

FMS Member Open Forum: Responding to COVID-19

March 24, 2020

Agenda for Today

- Discuss promising practices and challenges related to responding to the national COVID-19 outbreak
 - 46,549 confirmed COVID-19 cases in the U.S. as of this morning
- We encourage FMS members to join in the discussion. If you would like to share information with the group without identifying yourself, you are welcome to share your comment in writing in the Q&A pod. We are happy to share your comment anonymously with the group.

Today's Speakers from Applied Self-Direction

- Mollie Murphy, Principal
- Kate Murray, Principal
- Casey DeLuca, Membership Director
- James Toews, Executive Technical Assistance (TA) Consultant
- Molly Morris, Senior TA Consultant
- Highsmith Rich, TA and Research Analyst

Emergency Response Tools

- 1135 waiver
 - Can be requested in the event the U.S. President declares a national emergency or disaster
 - Approved 1135 waivers modify or waive federal requirements for Medicaid programs
- Appendix K for 1915(c) waiver
 - Can be used to modify waiver rules and requirements
 - E.g., can be invoked to pay workers for paid time off and/or time spent assisting participants in the hospital
- Medicaid State Plan Amendments
- 1115 demonstration and evaluation waivers

Families First Coronavirus Response Act

- Includes provisions for paid sick time and paid Family and Medical Leave Act (FMLA) requirements and applies to employers with 500 or fewer employees
 - Employers with 500 or more employees are exempt from this requirement
 - Act uses the Fair Labor Standards Act (FLSA) definition of employer
 - Joint employers count as employers under the Act
- Employers with 50 or fewer employees can be exempted by the Department of Labor (DOL) from both the paid leave and paid FMLA provisions of the Act
 - The Act is written to allow the DOL to create regulations or definitions to exempt employers with 50 or fewer employees

Families First Coronavirus Response Act

- To qualify for the paid FMLA under the Act, the employee must have been employed by the employer for 30 or more calendar days prior to taking leave
- The first 10 days of leave are unpaid, but paid sick leave, Paid Time Off (PTO) or other pay mechanisms can be used during that time
- Subsequent absences beyond the first 10 days under the Act are paid at 2/3s of the employee's normal rate of pay
 - ❑ For variable hour employees, such as those typically in self-direction, the employer would calculate 2/3s pay on the number of hours the employee *would have* worked if employed
 - ❑ OR, if that is unknown, then
 - ❑ Use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type

Families First Coronavirus Response Act

- Full-time employees are entitled to 80 hours of paid sick time under the Act
 - Full-time or part-time employment under the FLSA (which is applicable for FMLA) is not defined by the FLSA but rather by each employer
- Part-time employees are entitled to the average number of hours the employee works in a 2-week period
- Paid sick time under the Act does not carry over from one year to the next
- Paid sick time under the Act applies to employees regardless of how long they have been employed by the employer
- An employer cannot require the employee to use other paid leave prior to using the paid leave provided by the Act
- Paid sick leave is capped at a total of \$511 per day or \$5110 in the aggregate or \$200 per day or \$2000 in the aggregate depending on the reason the leave is needed

Families First Coronavirus Response Act

- When paying for paid sick time and paid FMLA under the Act, the employer can offset the cost of the employer portion of the Social Security and Medicare taxes with the cost of paid sick time and paid FMLA
- There are still many unknowns regarding how this bill will be operationalized
 - Congress is expected to pass new legislation that builds on this Act
 - DOL and IRS will release detailed guidance in the future
 - We are working with our federal partners to develop clarity for LTSS stakeholders

Outstanding Questions for Self-Direction

- How does joint employment under the Act affect paying paid sick time and paid FMLA to an employee when that employee is jointly employed by an employer with 500 or more employees (e.g. a State, large agency or Agency with Choice, or a Managed Care Organization AND another entity, such as a consumer)?
- Are Agencies with Choice with 500 or more employees exempt from the paid sick time and paid leave requirements under the Act?
- Are employees providing LTSS and/or FMS entities defined as Health Care Providers under the Act per this definition referenced in the Act, “any other person determined by the Secretary to be capable of providing health care services.”?

What is your organization presently doing to respond to COVID-19?

What is your state presently planning to do with regard to self-direction?

- Feel free to share just one thing or your state's overall plan
 - Examples: waiving background check requirements or moving to a conditional check system, conducting case management meetings via telephone, etc.

What are the biggest challenges or obstacles you are facing?

Is your state considering adjusting payment rates for Financial Management Services to cover new emergency-related responsibilities?

Is your state classifying workers in self-direction as “health care workers” so they can receive testing for COVID-19?

- In most areas of the country, testing for COVID-19 is available only to health care personnel
- Testing workers in self-direction is also critical to make sure workers do not unknowingly spread the virus to participants—many of whom are considered at high risk for complications related to COVID-19

What is your state planning with regard to the Families First Act/paid sick leave?

What resources from Applied Self-Direction would help your work the most?

- We are here to help and want to make sure our work is responsive to your needs
- Examples of possible future resources:
 - ❑ Analysis of other states' emergency response measures
 - ❑ Additional open forum calls with members
 - ❑ Webinars or written resources analyzing new federal policies related to COVID-19

Any other questions, concerns, or comments?

Thank You!

