

Revised chapter governing

Consumer Directed Services (CDS) Option Chapter 41, Subchapters A - H

EFFECTIVE DATE: March 20, 2016

Please remove Chapter 41, governing Consumer Directed Services (CDS) Option, with an effective date of September 1, 2014, from your collection of DADS rules and replace it with this document.

What changed?

The amendments to Chapter 41 implement Community First Choice (CFC). CFC services are available to individuals enrolled in the following DADS §1915(c) waiver programs:

- Home and Community-based Services (HCS) Program;
- Texas Home Living (TxHmL) Program;
- Community Living Assistance and Support Services (CLASS) Program; and
- Deaf-Blind with Multiple Disabilities (DBMD) Program.

CFC services in the waiver programs include CFC personal assistance services/habilitation (PAS/HAB), which provides services similar to services in the waiver programs, except transportation. An individual may receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option.

Process

Amendments to this chapter were proposed for public comment in the November 27, 2015, issue of the *Texas Register*. The adoption is published in the March 11, 2016, issue of the *Texas Register*.

Questions

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**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 41, CONSUMER DIRECTED SERVICES OPTION**

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SUBCHAPTER A - INTRODUCTION**

Subchapter A - Introduction

§41.101. Introduction.

Effective: January 1, 2007

This chapter describes:

- (1) the CDS option available to an individual or the individual's LAR;
- (2) the process for the enrollment and participation of an individual in the CDS option;
- (3) the responsibilities and requirements of an individual, LAR, or DR participating in the CDS option;
- (4) the minimum qualifications for a person or entity providing services to an individual participating in the CDS option;
- (5) the responsibilities and requirements of a person or entity providing services under the CDS option;
- (6) the method of payment to a person or entity providing services to an individual participating in the CDS option; and
- (7) the oversight applicable to a person or entity providing services under the CDS option.

§41.103. Definitions.

Effective: March 20, 2016

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

- (1) **Adult** -- A person who is 18 years of age or older.
- (2) **Actively involved** -- Involvement with an individual that the individual's service planning team deems to be of a quality nature based on the following:
 - (A) observed interactions of the person with the individual;
 - (B) a history of advocating for the best interests of the individual;
 - (C) knowledge and sensitivity to the individual's preferences, values, and beliefs;
 - (D) ability to communicate with the individual; and
 - (E) availability to the individual for assistance or support when needed.
- (3) **Allowable cost** -- A billable service or item that is within the rate and spending limits of the rate established by the Health and Human

Services Commission and that meets the requirements of an individual's program.

(4) **Applicant** -- Depending on the context, an applicant is:

- (A) a person applying for employment with an employer;
- (B) a person or legal entity applying for a contract with an employer to deliver services to an individual; or
- (C) a person enrolling in a program or service in which the CDS option is available to the individual as described in §41.108 of this subchapter.

(5) **Budget** -- A written projection of expenditures for each service delivered through the CDS option.

(6) **Budgeted unit rate** -- The unit rate calculated for employee compensation (wages and benefits) in the budgeting process for services delivered through the CDS option. The rate is calculated after employer support services have been budgeted.

(7) **Case manager** -- A person who provides case management services to an individual. The case manager assists an individual who receives services in gaining access to needed services, regardless of the funding source for the services, and assists with other duties in accordance with the rules of the individual's program or service.

(8) **CDS option** -- Consumer Directed Services option. A service delivery option in which an individual or LAR employs and retains service providers and directs the delivery of program services.

(9) **CDSA** -- An FMSA.

(10) **CFC** -- Community First Choice. The CFC Option described in 1 Texas Administrative Code (TAC) Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(11) **CFC PAS/HAB** -- CFC personal assistance services/habilitation. A Medicaid state plan service provided through CFC.

(12) **CFC support management** -- Training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB.

(13) **Contractor** -- A person, who

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performs one or more program services, offers service to the general public, performs services for payment, and with whom the CDS employer has a written service agreement. A contractor directs and controls when and how the work is performed as well as the business aspect of the job including expenses and the business relationship. A contractor may be a sole proprietor.

(14) **DADS** -- The Department of Aging and Disability Services.

(15) **DR** -- Designated representative. A willing adult appointed by the employer to assist with or perform the employer's required responsibilities to the extent approved by the employer.

(16) **Employee** -- A person employed by an employer through a service agreement to deliver program services and who is paid an hourly wage for those services.

(17) **Employer** -- An individual or LAR who chooses to participate in the CDS option, and, therefore, is responsible for hiring and retaining service providers to deliver program services.

(18) **Entity** -- An organization that has a legal identity such as a corporation, limited partnership, limited liability company, professional association, or cooperative.

(19) **Employer support services** -- Services and items the employer needs to perform employer and employment responsibilities, as described in §41.507(a)(1) of this chapter (relating to Employer Support Services Budgeting).

(20) **EVV system** -- Electronic visit verification system. As defined in §68.102 of this title (relating to Definitions), an electronic visit verification system that:

(A) allows a service provider to electronically report:

- (i) the service recipient's identity;
- (ii) the service provider's identity;
- (iii) the date and time the service provider begins and ends the delivery of services;
- (iv) the location of service delivery; and
- (v) tasks performed by the service provider; and

(B) meets other guidelines described

on the DADS website at www.dads.state.tx.us.

(21) **FMS** -- Financial management services. Services delivered by an FMSA to an employer or DR as described in §41.309(a) of this chapter (relating to Financial Management Services, CFC Support Management, and Vendor Fiscal/Employer Agent Responsibilities).

(22) **FMSA** -- A financial management services agency. A person, as defined in §49.102 of this title (relating to Definitions), that contracts with DADS to provide FMS.

(23) **Individual** -- A person enrolled in a DADS program or service in which the CDS option is available, as described in §41.108 of this subchapter.

(24) **LAR** -- Legally authorized representative. A person authorized or required by law to act on behalf of an individual with regard to a matter described in this chapter, including a parent of a minor, guardian of a minor, managing conservator of a minor, or the guardian of an adult.

(25) **LIDDA** -- Local intellectual and developmental disability authority. An entity designated by the executive commissioner of the Health and Human Services Commission, in accordance with Texas Health and Safety Code §533A.035.

(26) **Minor** -- A person who is 17 years of age or younger.

(27) **Non-program resource** -- A resource, other than an individual's DADS program or service.

(28) **Parent** -- A natural, legal, foster, or adoptive parent of a minor.

(29) **Program or service** -- A program or service administered by DADS that is described in §41.108 of this subchapter.

(30) **Relative** -- A person related to an employer within the fourth degree of consanguinity or within the second degree of affinity.

(31) **Service agreement** -- A written agreement or acknowledgment between two parties that defines the relationship and lists respective roles and responsibilities.

(32) **Service backup plan** -- A documented plan to ensure that critical services

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delivered through the CDS option are provided to an individual when normal service delivery is interrupted or there is an emergency.

(33) **Service coordinator** -- An employee of a LIDDA who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services, including a DADS program or service. A service coordinator provides case management services to an individual.

(34) **Service plan** -- A document developed in accordance with rules governing an individual's program or service that identifies the services to be provided to the individual, the number of units of each service to be provided, and the projected cost of each service.

(35) **Service planning team** -- A group of people identified in accordance with the requirements of an individual's program or service. Some DADS programs and services refer to the service planning team as an interdisciplinary team.

(36) **Service provider** -- An employee, contractor, or vendor.

(37) **Support advisor** -- An employee who provides support consultation to an employer, a DR, or an individual receiving services through the CDS option.

(38) **Support consultation** -- An optional service that is provided by a support advisor and provides a level of assistance and training beyond that provided by the FMSA through FMS or CFC support management. Support consultation helps an employer to meet the required employer responsibilities of the CDS option and to successfully manage the delivery of program services.

(39) **Vendor** -- A person or entity selected by an employer or DR to deliver goods, items, or services other than a direct service to an individual. Examples of vendors include a building contractor, an electrician, a durable medical equipment provider, a pharmacy, and a medical supply company.

(40) **Vendor fiscal/employer agent** -- The entity responsible for conducting payroll activities, including withholding, filing, and depositing taxes on behalf of an employer in the

CDS option, in accordance with Section 3504 of the Internal Revenue Service (IRS) code and with IRS Procedure 2013-39.

(41) **Working day** -- Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

§41.105. Application.

Effective: January 1, 2007

This chapter applies to the following:

(1) an individual or LAR who elects to be the employer for services delivered through the CDS option;

(2) a DR;

(3) a CDSA;

(4) a support advisor;

(5) a service provider; and

(6) a case manager or service coordinator.

§41.107. Overview of the CDS Option.

Effective: January 1, 2007

(a) An individual or LAR may elect the CDS option if:

(1) the individual's program offers the CDS option;

(2) one or more program services in the individual's authorized service plan are available for delivery through the CDS option;

(3) the individual or LAR agrees to perform, or to appoint a DR to perform, the employer responsibilities required for participation in the CDS option;

(4) the individual or LAR selects a CDSA to provide FMS; and

(5) the individual or LAR has developed and received approval from the service planning team for each required service back-up plan.

