packet* and *Participant Directed Worker*

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Employment and Individual-Directed Goods and Services Vendor Engagement Packet with assistance, as needed, from the Vendor F/EA FMS-Support Broker entity.

2. Recruit, interview, hire and train only qualified PDWs. Ensure that all PDWs hired meet the qualifications and receive training from the common law employer and that the common law employer completes and signs the *PDW Competency Certification Statement* for each qualified PDW hired within 21 days of hire.
3. Validate and ensure that vendors selected to provide individual-directed goods and services meet the criteria outlined in the approved District of Columbia's Medicaid §1915 EPD Waiver.
4. Negotiate the wage rate for PDWs within the wage ranges established by the DHCF. The wage rates determined for PDWs must be developed in accordance with U.S. Department of Labor and DC Department of Employment Services rules and regulations, including the DC Living Wage Act of 2006.
5. Determine the work schedule for the Participant's PDWs in accordance with the Participant's approved person-centered service plan and PDS budget.
6. Determine the tasks to be performed by the Participant's PDWs, including how and when service-related tasks are to be performed in accordance with the Participant's person-centered service plan and PDS budget.
7. Orient and train the Participant's PDWs.
8. Develop an emergency back-up PDW Plan and designate emergency back-up PDWs for coverage of PDW's hours when the primary PDW cannot report for work for any reason.
 - a. Complete the *Emergency Back-Up PDW Designation Form* for each qualified PDW who is willing and able to provide coverage when the primary PDW cannot report for work for any reason. This form must be completed and forwarded to the Vendor F/EA FMS-Support Broker entity and retained in the Participant/Representative-employer's file.
 - b. Monitor the Participant's Emergency Back-up PDW Plan and staff for effectiveness and update the plan and emergency back-up PDW designations, as necessary.
9. Review, approve and sign qualified PDWs' timesheets and individual-directed goods and services vendor payment requests in an accurate and timely manner. Effective December 7, 2020, possess or acquire a valid email address and utilize the District's Electronic Visit Verification (EVV) system for the purposes of approving/validating time worked by your PDW(s).

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10. Validate/Approve time worked in the District's EVV system, and submit individual-directed goods vendor payment requests to the Vendor F/EA FMS-Support Broker entity for processing and payment in accordance with the *PDW Timesheet/EVV Submission and Pay Day Schedule* and *Individual-directed Goods and Services Vendor Invoice Submission and Payment Schedule* and in accordance with DC Department of Employment Services' payday requirements.
11. Validate/Approve time in the District's EVV system and submit individual-directed goods and services vendors' payment requests only for goods and services approved in the Participant's person-centered service plan and PDS budget.
 - a. Understand that if the Participant/Representative-Employer overspends the Participant's annual PDS budget related to participant-directed community support services (PDCS) provided by the PDWs, the Participant/Representative-Employer must reimburse the Vendor F/EA FMS-Support Broker entity for the amount of the overage.
 - b. Understand that if the Participant/Representative-Employer overspends the Participant's annual PDS budget related to individual-directed goods and services, or purchases a good or service not approved in the Participant's PDS budget, the Participant/Representative-Employer is responsible for paying the cost of the non-allowable purchases and/or the cost over the approved amounts.
12. Manage the day-to-day tasks performed by PDWs hired by the Participant/Representative-Employer.
13. Dismiss PDWs hired by the Participant/Representative-Employer for just cause and notify the Vendor F/EA FMS-Support Broker and the Participant's supports broker immediately of the dismissal by completing and submitting the *PDW Information Change/Termination Form*.
14. Track utilization of PDCS in accordance with my authorized waiver ISP and PDS budget and contact the Vendor F/EA FMS-Support Broker entity with any questions.
15. Notify my Support Broker of any changes in need that may require a change to the Participant's person-centered service plan and PDS budget. Any needed changes to the Participant's person-centered service plan and PDS budget should also be reported to the Participant's waiver case manager and support broker.
16. Notify the Vendor F/EA FMS-Support Broker when I suspect or am aware of any issues of Medicaid fraud or financial abuse related to the use of the Participant's PDS budget funds.

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17. Cooperate with the Participant's support broker and waiver case manager in conducting service monitoring at the minimum frequency outlined in the Medicaid §1915(c) EPD Waiver.
18. Report incidents to my support broker in accordance with DHCF's requirements.
19. Respond to surveys regarding my satisfaction with the receipt of PDS and Vendor F/EA FMS-Support Broker services.
20. Participate in all required orientation and training offered by DHCF and its designee.
21. Not cause work to be performed and expect payment through the *Services My Way* Program for PDWs and individual-directed goods and services vendors before all the required paperwork, including any and all background checks, have been completed.
22. Submit the *PDW Competency Certification Statement* within 21 days of hiring a PDW.
23. Receive, read, and understand the following information:
 - a. The Participant's person-centered service plan and PDS budget; and
 - b. DHCF's *Participant guide*.

Attestation

By signing below, I attest, as the Participant/Representative-Employer, that I have read this *Participant/Representative-Employer Agreement* in its entirety, initialed each page, and understand the information included in this Agreement.

I understand that I must sign and return this Agreement (and retain a copy for my personal records) as a condition of participation in the *Services My Way* Program and that I cannot complete enrollment in the Program until this Agreement is completed and returned to the Vendor F/EA FMS-Support Broker entity. 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 and my participation in the DHCF *Services My Way* Program.

Signature of Participant

Date



Services My Way
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Signature of Authorized Representative (if applicable)

Date

Signature of Support Broker

Date

