

Risk and Liability in Consumer Direction

Review and Analysis

Risk Overview

Avoiding danger is no safer in the long run than outright exposure. The fearful are caught as often as the bold.

--Helen Keller

The primary risk that needs to be managed is risk of people getting hurt. The secondary risk is protection of assets. The best way to protect assets is to focus on avoiding the primary risk and protect people from getting hurt. Happy, healthy people rarely sue. Risk is a real part of life that cannot be completely avoided by anyone. People with developmental disabilities are often have less power to deal with situations and suffer more severe consequences. Insurance can pay people back for any financial loss they experience, but it cannot replace a loved one, or loss of functionality.

A sincere and noble effort to protect people with disabilities beginning in the 19th century resulted in thousands of people living in institutions. Here they were very safe, but the elimination of risk also eliminated something more subtle but more precious, best called "life". Here regulations guided every aspect of life and greatly reduced random problems and crisis that can severely impact people with disabilities. Ironically people in the institutions were not always very safe, and cases and reports of abuse were widespread.

As society came to a point where institutions were seen as insufficient, the idea of Home & Community Based emerged. Again sincere concerns of safety resulted in regulations, many carried over directly from institutional settings, to help keep people safe. Again these regulations have improved safety but have in their own way again subtly interfered with that elusive thing called "life". People with disabilities are impacted when regulations limit their choices, or don't allow for individual control of life including basics such as where to live or when to and what to eat.

Consumer direction offers yet another systematic approach that is hoped to bring people with disabilities a larger helping of the mysterious thing called "life". Safety is still a concern, but our past experiences should teach us to move forward carefully in this area. So the real question is: How can we keep people safe in a consumer directed service system?

There are two main options available to support safety: Government Regulation and Community Relationships. Neither one works well alone, as history has shown us. Together they cannot eliminate risk, but can reduce opportunities for severe loss, and provide people to grieve with when there is a loss. Government regulation is especially good at reducing opportunities for direct injury and loss, such as from abusive caregivers or unqualified support workers. Community relationship is especially good at reducing indirect injury and loss, such as depression, lack of opportunity for activity, or lack of awareness of a problem situation.

We need a careful dose of both of these elements of protection to keep people as safe as possible, while still giving them a reason to get out of bed in the morning. We may have to live with a little more danger, but the reward could be more people who tackle life head on and make our communities stronger, more interesting, and a place where there is room for everyone.

The tables below attempt to outline some of the risks involved in consumer direction and some of the ways to reduce this risk. Eliminating risk completely is not viewed as a desirable outcome.

Sabatino, C.P., Hughes, J.D. (Jan, 2004). Addressing Liability Issues in Consumer Directed Personal Assistance Services (CDPAS). U.S. Department of Health and Human Services
O'Brien, J., O'Brien, C., & Schwartz, D. (2004). What can we count on to make and keep people safe?; Responsive Systems Associates, Inc.

Consumer Direction Risk Summary

TABLE 1:

PARTY	MAJOR RISKS PHYSICAL/ MENTAL	RISK REDUCTION STRATEGIES	NOTES
Consumer	Accident	<ul style="list-style-type: none"> ✓ Take calculated risk. ✓ Make available optional training programs for workers. 	Risk free life is undesirable to most people.
	Negligence by worker	<ul style="list-style-type: none"> ✓ Careful screening and background check on worker. ✓ Proper training for worker. 	Responsibility of employer – can be assisted by adequate training.
	Isolation	<ul style="list-style-type: none"> ✓ Employ components of the system to support and build community relationships ✓ Develop regulations that allow for money to be used to pursue social relationships 	CSG's could be assigned this as their primary task of any goal
	Abuse by regulations and monitoring	<ul style="list-style-type: none"> ✓ Involve in all levels of planning and monitoring ✓ Develop regulations that empower primary caregivers 	CPASS Council sustained
Worker	Accident	<ul style="list-style-type: none"> ✓ Fully inform the worker of the risks and document the process. ✓ Require workers' compensation coverage for all workers. ✓ Make available optional training programs for workers. 	Worker's Compensation coverage greatly reduces the need for a worker to sue to assist with medical bills. Providing training, greatly reduces the risk of worker and consumer getting hurt.
	Injured by Consumer	<ul style="list-style-type: none"> ✓ Fully inform the worker of the risks. ✓ Require workers' compensation coverage. ✓ Make available optional training programs for workers. 	If consumer injures worker because of disability as long as worker was informed and trained there is little chance of successful suit.
	Inadequate compensation or protection	<ul style="list-style-type: none"> ✓ Provide for living wages ✓ Provide for health insurance and other benefits 	Nationwide issue related to direct service worker shortage.
Representative	Abuse by regulations and monitoring	<ul style="list-style-type: none"> ✓ Involve in all levels of planning and monitoring ✓ Develop regulations that empower primary caregivers 	CPASS council sustained
Consultant	None		
Fiscal Agent	None		
State	None		