(b) If an individual or LAR elects to participate in the CDS option, the individual or LAR:

(1) selects a CDSA to provide FMS;

(2) with the assistance of the CDSA, budgets funds allocated in the individual's service plan for delivery through the CDS option; and

(3) recruits, screens, hires, trains, manages, and terminates service providers.

(c) An individual or LAR, as the employer,

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may appoint in writing a willing adult as the DR to assist in performing employer responsibilities.

§41.108. Services Available Through the CDS Option.

Effective: March 20, 2016

(a) The CDS option is available in the following programs and services:

(1) Medicaid waiver programs as follows:

(A) the Community Living Assistance and Support Services (CLASS) Program, if the individual does not receive in the CLASS Program:

- (i) family support services; or
- (ii) continued family services;

(B) the Deaf Blind with Multiple Disabilities (DBMD) Program, if the individual does not receive in the DBMD Program:

- (i) licensed assisted living; or
- (ii) licensed home health assisted living;

(C) the Home and Community-Based Services (HCS) Program, if the individual does not receive in the HCS Program:

- (i) residential support;
- (ii) supervised living; or
- (iii) host home/companion care;

(D) the Medically Dependent Children Program (MDCP); and

(E) the Texas Home Living (TxHmL) Program;

(2) primary home care/community attendant services (Medicaid state plan services); and

(3) services under Title XX, Subtitle A of the Social Security Act as follows:

- (A) family care; and
- (B) consumer managed personal attendant services.

(b) Except for an individual who receives a service described in subsection (a)(1)(A)(i) or (ii), (B)(i) or (ii), or (C)(i), (ii), or (iii) of this section, an individual enrolled in a waiver program described in subsection (a)(1)(A) - (E) of this section may choose to receive the following services through the CDS option:

(1) the CLASS Program:

- (A) habilitation;

- (B) in-home respite;
- (C) nursing;
- (D) occupational therapy;
- (E) out-of-home respite;
- (F) physical therapy;
- (G) speech therapy;
- (H) employment assistance;
- (I) supported employment;
- (J) cognitive rehabilitation therapy;
- (K) CFC PAS/HAB; and
- (L) any other service provided through

the CDS option as listed on DADS website;

(2) the DBMD Program:

- (A) employment assistance;
- (B) intervener;
- (C) residential habilitation;
- (D) respite;
- (E) supported employment;
- (F) CFC PAS/HAB; and
- (G) any other service provided

through the CDS option as listed on DADS website;

(3) the HCS Program:

- (A) cognitive rehabilitation therapy;
- (B) employment assistance;
- (C) nursing;
- (D) supported employment;
- (E) supported home living;
- (F) respite;
- (G) CFC PAS/HAB; and
- (H) any other service provided

through the CDS option as listed on DADS website;

(4) the MDCP:

- (A) employment assistance;
- (B) flexible family support services;
- (C) respite;
- (D) supported employment; and
- (E) any other service provided through

the CDS option as listed on DADS website; and

(5) the TxHmL Program:

- (A) adaptive aids;
- (B) audiology services;
- (C) behavioral support;
- (D) community support;
- (E) day habilitation;
- (F) dental treatment;

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(G) dietary services;
(H) employment assistance;
(I) nursing;
(J) minor home modifications;
(K) occupational therapy;
(L) physical therapy;
(M) respite;
(N) speech/language pathology services;
(O) supported employment;
(P) CFC PAS/HAB; and
(Q) any other service provided through the CDS option as listed on DADS website.

§41.109. Enrollment in the CDS Option.

Effective: January 1, 2007

(a) At the time of an individual's enrollment in a DADS program that offers the CDS option, and at least annually thereafter, a case manager, service coordinator, or other person designated by the individual's program must:

- (1) provide written materials on the CDS option to the individual or LAR;
- (2) meet with and provide the individual or LAR with an oral explanation of the CDS option specific to the individual's program; and
- (3) complete Form 1581, Consumer Directed Services Option Overview.

(b) An individual or LAR may request that a case manager, service coordinator, or other person designated by the individual's program provide additional oral and written information to the individual or LAR regarding the CDS option or assist with enrollment in the CDS option at any time. The case manager, service coordinator, or designee must comply within five working days after receipt of the request.

(c) An individual or LAR declining participation in the CDS option may at any time elect to participate in the CDS option while receiving services through a DADS program that offers the CDS option.

(d) An individual or LAR who decides to participate in the CDS option must, with assistance from a case manager or service coordinator, complete the following forms:

- (1) Form 1582, Consumer Directed

Services Responsibilities;

(2) Form 1583, Employee Qualification Requirements;

(3) Form 1584, Participant Choice for Consumer Directed Services;

(4) Form 1585, Acknowledgement of Responsibility for Exemption from Nursing Licensure for Certain Services through Consumer Directed Services, or Form 1733, Employer and Employee Acknowledgement of Exemption from Nursing License for Certain Services Delivered through Consumer Directed Services, if required by the policies of the individual's program; and

(5) Form 1586, Acknowledgement of Information Regarding Support Consultation Services in the Consumer Directed Services (CDS) Option, if the service is available in the individual's program.

(e) An individual or LAR who elects to participate in the CDS option must complete the self-assessment in Form 1582, Consumer Directed Services Responsibilities, and if applicable, complete any assessment required by the individual's program.

(f) An individual or LAR who is not able to complete the self-assessment must appoint a DR in order to participate in the CDS option.

(g) The person appointed as the DR by the individual or LAR must:

- (1) be willing to serve as the individual's or LAR's DR for participation in the CDS option;
- (2) be or become actively involved with the individual; and
- (3) complete the self-assessment in Form 1582, and any assessment required by the individual's program.

§41.111. Service Planning in the CDS Option.

Effective: January 1, 2007

(a) Service planning for an individual who chooses to participate in the CDS option is completed in accordance with the rules and requirements of the individual's program in the same manner as if services are delivered through a program provider. Service planning includes:

- (1) determining the individual's needs;
- (2) determining service levels;
- (3) justifying changes to the service plan;

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(4) maintaining costs and cost ceilings;
(5) reviewing services; and
(6) obtaining approval for planned services.

(b) A case manager or service coordinator must adhere to rules and requirements of the individual's program and in Subchapter D of this chapter (relating to Enrollment, Transfer, Suspension, and Termination) if the individual's services or a request for services is recommended for:

- (1) denial;
- (2) reduction;
- (3) suspension; or
- (4) termination.

(c) A case manager or service coordinator must provide an oral explanation of an action recommended by a service planning team. The procedure for requesting a fair hearing must be provided orally and in accordance with the individual's program requirements.

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SUBCHAPTER B - RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES**

Subchapter B - Responsibilities of Employers and Designated Representatives

§41.201. [Repealed]

§41.205. Employer Appointment of a Designated Representative.

Effective: July 1, 2013

(a) An employer may appoint a willing adult as a DR to assist or to perform employer responsibilities. The employer maintains responsibility and accountability for decisions and actions taken by the DR.

(b) If the employer chooses to appoint a DR or change a DR, or is required to appoint a DR at enrollment in the CDS option, as described in §41.109 of this chapter (relating to Enrollment in the CDS Option), the employer must complete DADS Form 1720, Appointment of Designated Representative.

(1) The employer must notify the FMSA by fax or telephone within two working days after the appointment or change of a DR.

(2) If the employer notifies the FMSA by telephone, the employer must fax or mail a copy of Form 1720 to the FMSA within five working days after the appointment or change of a DR.

(c) The employer, if appointing a DR who is not a relative, must:

(1) obtain the DR's information required on the Appointment of Designated Representative Form (Form 1720) and request the FMSA to perform a criminal history background check through the Department of Public Safety's (DPS) public Criminal History Conviction Database website; and

(2) not appoint or retain a DR who is not a relative who:

(A) has a criminal history that indicates the person has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a); or

(B) has a criminal history that indicates the person has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(d) If an employer decides to revoke the appointment of a DR, the employer must:

(1) complete DADS Form 1721, Revocation of Appointment of Designated Representative; and

(2) provide a copy of the completed form to the FMSA within two calendar days after the effective date of the revocation.

(e) Based on documentation provided by the FMSA of an employer's inability to meet employer responsibilities, the service planning team or the FMSA may recommend that the employer designate a DR to assist with or to perform employer responsibilities.

(f) A DR must not:

(1) sign or represent himself as the employer;

(2) be paid to perform employer responsibilities;

(3) be an employee of the employer;

(4) have a spouse employed by the employer; or

(5) provide a program service to the individual.

§41.206. Proof of Guardianship for the Employer.

Effective: July 1, 2013

If the court has appointed a guardian for an individual enrolled in the CDS option, the court appointed guardian must provide the FMSA, at CDS enrollment and the beginning of each service plan year, with documentation of guardianship or documentation of efforts to obtain documentation from the court.

§41.207. Initial Orientation of an Employer.

Effective: September 1, 2014

An employer and the DR must:

(1) complete the initial orientation conducted by the FMSA in the residence of the individual in accordance with §41.307 of this chapter (relating to Initial Orientation of an Employer);

(2) complete:

(A) DADS Form 1736, Documentation of Employer Orientation, upon completion of the orientation; and

(B) if applicable, one of the following:

(i) DADS Form 1733, Employer

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and Employee Exemption from Nursing License for Certain Services; or

(ii) DADS Form 1585, Statement of Responsibilities for Consumer Directed Services;

(3) enter into an agreement with the FMSA by signing and dating:

(A) DADS Form 1735, Employer and Financial Management Services Agency (FMSA) Agreement; and

(B) the Service Provision Requirements Addendum to DADS Form 1735;

(4) complete DADS Form 1726, Relationship Definitions in Consumer Directed Services;

(5) send the original completed forms or a copy of the forms described in this section to the FMSA within five calendar days after the date of the initial orientation; and

(6) ensure services are not initiated until after the FMSA receives the completed forms; and

(7) retain the original completed forms or a copy of the forms described in paragraphs (2) - (4) of this section.

§41.209. Employer-Agent Registration.

Effective: January 1, 2007

Within five calendar days after a request from a CDSA, an employer must provide necessary information and documentation to the CDSA for registration by the CDSA as the employer's agent with the Internal Revenue Service, the Texas Workforce Commission, and other government agencies as applicable.

§41.211. Financial Management Services.

Effective: March 20, 2016

An employer must agree to accept FMS from the selected FMSA, as described in §41.309 of this chapter (relating to Financial Management Services, CFC Support Management, and Vendor Fiscal/Employer Agent Responsibilities).

§41.213. Employer Support Services.

Effective: January 1, 2007

An employer or DR may request employer support services if employer support services are included in an approved budget.

§41.215. Employer Role in the Service Planning Process.

Effective: January 1, 2007

(a) An individual's service planning team consists of persons required or allowed by the individual's program.

(b) An employer must attend and participate in the individual's service planning meeting. An employer's DR may also attend the meeting with approval of the individual or LAR.

(c) An employer or DR must provide documentation related to services, service delivery, and participation in the CDS option when requested by a case manager or service coordinator.

(d) An employer or DR must, when requesting a change in a service or the addition of a service for delivery through the CDS option, provide the service planning team with documentation of circumstances that require a revision to the individual's service plan.

§41.217. Employer Responsibilities Regarding Service Backup Plan.

Effective: September 1, 2014

(a) An employer or DR must develop a service backup plan, using DADS Form 1740, CDS Service Backup Plan, if requested by the case manager or service coordinator, in accordance with §41.404(b) of this chapter (relating to Ensuring Development and Monitoring Service Backup Plans).

(b) The actions listed in a service backup plan may include the use of:

(1) paid service providers;

(2) unpaid service providers, such as family members, and friends;

(3) non-program services; or

(4) respite, if included in the authorized service plan.

(c) A service backup plan, including any revised plan, must be approved by the case manager or service coordinator in accordance with §41.404(c) of this chapter before implementation by the employer or DR.

(d) An employer or DR must:

(1) budget sufficient funds in the CDS option budget to implement a service backup plan;

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(2) comply with §41.511 of this chapter (relating to Budget Revisions and Approval);

(3) review a service backup plan annually;

(4) revise a service backup plan at any time, including after a review required by paragraph (3) of this subsection, if:

(A) the employer or DR determines the service backup plan was ineffective;

(B) a change occurs in the availability of service backup plan resources;

(C) the employer or DR redistributes funds that are not utilized in implementing a service backup plan; or

(D) the case manager or service coordinator notifies the employer or DR that the service backup plan was determined ineffective and that the plan must be revised as described in §41.404(e) of this chapter; and

(5) provide a copy of the initial and revised service backup plan to the FMSA within five working days after the plan is approved by the case manager or service coordinator in accordance with §41.404(c) of this chapter.

§41.219. CDSA Reports.

Effective: January 1, 2007

(a) An employer must:

(1) review the CDSA report as described in §41.317 of this chapter (relating to CDSA Reports) for each service delivered to the individual through CDS; and

(2) initiate budget revisions based on the CDSA report if needed to ensure that sufficient funds and units of a service are available through the end date of the individual's service plan.

(b) An employer may request that the CDSA provide the report on a monthly basis.

§41.221. Corrective Action Plans.

Effective: January 1, 2007

(a) A written corrective action plan may be required from an employer or DR if the employer or DR:

- (1) hires an ineligible service provider;
- (2) submits incomplete, inaccurate, or late documentation of service delivery;
- (3) does not follow the budget;

(4) does not comply with program requirements related to the CDS option; or

(5) does not meet other employer responsibilities.

(b) An employer must provide written corrective action plans to the person requiring the plan within 10 calendar days after receiving the request. Corrective action plans may be requested in writing by:

(1) a CDSA, related to employer responsibilities;

(2) a case manager or service coordinator;

(3) a service planning team; or

(4) a DADS representative.

(c) A written corrective action plan must include:

(1) the reason the corrective action plan is required;

(2) the action to be taken;

(3) the person responsible for each action; and

(4) the date the action must be completed.

(d) An employer or DR may request assistance in the development or implementation of a corrective action plan from:

(1) the CDSA or others if the plan is related to employer responsibilities, as described in this subchapter;

(2) if applicable, the support advisor as described in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities); and

(3) the case manager, service coordinator, or others if the corrective action plan is related to program rules or requirements.

§41.223. Liability Acknowledgment and Workers' Compensation.

Effective: January 1, 2007

(a) An employer must complete Form 1728, Liability Acknowledgment, for each applicant for employment.

(b) An employer must document on Form 1728:

(1) if the employer is, or is not, a subscriber to workers' compensation through the Texas Department of Insurance, Division of Workers' Compensation; and

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(2) the arrangements, if any, that the employer has made for work-related injuries or illness incurred by an employee if the employer is not a subscriber to workers' compensation.

(c) An employer must maintain the original Form 1728 completed for an applicant and provide a copy to the CDSA.

(d) An employer may request assistance from the CDSA to subscribe to workers' compensation through the Texas Department of Insurance, Division of Workers' Compensation if the employer elects to subscribe to the state workers' compensation program.

§41.225. Criminal History Check of an Applicant for Employment and an Employee.

Effective: March 20, 2016

(a) Before an applicant can become an employee, an employer or DR must:

(1) obtain the applicant's information required on the Criminal History and Registry Checks Form 1725 to conduct a criminal history background check through the Texas Department of Public Safety (DPS) secure online website;

(2) sign the certification section on Form 1725 acknowledging that criminal history records and reports include confidential information that must not be shared, released, or otherwise disclosed, under penalty of law; and

(3) request that the FMSA obtain the criminal history report from the secure online DPS Criminal History Conviction Database website.

(b) If the employer or DR asks the FMSA to send the criminal history report to the employer or DR, the employer or DR must receive the original criminal history report sent by the FMSA, using a DPS-approved secure method of dissemination, before hiring the applicant.

(c) A criminal history report must be dated no more than 30 calendar days before the applicant's date of hire.

(d) An employer or DR must not hire an applicant or retain an employee who:

(1) has a criminal history that indicates the applicant or employee has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a); or

(2) has a criminal history that indicates the

applicant or employee has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(e) An employer or DR must retain a copy of Form 1725 completed as described in subsection (a)(2) of this section for each employee in accordance with record retention requirements described in §41.243 of this chapter (relating to Record Retention).

(f) An employer or DR, within five calendar days after making the hiring decision, must destroy the criminal history record documents obtained from DPS for all applicants, whether or not hired or retained by the employer or DR, as described in subsection (a)(3) of this section as follows:

(1) for paper records, shredding, pulping, or burning; and

(2) for electronic records, destroying the media or using specialized software to copy over the data.

(g) An employer or DR may, at any time, obtain or request that the FMSA obtain an updated criminal history report for a current employee.

(h) Within five calendar days after receiving a criminal history report from the FMSA under subsection (g) of this section, the employer or DR must destroy the report using a method described in subsection (f) of this section.

(i) An employer or DR must immediately terminate an employee if an updated criminal history report indicates that the employee has been convicted of an offense included in THSC, §250.006(a), or the employee has been convicted of an offense included in THSC, §250.006(b) within the previous five years.

(j) The cost of obtaining a criminal history report must be budgeted by the employer or DR in accordance with §41.507(d)(2) of this chapter (relating to Employer Support Services Budgeting) and be paid as an employer support service expenditure, except for the report of an applicant or current employee who is:

(1) only providing CFC PAS/HAB; or

(2) providing support consultation to an individual who is receiving only CFC PAS/HAB through the CDS option.

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(k) When contracting with an entity, the employer or DR and the entity must complete a service agreement in which the entity certifies that the entity has checked and verified that each person delivering a service to the individual on behalf of the entity has not been convicted of an offense listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years.

§41.227. Required Registry Checks.

Effective: July 1, 2013

(a) For each applicant for employment, an employer or DR must:

(1) obtain the applicant's required information on the Criminal History and Registry Checks, (Form 1725) necessary to conduct an initial and annual check of the DADS Nurse Aide Registry and the Employee Misconduct Registry; and

(2) request that the FMSA obtain and document the results of the registry check for an applicant using Form 1725 and send a copy to the employer or DR.

(b) The result of a registry check must be obtained within 30 calendar days before the hire date and within 30 calendar days after each annual employment anniversary.