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Consumer Direction and Liability

Any of the key parties in consumer direction (See Figure 1) are at potential risk of some liability. This risk varies greatly depending on the individual and the circumstances. All attempts to review the liability of a particular individual in a particular situation are purely hypothetical. Ultimately liability is decided by Hawaii laws and judicial system. The analysis below tries only to identify some general situations that could be encountered by key players in consumer directed personal assistance services, and some possible ways to reduce liability exposure of these parties.

Consumer Directed Personal Assistance vs. Agency Directed Personal Assistance:

Findings suggest that the levels of risk and liability in consumer directed personal assistance are no greater than that experienced under agency directed personal assistance. If anything the risk is slightly less as consumer directed personal assistance workers tend to be family members and friends and therefore less inclined to file lawsuits against their consumer-employer. Most of the functions that were performed by the state or a provider agency in traditional Medicaid-funded home care services are now unbundled and performed by consumers, consultants, and fiscal agents. The core functions that continue to be performed by the state, such as enrolling consumers and responding to serious problems in connection with consumer care, carry some risk of liability, but if the state program is well structured and operated in accordance with that structure, this risk is minimal.

Concern over liability centers around three primary scenarios:

1. The PA worker is injured while on the job.
2. The consumer, or person receiving care is injured in the course of being cared for by the worker.
3. A third-party is injured as a result of actions taken by the PA worker.

Accident vs. Negligence:

Accident:

Most injuries and loss are a result of accident and not due to any negligence. In the case where no negligence is found and someone is injured or dies, there is still a loss, and liability for the loss falls on the individual who is viewed as causing the loss. This is where insurance coverage is beneficial if the individual has the proper coverage.

Negligence:

Injuries or loss as a result of negligence are more rare, and are due to someone doing something they should have done, or not doing something they should have done. If an individual wishes to collect money for damages from someone, it must be proven that the person acted negligently. They must show that the person did something wrong, and that they should have known not to do that.

Presented in the tables below is a brief look at possible scenarios that could result in litigation or financial responsibility by the key parties in consumer direction. It is based largely on situations that have arisen under agency directed personal assistance, which legally has many similarities to consumer directed personal assistance.

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**FIGURE 1.
Parties Involved in Cash & Counseling**