(c) An employer must not employ an applicant, and must immediately discharge an employee upon verification that the person is listed:

(1) as revoked in the Nurse Aide Registry; or

(2) as unemployable in the Employee Misconduct Registry.

(d) An employer must:

(1) submit to the FMSA, for each applicant, contractor or vendor, the information required to conduct a monthly check of the Texas Health and Human Services Commission (HHSC) – Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) – OIG Excluded Individuals/Entities Search online searchable databases; and

(2) not employ an applicant, contractor or vendor or immediately discharge an employee,

contractor or vendor if listed on the HHSC or the HHS List of Excluded Individuals and Entities.

(e) An employer must obtain and maintain a copy of completed Form 1725 documenting the results of the registry checks.

(f) When contracting with an entity, the employer and the entity must complete a service agreement in which the entity certifies that it has checked and verified that each person delivering a service to the individual on behalf of the contractor is in compliance with, and will maintain compliance with, this section.

§41.229. Licensure and Certification Verification.

Effective: January 1, 2007

(a) An employer or DR must, for each service that requires a service provider to be licensed, certified, or have other official or legal permission to perform a specific service:

(1) obtain and retain a copy or other documentation on file to verify the current status of the applicant's license, certification, or other permission; and

(2) submit a copy of the document verifying current status to the CDSA.

(b) An employer or DR must:

(1) obtain and retain documentation while the service provider is providing services to verify that the service provider's license, certification, or other legal or official permission is maintained; and

(2) provide documentation to the CDSA within 30 calendar days after the renewal date of the service provider's license, certification, or other permission.

(c) If applicable, the employer or DR must obtain a copy from the service provider of:

(1) the current complaint procedure for each of the service provider's authorities; and

(2) the service provider's professional liability insurance coverage.

(d) An employer is responsible for services delivered by the service provider prior to the employee receiving verification of a service provider's eligibility in writing from the CDSA.

(e) When contracting with an entity, the employer and the entity must complete a service

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agreement in which the entity certifies that the entity has checked and verified that each person delivering a service to the individual on behalf of the entity is in compliance with, and will maintain compliance with, this section.

§41.231. Verification of Eligibility of an Employee or Contractor.

Effective: January 1, 2007

(a) When an applicant is hired, the employer or DR must ensure that the applicant completes Form 1724, New Service Provider Packet Cover Sheet, and supplies any required support documentation before being employed or retained by the employer or DR for the delivery of services to the individual. The employer or DR must provide Form 1724 to the CDSA.

(b) An employer or DR must:

(1) withdraw an offer of employment if a person is not eligible for employment based on results of US Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification or regulations of any government agency;

(2) verify continued eligibility of employment based on the requirements of the US Citizenship and Immigration Services using Form I-9, Employment Eligibility Verification;

(3) maintain a copy of renewed supporting documents; and

(4) submit a copy of renewed supporting documentation to the CDSA.

(c) An employer or DR must immediately terminate an employee or contractor that does not maintain eligibility to:

(1) be employed or retained; or

(2) provide the service or services to an individual.

(d) If an employee or contractor is permitted, by program rule or with employer approval, to transport the individual, the employer or DR must obtain, maintain, and update copies of the employee's or contractor's:

(1) current Texas Driver License; and

(2) current proof of minimum auto insurance as required by the State of Texas.

(e) An employer or DR may obtain additional background or reference checks on applicants,

employees, and contractors. Charges for the costs of background or reference checks must be in the individual's approved budget before the expense is incurred, if the expense will be paid through the individual's budget.

(f) If an applicant that has previously been terminated by the employer is being considered as a service provider through the CDS option, the employer or DR must determine eligibility in the same manner as required for a new employee or a new contractor.

(g) An employer or DR must obtain written notice from the CDSA that an applicant, employee, or contractor is eligible to be hired, retained, or maintained for service delivery before services are delivered.

(h) When contracting with an entity, the employer and the entity must complete a service agreement in which the entity certifies that the entity has checked and verified that each person delivering a service to the individual on behalf of the entity is in compliance with, and will maintain compliance with, this section.

§41.233. Training and Management of Service Providers.

Effective: September 1, 2014

(a) An employer or DR must use DADS Form 1732, Management and Training of Service Provider, to document:

(1) the activities regarding initial and on-going training of a service provider required by the Service Provision Requirements Addendum to DADS Form 1735, Employer and Financial Management Services Agency (FMSA) Agreement;

(2) the activities regarding on-going management of a service provider required by the Service Provision Requirements Addendum to DADS Form 1735; and -

(3) an evaluation of the service provider's performance at least annually after the date of hire.

(b) An employer or DR must send a copy of completed DADS Form 1732 to the FMSA within 30 calendar days after:

(1) hiring a service provider; and

(2) each annual evaluation of the service provider.

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§41.235. Verification of Eligibility for Vendors.

Effective: January 1, 2007

- (a) An employer or DR must:
- (1) obtain, verify, and retain documentation that a vendor meets and maintains the eligibility requirements of an individual's program for the services to be delivered; and
 - (2) submit documentation of the vendor's eligibility and continued eligibility to the CDSA before services are delivered.
- (b) A vendor must be in compliance with any requirements of law or of the individual's program, including:
- (1) applicable licensing or certification standards;
 - (2) local building codes;
 - (3) the Americans with Disabilities Act of 1990 as amended; and
 - (4) state requirements for automotive adaptive equipment and vehicle modifications.
- (c) An employer or DR must obtain written approval from the CDSA that a vendor has met the requirements detailed in subsection (a) of this section before the vendor delivers services to the individual.

§41.237. Service Provider Agreements.

Effective: January 1, 2007

- (a) An employer or DR must, before an employee, contractor, or vendor provides services to an individual, ensure that required DADS service agreements have been completed between:
- (1) the employer and the employee;
 - (2) the employer and the contractor; and
 - (3) the employer and a vendor, if required by DADS.
- (b) An employer must assist the CDSA in obtaining the required DADS service agreement form between:
- (1) the CDSA and the employee;
 - (2) the CDSA and individual contractor or entity contractor; and
 - (3) the CDSA and a vendor, if required by DADS.
- (c) An employer must ensure that the CDSA receives the completed service agreement described in subsection (b) of this section.
- (d) A CDSA must not make payment to a

service provider until the completed service agreement is received.

§41.238 Service Delivery Requirements

Effective: September 1, 2014

- (a) The employer or DR must ensure that services provided through the CDS option:
- (1) are included on the individual's DADS authorized service plan and, if required by the program rules, included on any other plan such as the habilitation plan or implementation plan;
 - (2) are budgeted in the employer budget;
 - (3) are provided only to the individual;
 - (4) are not provided if the individual receiving services becomes ineligible for program services; and
 - (5) meet requirements for payment in accordance with program rules and §41.241 of this subchapter (relating to Payment of Services).
- (b) If nursing services or MDCP respite or flexible family support are included on the service plan, the employer or DR must:
- (1) if the employer or DR hires an RN to deliver the service, obtain a completed DADS Form 1747, Acknowledgment of Nursing Requirements, from the RN before the RN provides nursing services or MDCP respite or flexible family support to the individual;
 - (2) if the employer or DR hires a licensed vocational nurse (LVN) to deliver the service, obtain a completed DADS Form 1747-LVN, Licensed Vocational Nurse Supervision Certification, from the LVN before the LVN provides nursing services or MDCP respite or flexible family support to the individual;
 - (3) maintain completed DADS Forms 1747 and 1747-LVN in the individual's home and send a copy of the completed forms to the FMSA before delivery of nursing services or MDCP respite or flexible family support; and
 - (4) if program rules require that the individual's program provider's nurse complete the initial and annual nursing assessment:
 - (A) provide a copy of the program provider's nursing assessment, including the number of nursing hours authorized, to the CDS nurse; and
 - (B) if the CDS nurse disagrees with

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the number of authorized nursing hours, ensure that the CDS nurse provides justification to the service planning team for consideration and a possible service plan revision.

(c) If DADS determines that an employer or DR is not in compliance with this section, DADS may require the employer to develop and implement a corrective action plan in accordance with §41.221 of this subchapter (relating to Corrective Action Plans).

§41.239. Documentation of Services Delivered.

Effective: January 1, 2011

(a) An employer or DR must ensure that documentation of services delivered includes:

(1) each element required by an individual's program; and

(2) service dates within the same calendar month.

(b) In addition to documentation generated by an EVV system, documentation of services delivered must include:

(1) time sheets for employees who are not required to document their time worked using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System);

(2) time sheets or invoices for contractors;

(3) invoices for vendors;

(4) receipts when payment has been made for a service; and

(5) other documentation in accordance with requirements of the individual's program.

(c) Unless using an EVV system as required by Chapter 68 of this title:

(1) an employer or DR must review documentation of services delivered and obtain corrections or revisions before submitting the document to the CDSA for payment;

(2) the person making an error or omission on documentation of services delivered must:

(A) enter the omission; and

(B) for an error, make correction by:

(i) making one line through the error;

(ii) entering the correction; and

(iii) initialing and dating the

correction; and

(3) the employer or DR must sign and date the documentation of services delivered after the last entry or correction made by the service provider to signify approval for payment of the documentation of services delivered.

§41.241. Payment of Services.

Effective: January 1, 2011

(a) Only the employer or DR may approve the documentation of services delivered described in §41.239 of this chapter (relating to Documentation of Services Delivered).

(b) An employer or DR must submit to the CDSA approved documentation of services delivered for payment on or before the due date established by the CDSA.

(c) Unless using an EVV system as required by Chapter 68 of this title, an employer or DR must obtain a correction and submit the corrected and approved documentation of services delivered to the CDSA within three calendar days after receiving a request for corrected documentation of services delivered from the CDSA.

(d) The CDSA does not pay for services delivered until receipt of approved documentation.

(e) Overtime pay for employees must be calculated and paid in accordance with current state or federal laws and regulations for payment of overtime.

(f) DADS does not pay, and the CDSA must not pay, for purchases or services that:

(1) are not in an approved budget at time of purchase;

(2) do not meet requirements for payment through the individual's program or this chapter;

(3) are provided by a service provider:

(A) before the CDSA provides written approval of the service provider's eligibility to deliver the service, even if the CDSA determines later that the service provider was eligible to deliver the service;

(B) while the service provider was not eligible to deliver services because the service provider did not have a valid license, certificate, or other formal permission to provide the service or failed to meet other qualifications for service delivery; or

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(C) when the service provider's relationship to the employer, individual, or DR is prohibited for service delivery;

(4) are delivered when the individual receiving services is not eligible for services at the time of service delivery;

(5) are available through a non-program resource;

(6) are available through another service within the individual's program;

(7) do not meet:

(A) the needs of the individual;

(B) the employment-related requirements;

or

(C) the employer-related responsibilities;

or

(8) exceed the rate or amount approved for the service.

(g) If the employer or DR does not meet an employer responsibility or due date, DADS does not pay and the CDSA must not pay related finance charges, interest, and fees.

§41.243. Record Retention.

Effective: January 1, 2007

(a) An employer must, for at least five years after services are delivered through the CDS option, maintain documentation required by:

(1) this chapter;

(2) the individual's program; or

(3) government agencies with regulatory authority over employer and employer-agent responsibilities.

(b) An employer must retain documentation of:

(1) services delivered to an individual through the CDS option;

(2) payments by the CDSA to service providers;

(3) service provider qualifications;

(4) employer responsibilities;

(5) employer-agent responsibilities; and

(6) contracts, service agreements, and required supporting documentation.

(c) An employer must maintain all documentation:

(1) until all litigation or claims are resolved, if any litigation or claim involving these

records is ongoing, regardless of the five-year period; and

(2) in accordance with the regulating government agency's requirement for specific documentation when the record retention requirement is more than five years.

(d) An employer must allow representatives of DADS and other appropriate government agencies to examine and copy records during normal business hours and days.

(e) DADS may take adverse action if the employer fails to maintain records as required or to provide records upon request.

(f) An employer must ensure confidentiality and security of all records.

(g) If records are discarded, the employer must ensure confidentiality and security of the information.

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Subchapter C - Enrollment and Responsibilities of Financial Management Services Agencies (FMSAs)

§41.301. Contracting as a Financial Management Services Agency.

Effective: September 1, 2014

(a) An FMSA must:

(1) comply with Chapter 49 of this title (relating to Contracting for Community Services);

(2) have at least one eligible employee or contractor to provide support consultation services as defined in Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities);

(3) operate as a Vendor Fiscal/Employer Agent (VF/EA) in accordance with §3504 of the Internal Revenue Service (IRS) Code; and

(4) participate in all mandatory training provided or authorized by DADS.

(b) An FMSA must not:

(1) use a third party to file and report payroll taxes to the IRS on behalf of a CDS employer;

(2) provide FMS to an individual who is receiving case management services or service coordination from the FMSA or a controlling person, as defined in §49.102 of this title (relating to Definitions) of the FMSA, except in the Consumer Managed Personal Attendant Services program.

(c) An individual receiving FMS, the individual's LAR, or DR, must not be:

(1) the individual's FMSA; or

(2) a controlling person, as defined in §49.102 of this title, of the individual's FMSA.

§41.303. Obtaining and Revoking Federal and State Approval to be a Vendor Fiscal/Employer Agent.

Effective: July 1, 2013

(a) An FMSA must apply for and obtain one Federal Employer Identification Number (FEIN) for the sole purpose of filing and depositing federal income tax withholding and employment taxes (i.e., Medicare and Social Security (FICA) and Federal Unemployment Insurance taxes) on behalf of employers it represents as a vendor

fiscal/employer agent. The one FEIN must cover all states and programs under which the entity functions as a FMSA.

(b) An FMSA must obtain IRS approval to act as an agent for each employer it represents by:

(1) obtaining, within 30 calendar days after the employer enrolls into the CDS option, a separate FEIN for each employer it represents by completing and submitting an IRS Form SS-4, Application for Employer Identification Number unless the employer uses an existing FEIN for the CDS option;

(2) requesting that the employer, who uses an existing FEIN for the CDS option, inform the FMSA if the FEIN is being used for other purposes;

(3) retaining a copy of an executed IRS Form SS-4 or other documentation provided by the CDS employer who already has an FEIN for each employer on file;

(4) applying for and receiving agent authorization from the IRS by completing and submitting an IRS Form 2678, Employer/Payer Appointment of Agent, within 30 calendar days after the employer enrolls into the CDS option, for each employer it represents; and

(5) retaining a copy of executed IRS Form 2678 for each employer on file.

(c) The FMSA must register as a reporting agent with the Texas Workforce Commission (TWC) for the sole purpose of filing and depositing state unemployment taxes.

(d) The FMSA must revoke the FMSA's IRS and TWC agent status within 30 calendar days after becoming aware that the person no longer qualifies for the program, the employer no longer qualifies to be an employer, the individual transfers to another FMSA, or the individual no longer uses the CDS option.

§41.305. Appointment of a Designated Representative.

Effective: July 1, 2013

(a) The FMSA must, if the employer requests to appoint a person who is not a relative as DR, use the information provided by the employer on the Appointment of Designated Representative form (Form 1720) to:

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(1) obtain the criminal history information directly from the Texas Department of Public Safety's (DPS) public online criminal history website; and

(2) notify the employer, using Form 1720, if the DR has been convicted of an offense included in Texas Health and Safety Code (THSC), §250.006(a), or has been convicted of an offense included in THSC, §250.006(b) within the previous five years and cannot be appointed as DR.

(b) An FMSA must maintain the following documentation regarding an employer's DR:

(1) Form 1720, Appointment of a Designated Representative, for:

(A) initial designations; and

(B) any change to an appointment of a DR; and

(2) Form 1721, Revocation of Representative, if the employer elects to revoke the appointment of a DR.

(c) An FMSA must communicate with and accept direction from the employer's DR to the extent delegated by the employer on Form 1720.

§41.306. Proof of Guardianship for Financial Management Services Agencies.

Effective: July 1, 2013

An FMSA must obtain at CDS enrollment and the beginning of each service plan year from the court appointed guardian of an individual using the CDS option, current documentation of guardianship or documentation of the guardian's efforts to obtain documentation from the court. The FMSA must maintain the documentation.

§41.307. Initial Orientation of an Employer.

Effective: July 1, 2013

(a) An FMSA must conduct an initial face-to-face orientation with the employer, and the DR if applicable, in the residence of the individual, that:

(1) explains the roles, rules, and responsibilities that apply to a CDS employer, provider, FMSA, and state agencies, including:

(A) the employer budget based on the authorized service plan;

(B) the hiring process, including documents and forms to be completed for new

employees; and

(C) managing paper and electronic timesheets, due dates, payday schedules, and disbursing employee payroll checks;

(2) reviews and leaves with the employer, and DR if applicable, a printed document that clearly states the FMSA's:

(A) normal hours of operation;

(B) key persons to contact with issues or questions and how to contact these persons; and

(C) the complaint process, including how to file a complaint with to the FMSA or about the FMSA;

(3) reviews Form 1735, Employer and FMSA Agreement and required attachments, emphasizing rule and policy requirements of the individual's program, including:

(A) service definitions;

(B) provider qualifications;

(C) required documentation to be kept in the home;

(D) training requirements for service providers;

(E) program staff who will be reviewing the employer's records; and

(F) if applicable, nursing requirements as described on DADS Form 1747; and

(4) reviews and leaves with the employer, and DR if applicable, printed information on how to report allegations of abuse, neglect and exploitation.

(b) The FMSA must provide to the employer or DR a printed or an electronic copy of the DADS CDS Employer Manual.

(c) The FMSA and employer must complete Form 1736, Documentation of Employer Orientation, upon conclusion of the orientation.

(d) The FMSA must receive a completed Form 1735 with required attachments signed and dated by the employer before initiation of the CDS option.

§41.309. Financial Management Services, CFC Support Management, and Vendor Fiscal/ Employer Agent Responsibilities.