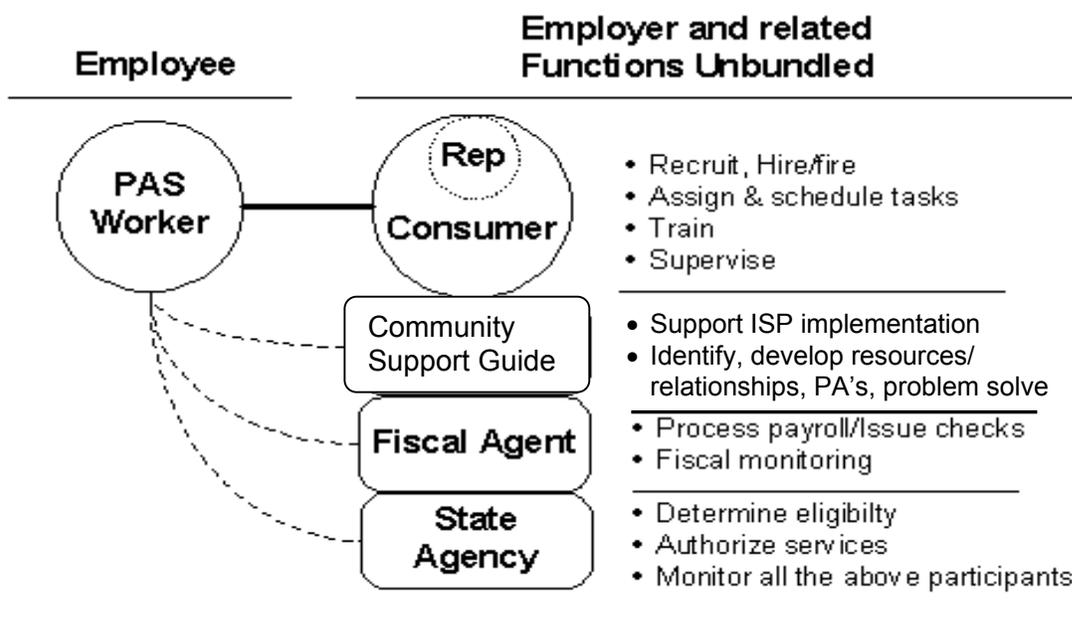


Figure 1: Outlines the key parties involved in “cash & counseling” or consumer directed service models providing personal assistance services. All parties have some legal interaction with the employee, however the strongest relationship represented by a solid line is between the worker and the Consumer/Representative. The dashed lines show weaker relationships and interaction with the worker.

(Taken and modified from Sabatino, C.P., Hughes, J.D. (Jan, 2004). Addressing Liability Issues in Consumer Directed Personal Assistance Services (CDPAS). U.S. Department of Health and Human Services)

Sabatino, C.P., Hughes, J.D. (Jan, 2004). Addressing Liability Issues in Consumer Directed Personal Assistance Services (CDPAS). U.S. Department of Health and Human Services
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Consumer Direction Liability Summary

TABLE 2:

PARTY	MAJOR RISKS OF LAWSUIT	RISK REDUCTION STRATEGIES	NOTES
Consumer	Negligence in workplace environment.	<ul style="list-style-type: none"> ✓ Maintain safe workplace. ✓ Acquire General liability insurance coverage. ✓ Workers Compensation. 	This type of claim is only likely to manifest where the worker is hurt and does not have medical coverage and cannot pay their bills. SOLUTION= Worker's Compensation.
	Third party injured by worker. Example, car accident while worker is running a work errand.	✓ Adequate general liability and auto insurance coverage.	This type of claim will happen if large numbers of people use this program.
	Worker is hurt by third party.	<ul style="list-style-type: none"> ✓ Worker's Compensation. ✓ Adequate general liability and auto insurance coverage. 	If the Consumer/Employer, is not at fault may have to go after third party to collect for damages.
	Wrongful termination. Fire someone who says you fired them unfairly, or discriminated against them.	✓ Written employment agreement that allows termination of employment at will.	Every consumer employer should have at-will agreements.
Representative (same as consumer)	Negligent hiring or training	✓ Properly screen and train workers.	Train the authorized representative of their liability risks.
Family Member or Property Owner	Negligence in workplace environment when work site is owned by someone other than the consumer. Could fall on a landlord if consumer is a renter.	<ul style="list-style-type: none"> ✓ Maintain safe workplace. ✓ Acquire General liability insurance coverage. 	This type of claim is more likely to go after the property owner than the Medicaid recipient because of assets. SOLUTION= Worker's Comp.
Worker	Negligence in work duties. Example, improper lifting, or not doing something like providing supervision.	✓ Fully inform the worker of the liability risks and document the process.	Make optional training programs available for workers.
	Third party injured by worker. Example, car accident while worker is running errand.	✓ Adequate general liability and auto insurance coverage.	This type of claim is guaranteed to happen if large numbers of people use this program.
Support Broker	Negligent assistance	<ul style="list-style-type: none"> ✓ Professional liability insurance. ✓ Clearly communicate and document the consultant's role. ✓ Ensure that important decisions are made by the consumer. 	

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PARTY	MAJOR RISKS OF LAWSUIT	RISK REDUCTION STRATEGIES	NOTES
	Negligent monitoring	<ul style="list-style-type: none"> ✓ Professional liability insurance. ✓ Clearly communicate and document the consultant's role. ✓ Provide for external monitoring. 	
Fiscal Agent	None other than gross negligence	<ul style="list-style-type: none"> ✓ Sensitivity training to disability issues. ✓ Implement a quality management plan. ✓ Utilize liability insurance. 	
State	Same as Agency PA, slightly less due to consumer directed PA's tending to be family or friends disinclined to sue.	<ul style="list-style-type: none"> ✓ Obtain the consumer's informed and voluntary agreement. ✓ Formal procedures for the designation of an authorized representative. ✓ Adopt a quality management plan in connection with broker monitoring. ✓ Avoid vicarious liability as the employer of workers. ✓ Take care when drafting regulations, rules and protocols. ✓ Negotiate an indemnity clause in contracts with brokers and fiscal agents. ✓ Enact legislation limiting liability. 	Risk contracts are being used and tested in some states.

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Consumer Direction Liability Summary – Detailed

TABLE 3:

THE CONSUMER'S LIABILITY RISK	
LIABILITY RISKS	REDUCE RISK
<p>Negligence in maintaining the workplace. Consumers face a distinct risk of liability for on the job injuries to individual workers they employ unless those employees are covered by workers' compensation. The case law demonstrates that a consumer may be found liable for negligence in maintaining the workplace – that is, for creating or failing to correct hazardous conditions in the consumer's home. If the consumer lives with a family member or friend who is the owner or renter of the consumer's home, that family member or friend may also be liable on a theory of premises liability.</p>	<p>Risk of Lawsuit: Moderate -High The frequency and level of involvement of a personal assistance services worker in the home raise the risk to a substantially higher level, although no higher than is faced with agency-provided services. Reduce exposure: ***Provide Worker's Compensation The existence of workers' compensation coverage is a key protection for both workers who risk injury and for consumers who, without it, face significant liability risk.</p>
<p>Injuries caused by the consumer's mental impairment. Cases in which consumers with mental impairments engage in negligent or aggressive behavior that causes injury to the worker are more complicated, because state law varies on whether the consumer's mental impairment will be recognized as a defense in an action for damages.</p>	<p>Risk of Lawsuit: Low (Varies) Mental state is a recognized defense, although specific vary. Question of incompetence arises if individual is self-directing care. Reduce exposure: ***Provide Worker's Compensation Careful hiring and screening process Adequately train worker</p>
<p>Wrongful discharge and other employment-related claims. As an employer, the consumer is potentially liable for a variety of employment related claims, such as discharge in violation of an employment agreement or employment actions that are discriminatorily motivated.</p>	<p>Risk of Lawsuit: Low Reduce exposure: Carefully written employment contracts Training for consumer on Hawaii laws</p>
<p>Liability for injuries to third parties caused by the workers. Consumers may be liable as employers on the basis of vicarious liability (also referred to as <i>respondeat superior</i>) for injuries caused to third parties by their workers while acting within the scope of employment. For example, an auto accident caused by the worker while running an errand for the consumer could result in such liability.</p>	<p>Risk of Lawsuit: Low -Moderate Reduce exposure: Adequate general liability coverage Adequate auto insurance</p>

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TABLE 4:

THE AUTHORIZED REPRESENTATIVE’S LIABILITY RISK	
LIABILITY RISKS	REDUCE RISK
<p>Liability for negligence and for breach of fiduciary duty. In addition to potential liability for negligence (that is, failure to exercise ordinary care) in performing the duties of an authorized representative, an authorized representative may well have a heightened “fiduciary duty” to the consumer.</p>	<p>Risk of Lawsuit: Low In most cases authorized representatives are relatives or friends whose care-giving commitment is high, as is their level of care in performing their duties, thus significantly reducing the likelihood of negligence or breach of fiduciary duty.</p> <p>Reduce exposure: Adequate training and support for representatives</p>
<p>Liability for Negligent Hiring of a Worker. The parent or other legally responsible person who is acting as the consumer’s authorized representative may be liable for injuries or damage to a third party that results from a worker’s failure to properly supervise or care for the consumer.</p>	<p>Risk of Lawsuit: Low Liable only if the representative: (1) knew or had reason to know that the consumer was likely to cause such damage or injuries; and (2) the authorized representative was negligent in hiring the personal assistant responsible for the supervision or care of the consumer.</p> <p>Reduce exposure: Adequate training and support for representatives</p>
<p>Liability as the employer of the worker. The authorized representative normally will be considered the joint employer, or the sole employer of the worker if the consumer has no ability to self direct his or her care, and therefore will have potential employment related liability, including vicarious liability for torts committed by the worker that cause injury to third parties.</p>	<p>Risk of Lawsuit: (See Consumer’s Liability) Generally low except in case of negligence in maintaining workplace.</p> <p>Reduce exposure: ***Provide Worker’s Compensation Careful hiring and screening process Adequately train worker Carefully written employment contracts Training for consumer on Hawaii laws Adequate training and support for representatives Adequate general liability coverage</p>
<p>Liability for abuse, neglect or exploitation of the consumer. In states that provide for a civil cause of action for abuse of a vulnerable adult, the representative may be liable to the consumer if the representative abuses, neglects or exploits the consumer. The representative could also be criminally liable. Again, this is a very low-incidence risk. Finally, the representative may be a mandatory reporter under the state APS law.</p>	<p>Risk of Lawsuit: Low In most cases authorized representatives are relatives or friends whose care-giving commitment is high.</p> <p>Reduce exposure: Train on mandatory reporter laws External monitoring</p>