Effective: March 20, 2016

(a) An FMSA must provide FMS to an

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employer or DR. FMS consists of the following activities:

(1) providing initial orientation as described in §41.307 of this chapter (relating to Initial Orientation of an Employer);

(2) providing ongoing training, assistance, and support for employer-related responsibilities;

(3) assisting an employer to verify qualifications of service providers before services are delivered, including citizenship status;

(4) monitoring continued eligibility of service providers;

(5) approving and monitoring budgets for services delivered through the CDS option;

(6) collecting and processing service provider timesheets or invoices approved by the employer;

(7) processing payroll, including calculating employee withholdings and employer contributions and depositing these funds with applicable federal, state, and local agencies;

(8) complying with applicable government regulations concerning employee withholdings, garnishments, mandated withholdings, and benefits;

(9) preparing and filing required tax forms and reports;

(10) paying allowable expenses incurred by the employer;

(11) providing status reports concerning the individual's budget, expenditures, and compliance with CDS option requirements; and

(12) responding to the employer or DR as soon as possible, but at least within two working days after receipt of information requiring a response from the FMSA, unless indicated otherwise in this chapter.

(b) An FMSA must provide, in accordance with DADS instructions, CFC support management to an individual or LAR if:

(1) the individual is receiving CFC PAS/HAB; and

(2) the individual or LAR requests to receive CFC support management.

(c) An FMSA must complete DADS Form 1739 Service Provider Agreement with an employer's service provider before issuing the

initial payment for services to the service provider.

(d) An FMSA must accept a designated fee established by the Health and Human Services Commission as payment in full for FMS provided.

(e) An FMSA must maintain originals or copies of records to document compliance with this section.

(f) An FMSA must not provide FMS and case management services to the same individual as prohibited in §41.301 of this chapter (relating to Contracting as a Financial Management Services Agency).

§41.311. Employer Support Services and Support Consultation Services.

Effective: January 1, 2007

If requested, a CDSA must assist an employer or DR to plan, budget, and purchase allowable employer support services and goods for:

- (1) employer-related activities;
- (2) employment-related activities; and
- (3) support consultation.

§41.313. Individual Service Planning Process.

Effective: January 1, 2007

(a) A CDSA may participate as a member of an individual's service planning team when requested by the individual or LAR and agreed to by the CDSA.

(b) Within three working days after receiving a request from an employer, DR, case manager, service coordinator, or DADS, the CDSA must provide information related to an individual's participation in the CDS option.

(c) The CDSA must document and notify a case manager or service coordinator of issues or concerns related to an individual's participation in the CDS option, including:

- (1) allegations of abuse, neglect, exploitation, or fraud;
- (2) concerns about the individual's health, safety, or welfare;
- (3) non-delivery or extended breaks in services;
- (4) noncompliance with employer responsibilities;
- (5) noncompliance with service back-up plans; or

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(6) over or under utilization of services or funds allocated in the individual's service plan for delivery of services to the individual through the CDS option and in accordance with the requirements of the individual's program.

§41.315. Service Back-up Plan.

Effective: January 1, 2007

A CDSA must:

- (1) assist an employer as requested to revise budgets to meet service back-up plan strategies approved by the individual's service planning team;
- (2) review, validate, and approve revised budgets in accordance with §41.511 of this chapter (relating to Budget Revisions and Approval);
- (3) reimburse documented, budgeted, allowable expenses incurred related to implementing service back-up plan strategies; and
- (4) retain a copy of service back-up plans received from the employer.

§41.317. CDSA Reports.

Effective: January 1, 2007

A CDSA must:

- (1) compile a report in accordance with the format provided by DADS addressing each service delivered through the CDS option, including the actual number of hours or units of service delivered;
- (2) provide the report no less than quarterly, and monthly if requested, to:
 - (A) the employer or DR; and
 - (B) the case manager or service coordinator; and
- (3) provide a copy of the report to DADS, upon request by a DADS representative.

§41.319. Corrective Action Plans.

Effective: January 1, 2007

- (a) A CDSA may require that the employer or DR develop a written corrective action plan related to employer responsibilities, such as:
 - (1) an ineligible service provider is hired or retained for service delivery;
 - (2) documentation of service delivery is incomplete, inaccurate, or late;
 - (3) the budget has not been followed;

(4) the rules in this chapter have not been followed; or

(5) other employer responsibilities are not followed.

(b) If requested by an employer or DR, a CDSA must assist the employer or DR in the development and implementation of a corrective action plan related to employer responsibilities in the CDS option. A corrective action plan must include:

- (1) the reason the corrective action plan is required;
- (2) the action to be taken;
- (3) the person responsible for the action; and
- (4) the date the action must be completed.

§41.321. Liability Acknowledgment and Workers' Compensation.

Effective: January 1, 2007

(a) A CDSA must verify that an applicant for employment has completed, signed, and dated Form 1728, Liability Acknowledgment, before approving the applicant for hire by the employer.

(b) A CDSA must assist an employer if requested to obtain coverage for employee work-related injuries, including:

- (1) workers' compensation through the Texas Department of Insurance, Division of Workers Compensation; or
- (2) other options listed on Form 1728.

§41.323. Criminal History Check of an Applicant for Employment and to be an Employee.

Effective: March 20, 2016

(a) The FMSA must ensure that the employer or DR signs the Criminal History and Registry Checks form (Form 1725) acknowledging that criminal history reports are confidential and must not be shared, released, or otherwise disclosed, under penalty of law.

(b) The FMSA must, using the applicant information provided by the employer on the Criminal History and Registry Checks Form (Form 1725):

- (1) obtain the criminal history record information directly from the Texas Department of

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Public Safety's (DPS) secure online criminal history website within two working days after the CDS employer or DR requests the information; and

(2) if requested by the CDS employer or DR, using a DPS-approved secure method, send the original printed document of the criminal history record information to the employer within two working days after receiving the request.

(c) The criminal history report must not be dated more than 30 calendar days before the date the applicant is hired.

(d) The FMSA must review the criminal history report on each applicant and notify the employer or DR in writing, using the Criminal History Registry Checks form (Form 1725), if the applicant has been convicted of an offense listed in Texas Health and Safety Code (THSC), §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years, and the applicant must not be hired or retained.

(e) The FMSA must maintain a copy of the Criminal History and Registry Checks form (Form 1725) for an applicant hired by an employer or DR.

(f) The FMSA, within five calendar days after the hiring decision, must destroy the criminal history record information obtained from DPS as described in subsection (b)(1) of this section for all applicants, whether or not hired or retained by the employer or DR, as follows:

(1) for paper records, shredding, pulping, or burning; and

(2) for electronic records, destroying the media or using specialized software to copy over the data.

(g) The FMSA must obtain an updated criminal history report for an employee, if requested by the employer or DR. If the results of the updated report indicate the employee has been convicted of an offense listed in THSC, §250.006(a), or an offense listed in THSC, §250.006(b) within the previous five years, the FMSA must notify the employer or DR that the person must be terminated immediately as an employee.

(h) Within five calendar days after obtaining

the criminal history report under subsection (g) of this section, the FMSA must destroy the report using a method described in subsection (f) of this section.

(i) The cost of obtaining a criminal history report must be budgeted by the employer or DR in accordance with §41.507(d)(2) of this chapter (relating to Employer Support Services Budgeting) and be paid as an employer support service expenditure, except for the report of an applicant or employee who is:

(1) only providing CFC PAS/HAB; or

(2) providing support consultation to an individual who is receiving only CFC PAS/HAB through the CDS option.

(j) From the fee established by the Health and Human Services Commission for providing FMS, an FMSA must pay the cost of obtaining the criminal history report of an applicant or employee who is:

(1) only providing CFC PAS/HAB; or

(2) providing support consultation to an individual who is receiving only CFC PAS/HAB through the CDS option.

(k) The amount paid for a criminal history report must be the amount stated on a receipt to the FMSA for purchase of the criminal history report.

§41.325. Required Registry Checks of an Applicant to be an Employee.

Effective: July 1, 2013

(a) For each applicant for delivery of services through the CDS option as an employee, an FMSA must:

(1) check DADS' Nurse Aide Registry and Employee Misconduct Registry not more than 30 calendar days prior to the hire date;

(2) document and maintain the results of each applicant registry check on Form 1725, Criminal Conviction History and Registry Check; and

(3) provide a copy of completed Form 1725 for each applicant to the employer.

(b) For each applicant for delivery of services through the CDS option as an employee, contractor, or vendor, an FMSA, prior to hiring, must:

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(1) check the Texas Health and Human Services Commission (HHSC) – Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) – OIG Excluded Individuals/Entities Search online searchable databases; and

(2) document the results and retain the documentation on file.

(c) To comply with the Centers for Medicare and Medicaid Services reporting requirements and 42 Code Federal Regulations §1003.102(a)(2), an FMSA must immediately report any Medicaid exclusion findings to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website.

(d) The FMSA must obtain a copy of Form 1725 documenting the results of the registry checks if the employer or DR directly conducts a check of the registries.

(e) The FMSA must not approve an applicant for employment or for a contract or a vendor upon verification that the person is listed:

(1) as revoked in the Nurse Aide Registry;

(2) as unemployable in the Employee Misconduct Registry; or

(3) on the HHSC or HHS list of excluded individuals or entities.

§41.327. Verification of Applicants for Employees, Contractors, and Vendors.