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TABLE 5:

THE WORKER'S LIABILITY RISK	
LIABILITY RISKS	REDUCE RISK
<p>Negligent caregiving. Case law demonstrates that individual workers face a significant risk that they may be found liable if they are negligent in performing their caregiving duties, including leaving the consumer unattended.</p>	<p>Risk of Lawsuit: Low Workers tend to have low or modest assets and income. Reduce exposure: Careful hiring and screening process Adequate training for workers Worker obtain professional coverage</p>
<p>Negligence in non-caregiving matters. A worker may be found liable for negligence in non-care-giving activities, most notably creating a hazard in the consumer's home. For example, leaving stuff lying around and someone trips on it.</p>	<p>Risk of Lawsuit: Low Workers tend to have low or modest assets and income. Reduce exposure: Careful hiring and screening process Adequate training for workers Worker obtain professional coverage</p>
<p>Failure to report abuse or neglect. A worker may be a mandatory reporter under the state's adult protective services (APS) law and may therefore be both civilly and criminally liable for failure to report abuse or neglect that comes to attention of the worker.</p>	<p>Risk of Lawsuit: Low Workers tend to have low or modest assets and income. Reduce exposure: Train workers on mandatory reporter laws External monitoring as worker may hesitate to report abuse at risk of unemployment.</p>
<p>Liability for abuse or neglect. A worker may be criminally liable under the state's APS law if the worker abuses or neglects the consumer.</p>	<p>Risk of Lawsuit: Low This level of abuse or neglect happens infrequently Reduce exposure: Careful hiring and screening process Adequate monitoring of workers</p>
<p>Liability for injury to third party caused by the worker. The worker and the consumer are potentially liable for injuries to third parties caused by the worker while acting within the scope of employment. The worker's liability is direct, i.e., flowing directly from his or her own action or inaction, while the consumer's risk of liability is vicarious.</p>	<p>Risk of Lawsuit: Low Workers tend to have low or modest assets and income. Reduce exposure: Careful hiring and screening process Adequate training for workers Worker obtain professional coverage</p>
<p>Liability for injury to third party caused by consumer. A third party may claim that an injury inflicted by a consumer was caused by the negligent care or supervision of the worker, thus making the worker liable for damages.</p>	<p>Risk of Lawsuit: Low Likely to be dismissed for failure to prove that the worker owed a duty of care to the third party. Reduce exposure: Adequate training for workers Worker obtain professional coverage</p>

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TABLE 6:

*THE SUPPORT BROKER'S LIABILITY RISK	
LIABILITY RISKS	REDUCE RISK
<p>Liability for negligent designation of an authorized representative. To the extent that the consultant takes on responsibility for screening and/or approving an authorized representative, the consultant may be liable to the consumer for negligence in investigating, evaluating, or approving that selection, if the representative subsequently is negligent in performing his or her responsibilities or otherwise fails to act in the consumer's best interest.</p>	<p>Risk of Lawsuit: LOW With direction CSG is going this responsibility is unlikely. Reduce exposure: Clear responsibilities Professional insurance coverage</p>
<p>Liability for negligent assistance in the development of the spending plan and back-up plan. If the consultant provides inadequate or incorrect advice, the consultant may be liable for negligent assistance in the development of the spending plan or back-up plan. In states that give consultants authority to approve the spending plan and/or the back-up plan, the consultant may be liable for negligent approval of a deficient plan.</p>	<p>Risk of Lawsuit: LOW With direction CSG is going this responsibility is unlikely. Reduce exposure: Clear responsibilities Professional insurance coverage</p>
<p>Liability for negligent assistance in hiring, training and supervising workers. Similarly, if the consultant provides inadequate or incorrect advice regarding hiring, training or supervising workers, the consultant may be liable for negligence if the consumer who relies on that advice is subsequently injured.</p>	<p>Risk of Lawsuit: LOW With proper documentation and training consumer will be acting as and viewed as employer. Reduce exposure: Clear responsibilities Qualified and trained CSG Professional insurance coverage</p>
<p>Liability for negligent monitoring. A consultant may be liable if the consultant is negligent in monitoring program quality or fails to initiate action to correct problems identified in the course of monitoring, resulting in injury to the consumer.</p>	<p>Risk of Lawsuit: LOW - MODERATE Depending on responsibilities, this responsibility will also be shared by State. Reduce exposure: Clear responsibilities Qualified and trained CSG Professional insurance coverage</p>
<p>Liability for failure to report abuse or neglect. A consultant may be a mandatory reporter under the state's adult protective services (APS) law and may therefore face civil and/or criminal liability for failure to report abuse or neglect that comes to attention of the consultant.</p>	<p>Risk of Lawsuit: Low Low incidence. Reduce exposure: Train on mandatory reporter laws External monitoring</p>

*Level of exposure depends on the structuring of this support component and the responsibilities and authorities of this position. Some protection: (1) clear boundaries between consultation versus case management; (2) careful compliance with program procedures and instructions; and (3) making it clear all times that it is the role of the consumer, not the consultant, to make decisions regarding the consumer's care.

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TABLE 7:

THE FISCAL AGENT’S LIABILITY RISK	
LIABILITY RISKS	REDUCE RISK
<p>Liability to consumers for breach of contract. In some states, the fiscal agent (FA) enters into an agreement directly with the consumer, creating the possibility of a breach of contract action by the consumer if the FA fails to issue a paycheck to the worker and the consumer, as a result, loses the worker’s services and suffers injury.</p>	<p>Risk of Lawsuit: Low Amount of damages a consumer or worker will be able to recover is likely to be insignificant. Reduce exposure: Accountability and monitoring of FA</p>
<p>Tort liability to consumers and workers for failure to pay worker. Negligence resulting in failure to pay the worker could also give rise to a tort action by the worker or the consumer against the FA.</p>	<p>Risk of Lawsuit: Low Amount of damages a consumer or worker will be able to recover is likely to be insignificant. Reduce exposure: Accountability and monitoring of FA</p>
<p>Liability to consumers for negligent monitoring. A fiscal agent’s negligence in monitoring a consumer’s expenses and detecting problems could result in negative consequences for the consumer such as dis-enrollment from the CDPAS program.</p>	<p>Risk of Lawsuit: Low Consumer will likely have contributory negligence in deviating from the spending plan. Reduce exposure: Accountability and monitoring of FA Timely reporting from FA to State agencies.</p>
<p>Liability for failure to report abuse or neglect. A fiscal agent may be a mandatory reporter under the state’s adult protective services (APS) law and may therefore be both civilly and criminally liable for failure to report abuse, neglect, or exploitation that comes to attention of the FA.</p>	<p>Risk of Lawsuit: Low Low incidence. Reduce exposure: Train on mandatory reporter laws External monitoring</p>

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TABLE 8:

*THE STATE'S LIABILITY RISK	
LIABILITY RISKS	REDUCE RISK
<p>Liability for failure to obtain adequate consent. States that do not screen applicants for appropriateness, risk liability if state enrolled without obtaining consumer's voluntary agreement.</p>	<p>Risk of Lawsuit: LOW Reduce exposure: Ensure and document that consumers are informed.</p>
<p>Liability for failure to adopt adequate criteria and procedures for selection of an authorized representative for consumers who lack the capacity to designate a representative. States may be liable if a representative mismanages a consumer's care, particularly if the consumer lacks capacity to designate a representative. *Denying consumer direction to these individuals on this basis alone may be viewed as discrimination.</p>	<p>Risk of Lawsuit: LOW Few individuals will likely need an appointed representative. Reduce exposure: Formal process to appoint representative. Training and monitoring for appointed representatives.</p>
<p>Liability for negligent response to a problem or complaint regarding consumer's care. The state may be liable if it fails to exercise ordinary care in responding to a problem or complaint regarding a consumer's care.</p>	<p>Risk of Lawsuit: SAME As agency directed PA. Reduce exposure: Adequate monitoring and response.</p>
<p>Liability as alleged employer of the individual worker. If the state is found to be the employer of the individual worker, the state will be vicariously liable for torts committed by that person while acting within the scope of employment and for workers' compensation if the worker is injured on the job.</p>	<p>Risk of Lawsuit: LOW Reduce exposure: Structure program to establish consumer as employer. Provide training to ensure consumers are informed.</p>
<p>Vicarious liability for consultant's or fiscal agent's negligence and other tortuous conduct. If the state exercises sufficient control over the independent contractor, the state can be found to be the employer of that contractor and will be vicariously liable for the contractor's negligence and other tortuous conduct.</p>	<p>Risk of Lawsuit: LOW Reduce exposure: Contracts written carefully. Adequate monitoring of contracts. Contract with accountable and insured organizations.</p>
<p>Liability based on non-delegable duty. The state will be liable if a tortuous act is committed by the consultant or the fiscal agent while carrying out a "non-delegable duty" of the state. Something that should be a responsibility of the government.</p>	<p>Risk of Lawsuit: LOW Depends on State statutes Reduce exposure: Contract out only delegable duties. Modify statutes.</p>
<p>Liability for failure to provide effective emergency back-up care. If the state takes on a system-wide role in securing or providing emergency back-up, the state will take on significantly greater risk of liability for failure of back-up care. Independence Plus templates require states to "assure" emergency backup care for consumers.</p>	<p>Risk of Lawsuit: MODERATE High risk if the state's emergency backup system fails and consumer is injured. Reduce exposure: Provide effective statewide emergency backup plan.</p>

*In most consumer directed models, the state's risk of liability for personal injury is greatly reduced.

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TABLE 9:

DEFINITIONS
Assets – money, property or other valuable things owned by a person, corporation, etc.
Exposure - the condition of being unprotected or at risk of financial loss; <i>also</i> : an amount at risk
<p>Fear – (<i>noun</i>)</p> <p>1a: an unpleasant often strong emotion caused by anticipation or awareness of danger; 2: anxious concern; 4: reason for alarm</p> <p><i>Avoiding danger is no safer in the long run than outright exposure. The fearful are caught as often as the bold. --Helen Keller</i></p> <p><i>How much do we lose when we fear to lose anything. --Howard J. Lancel</i></p> <p><i>A man who fears suffering is already suffering from what he fears. --Michel de Montaigne</i></p> <p>And the most famous fear quote of all time: <i>"The only thing we have to fear is fear it'self - nameless, unreasoning, unjustified, terror which paralyzes needed efforts to convert retreat into advance." -- FDR</i></p>
Incident – something that happens that results in significant pain, suffering, or loss
Indemnity - the act of making someone "whole" (give equal to what they have lost), or protected from (insured against) any losses which have occurred or will occur.
Judgment proof – immune from having to pay for damages because of a lack of assets. This does not mean immune from being sued or taken to court or even from attempts made to collect payment.
Liable, Liability – according to the laws of the United States indicates the person or people who are responsible for the incident, and indicates who will have to pay to replace the loss or damages experienced by another person.
Negligent – careless actions; marked by or given to neglect especially habitually or culpably; not taking prudent care; marked by a carelessly easy manner
Risk – potential to get hurt, experience pain, or suffer a significant loss including death. This is a reality of life on earth, and the reason we have a legal system, and an insurance industry.
Tort - a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction.
Vicarious liability - attachment of responsibility to a person for harm or damages caused by another person in either a negligence lawsuit or criminal prosecution. Thus, an employer of an employee who injures someone through negligence while in the scope of employment (doing work for the employer) is vicariously liable for damages to the injured person.

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Sabatino, C.P., Hughes, J.D. (Jan, 2004). Addressing Liability Issues in Consumer Directed Personal Assistance Services (CDPAS). U.S. Department of Health and Human Services
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