Effective: July 1, 2013

(a) For each applicant for delivery of services through the CDS option as an employee, contractor, or vendor, the FMSA must:

(1) obtain and review documentation from the employer, DR, or applicant that is required to verify each required qualification of the applicant;

(2) notify the employer or DR of required documentation not received;

(3) notify the employer or DR using the Verification of Applicant Form (DADS Form 1729) within three working days after receipt of all required documentation that the applicant is or is not qualified to be hired or retained for delivery of the specific service or services; and

(4) retain documentation on file if the applicant is hired or retained by the employer or DR for service delivery.

(b) The FMSA must review documentation provided by the employer, DR, applicant, or service provider, to determine if the applicant or service provider meets eligibility, licensure, certification or training requirements of the individual's program and government regulations to deliver an intended service and that the planned service meets those requirements.

(c) Before services can be delivered, the FMSA must review Form 1724, New Service Provider Packet Cover Sheet, and any required supporting documentation provided by the employer, DR, or service provider and notify the employer, within two working days, to withdraw an offer of employment if the service provider is not eligible for employment based on results of reviewing the US Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification or regulations of any government agency.

(d) Before services can be delivered, the FMSA must verify an employee's or a contractor's social security number with the Social Security Administration.

(e) The FMSA must not pay for services delivered if the FMSA has not provided written notice to the employer or DR of the service provider's eligibility even if the service provider is determined later by the FMSA to be eligible.

(f) The FMSA must pay, but not claim reimbursement through DADS, for services delivered if the FMSA notified the employer or DR in error that the applicant was eligible.

(g) If an applicant has previously been terminated by the employer or DR, the employer or DR and the FMSA must complete the eligibility process as a new applicant.

§41.329. Continued Eligibility of an Employee, Contractor, or Vendor.

Effective: July 1, 2013

(a) For each employee, contractor, or vendor, an FMSA must:

(1) obtain from the employer, DR, or service provider a copy of a renewed license or

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certificate, if required by the individual's program, within 30 calendar days after the expiration date of the current document on file required to maintain qualifications;

(2) notify the employer or DR to send required documentation to the FMSA, if not received within the 30 days;

(3) notify the employer or DR in writing within three working days after receipt of all required documentation if the service provider is not qualified to continue service delivery; and

(4) retain the documentation on file.

(b) The FMSA must obtain and retain documentation on file that the service provider continues to meet qualifications as required by the individual's program rules, policies, and manuals, and other state and federal regulations including:

(1) an annual check of DADS Nurse Aide Registry and Employee Misconduct Registry; and

(2) a monthly check of the Texas Health and Human Services Commission (HHSC) – Office of Inspector General (OIG) List of Excluded Individuals/Entities and the United States Department of Health and Human Services (HHS) – OIG Excluded Individuals/Entities Search online searchable databases.

(c) The FMSA must notify the employer or DR in writing to immediately terminate a service provider if the person is:

(1) listed as revoked in the Nurse Aide Registry;

(2) listed as unemployable in the Employee Misconduct Registry; or

(3) is listed on the HHSC or HHS List of Excluded Individuals and Entities.

(d) To comply with the Centers for Medicare and Medicaid Services reporting requirements and 42 Code of Federal Regulations §1003.102(a)(2)), an FMSA must immediately report any Medicaid exclusion findings to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website.

(e) The FMSA must obtain an updated criminal conviction history check for an employee, if requested by the employer or DR. If the results of the updated check indicate the person has been convicted of a crime listed in Texas Health and

Safety Code (THSC), §250.006 (a), or an offense listed in THSC, §250.006(b) within the previous five years, the FMSA must notify the employer or DR that the person must be terminated immediately as an employee.

(f) The FMSA must not pay for services delivered by a service provider if the FMSA has not documented continuing qualifications for service delivery to the employer or DR, even if the service provider is determined later by the FMSA to be qualified.

(g) The FMSA must pay, and not claim reimbursement through DADS, for services delivered by a service provider if the FMSA had notified the employer or DR in error that the service provider was qualified.

(h) The FMSA must not pay, and must not claim reimbursement from DADS, for services delivered on dates that the service provider was not eligible.

§41.331. Evaluation of Job Performance and Satisfaction.

Effective: January 1, 2007

(a) If required by the individual's program, and the CDSA has not received a copy of a completed program-required evaluation from the employer or DR within 20 calendar days after the due date, the CDSA must notify the employer or DR in writing that a copy must be provided to the CDSA within 14 calendar days after receipt of the notice.

(b) The CDSA must provide the DADS satisfaction survey of CDSA services to the employer or DR for each individual enrolled with the CDSA:

(1) annually;

(2) upon transfer to another CDSA; and

(3) upon termination from the CDS

option.

(c) If a response to the satisfaction survey described in subsection (b) of this section is not received from the employer or DR within 14 calendar days after the survey is provided to the employer, the CDSA must conduct the satisfaction survey with the employer or DR by telephone.

(d) The CDSA must:

(1) retain completed satisfaction surveys

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received and conducted; and

(2) make the satisfaction surveys available to DADS on request.

§41.333. Service Agreements.

Effective: January 1, 2007

(a) After initial orientation of the employer by the CDSA and before additional FMS may be provided by the CDSA, the CDSA must receive from the employer a completed copy of Form 1735, Service Agreement between the Employer and the Consumer Directed Services Agency, and required attachments.

(b) Before the CDSA pays an eligible service provider, the CDSA must obtain a completed original of the DADS provided Service Acknowledgment Between a Service Provider and the Consumer Directed Services Agency, and required attachments, for:

- (1) each employee of the employer;
- (2) each contractor retained by the employer; and
- (3) each vendor retained by the employer, if required in instructions for completion of the DADS Service Acknowledgment Between a Service Provider and the Consumer Directed Services Agency.

§41.335. Documentation of Services Delivered.

Effective: January 1, 2011

(a) The CDSA must verify that the service provider:

- (1) documents each element required by the individual's program;
- (2) documents service dates within the same calendar month; and
- (3) unless using an EVV system as required by Chapter 68 of this title (relating to Electronic Visit Verification (EVV) System), has a dated signature of the employer or DR on all documentation of services delivered.

(b) Documentation must include:

- (1) time sheets for employees who are not required to document their time using an EVV system as required by Chapter 68 of this title;
- (2) time sheets or invoices for contractors;
- (3) invoices for vendors;
- (4) receipts when payment has been made

for a service; and

(5) other documentation in accordance with requirements of the individual's program.

(c) A CDSA must:

- (1) verify the accuracy of the document;
- (2) verify that documentation is completed in accordance with §41.239 of this chapter (relating to Documentation of Services Delivered);
- (3) if necessary, obtain corrected documentation approved by the employer or DR; and
- (4) process and issue payment.

§41.337. Payment of Services.

Effective: January 1, 2007

(a) A CDSA must make payments in accordance with posted pay dates and required time frames unless delay is documented by the CDSA as being caused by an employer, DR, or service provider.

(b) A CDSA approves and pays for purchases through the CDS option only if:

(1) documentation provided is in accordance with §41.239 of this chapter (relating to Documentation of Services Delivered) and §41.335 of this chapter (relating to Documentation of Services Delivered); and

(2) services, goods, or items documented are included in the approved budget before purchase.

(c) A CDSA must pay only:

- (1) the actual hours and minutes of service in accordance with the individual's program;
- (2) the actual cost of the service or item, not to exceed the established budget unit rate or amount for the service;
- (3) the budgeted employee benefits accrued based on hours worked by employees; and
- (4) purchases of services and items if funds have been accrued based on units delivered.

(d) A CDSA must not request payment from DADS, and DADS does not pay, for services, goods, or items that:

- (1) include finance charges, interest, or assessed late fees or charges;

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(2) services, goods, or items that are delivered by a service provider who:

(A) was not approved in writing by the CDSA before service delivery, even if the CDSA determines later that the service provider was eligible to deliver the service; or

(B) was not eligible to provide the service at the time of delivery;

(3) are available through another service within the individual's program;

(4) are available through a non-program resource;

(5) are not included in an approved budget before purchase or delivery of the service or item; or

(6) the individual was not eligible for.

(e) A CDSA must bill accrued funds either at the time the funds are paid or deposited by the CDSA.

(f) A CDSA must make billing adjustments:

(1) for payments received that:

(A) have not been paid by the CDSA;

and

(B) are not due from the CDSA; and

(2) when:

(A) the service plan period ends;

(B) the individual transfers to another

CDSA; or

(C) the individual terminates the CDS

option.

(g) A CDSA must ensure that payment of overtime pay for employees is calculated and paid in accordance with current state and federal laws and regulations for payment of overtime.

(h) A CDSA must receive a copy of the documentation of services delivered dated by the service provider and the employer or DR before issuing a subsequent payment to the employee when the previous payment was based on a time sheet received in an electronic format through e-mail.

§41.339. Records.

Effective: September 1, 2014

(a) An FMSA must maintain financial records to support claims submitted to DADS and payments received from DADS.

(b) An FMSA must, in accordance with

generally accepted accounting principles (GAAP) and DADS requirements, document and maintain financial records, including:

(1) deposit slips, bank statements, cancelled checks, and receipts;

(2) purchase orders;

(3) invoices;

(4) journals and ledgers;

(5) time sheets, payroll, and tax records;

(6) records, forms, and reports required by the Internal Revenue Service, the Texas Workforce Commission, and other applicable government agencies;

(7) insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation) as a DADS contracted provider (the FMSA) and as applicable for individuals.

(8) equipment inventory records;

(9) the FMSA's internal accounting procedures; and

(10) chart of accounts.

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Subchapter D - Enrollment, Transfer, Suspension, and Termination

§41.401. Enrollment Process.

Effective: January 1, 2007

The enrollment process is conducted in accordance with §41.109 of this chapter (relating to Enrollment in the CDS Option). Within five working days after receipt of a completed Form 1584, Consumer Participation Choice, by an eligible individual or LAR, or upon receipt of Form 1584 and within five working days after eligibility determination for an applicant applying for program services, a case manager or service coordinator must provide the following documentation to the CDSA:

- (1) Form 1584;
- (2) the individual's authorized service plan;
- (3) the individual's plan of care; and
- (4) if not provided in paragraph (1)-(3) of this section:

(A) the date the employer may begin incurring expenses to initiate start-up activities and to incur recruitment and hiring expenses;

(B) the date the employer may begin delivery of program services through the employer's service providers;

(C) the number of units, the approved rate, or the amount authorized in the individual's service plan for each service to be delivered through the CDS option;

(D) the total funds authorized for each program service to be delivered through the CDS option; and

(E) the authorized schedule of service delivery per day, week, month, or other time frame specific to the service.

§41.403. Transfer Process.

Effective: January 1, 2007

(a) An individual's CDSA must process a request by the individual or LAR to transfer from one CDSA to another CDSA in accordance with transfer procedures and requirements of the individual's program.

(b) The transferring CDSA must, within five working days after receipt of a request to transfer:

(1) account in writing for the funds allocated in the individual's service plan or plan of care and budgets and:

(A) bill DADS for funds in the individual's budget that the CDSA must pay on behalf of the employer;

(B) make payments within required time frames;

(C) submit billing adjustments for prior claims and payments from DADS that will not be paid, or deposited by the CDSA for accrued funds, for:

(i) deposits, withholdings, and employee and employer contributions; and

(ii) a pending payment that will transfer to the receiving CDSA;

(2) notify the employer and the individual's case manager or service coordinator in writing of the number of units and the amount of funds remaining in each budget after the scheduled transfer date;

(3) transfer all employer-related and employer-agent related information and reports applicable to the individual's budgets, payroll, accrual amounts, and payables:

(A) to the receiving CDSA at the time of transfer; and

(B) to the receiving CDSA and the employer as received or filed by the transferring CDSA following the transfer;

(4) distribute a final CDSA report in accordance with §41.317 of this chapter (relating to CDSA Reports) and provide the report to the employer, DR, case manager, service coordinator, and the receiving CDSA within five working days after the individual's transfer; and

(5) submit a satisfaction survey to the employer or DR in accordance with §41.331 of this chapter (relating to Annual Evaluation of Job Performance and Satisfaction).

(c) Within five working days after the receipt of a request to transfer, the case manager or service coordinator must:

(1) process the individual's request to transfer from one CDSA to another CDSA in accordance with the requirements of the individual's program and this chapter;

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(2) calculate the number of units or amount of funds needed to complete the service plan period based on the individual's current service plan;

(3) revise the service plan to indicate the number of units or amount of funds calculated in this subsection effective the date of transfer and:

(A) approve only the units and funds calculated as needed if units and funds remaining in the budget meet or exceed the needed number or units or amount of funds to complete the service period, or approve only the amount remaining in the budget for the period remaining in the individual's service plan; and

(B) provide a copy of the transferring service plan to the receiving CDSA and employer before the effective date of the transfer; and

(4) provide a copy of the individual's revised service plan to the transferring CDSA, the receiving CDSA, and the employer or DR.

(d) The employer or DR must provide documentation to the receiving CDSA within five working days after the transfer date to establish and maintain eligibility of each current employee, contractor, and vendor before the service provider being paid by the receiving CDSA. The employer or DR must also provide other documentation requested by the receiving CDSA.

(e) The receiving CDSA must:

(1) enroll the individual and employer with the CDSA, including registering the CDSA as the employer-agent within program transfer time frames; and

(2) initiate FMS and employer-agent responsibilities in accordance with this chapter, including:

(A) conducting an initial orientation in the individual's residence only if the current employer has not received an initial orientation from a CDSA;

(B) entering into the required service agreement with the employer; and

(C) obtaining the required DADS service agreements with each of the employer's service providers before issuing an initial payment to the service provider in accordance with §41.333 of this chapter (relating to Service Agreements).

§41.404. Ensuring Development, Approval, and Review of Service Backup Plans.

Effective: September 1, 2014

(a) A service planning team must determine if a service the individual is receiving through the CDS option is critical to the individual's health and safety.

(b) The case manager or service coordinator must request and ensure that the employer or DR develop a service backup plan, using DADS Form 1740, CDS Service Backup Plan, if:

(1) a service backup plan is required by the rules of the individual's program; or

(2) the service planning team determines that a service is critical to the health and safety of the individual in accordance with subsection (a) of this section.

(c) The case manager or service coordinator must approve a service backup plan, including a revised plan, before implementation by the employer or DR.

(d) The case manager or service coordinator must review each service backup plan during monitoring and at the annual service plan meeting to determine if the plan was implemented and effective.

(e) If, after a review required by subsection (d) of this section, the case manager or service coordinator determines the service backup plan was ineffective, the case manager or service coordinator must notify the employer or DR of the determination and that the employer must revise the service backup plan in accordance with §41.217(d)(4)(D) of this chapter (relating to Employer Responsibilities Regarding Service Backup Plan).

§41.405. Suspension of Participation in the CDS Option.

Effective: January 1, 2007

(a) An employer may request voluntary suspension of participation in the CDS option and request that all program services be delivered through a program provider at any time.

(b) The suspension must last at least 90 calendar days.

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(c) The employer must notify the individual's case manager or service coordinator of intent to reactivate participation in the CDS option.

(d) A CDSA must monitor an individual's program eligibility and notify the individual's case manager or service coordinator of a lapse of program eligibility.

(e) The case manager or service coordinator must notify the individual's service planning team of the individual's loss of eligibility to determine if suspension of participation in the CDS option is recommended. If participation in the CDS option is suspended, the case manager or service coordinator must give notice to the individual or LAR in accordance with the requirements of the individual's program.

(f) If participation in the CDS option is suspended, FMS and, if applicable, support consultation, are suspended in the individual's service plan.

§41.407. Termination of Participation in the CDS Option.

Effective: January 1, 2009

(a) An employer may request voluntary termination of participation in the CDS option and receive services through a program agency provider at any time. The termination must last at least 90 calendar days.

(b) An individual may be involuntarily terminated from participation in the CDS option in accordance with the requirements of the individual's program.

(c) FMS and, if applicable, support consultation, are terminated in the individual's service plan when participation in the CDS option is terminated.

(d) An individual's case manager or service coordinator convenes the individual's service planning team concerning issues that may warrant immediate termination of the individual's participation in the CDS option. On review of the information, the service planning team may recommend immediate termination of participation in the CDS option when:

(1) the individual's health or welfare is immediately jeopardized by the individual's participation in the CDS option;

(2) the DR has been convicted of an offense under Chapter 32 of the Penal Code or an offense barring employment as listed in the Texas Health and Safety Code, §250.006(a) and (b); or

(3) DADS or another government agency with applicable regulatory authority recommends that participation in the CDS option be immediately terminated.

(e) If an individual, LAR, or DR does not implement and successfully complete the following steps and interventions, an individual's service planning team may recommend termination of participation in the CDS option in accordance with the individual's program requirements:

(1) eliminate jeopardy to the individual's health or welfare;

(2) successfully direct the delivery of program services through CDS;

(3) meet employer responsibilities;

(4) successfully implement corrective action plans; or

(5) appoint a DR or access other available supports to assist the employer in meeting employer responsibilities.

(f) Before a CDSA recommends involuntary termination of participation in the CDS option to an individual's case manager or service coordinator, the CDSA must:

(1) provide documentation to the individual's case manager or service coordinator of additional and ongoing training and supports provided by the CDSA when an employer or DR demonstrates noncompliance with employer responsibilities;

(2) provide assistance requested by the employer or DR to develop and implement a corrective action plan;

(3) provide documentation of any corrective action plan required of the employer or DR by the CDSA in accordance with §41.221 of this chapter (relating to Corrective Action Plans); and

(4) notify the case manager or service coordinator in writing in accordance with the requirements of the individual's program when

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recommending termination of an individual's participation in the CDS option.

(g) On receipt of a recommendation for involuntary termination from the CDSA or other party, the individual's case manager or service coordinator must:

(1) provide assistance with accessing supports and developing and implementing a corrective action plan related to noncompliance with program and CDS requirements;

(2) document interventions utilized by the individual, employer, or DR to eliminate noncompliance with program requirements for delivery of program services through the CDS option; and

(3) convene the service planning team to:

(A) consider recommendations related to the individual's participation in the CDS option;

(B) recommend additional interventions to be implemented to protect the individual's health and welfare for continued participation in the CDS option; and

(C) make revisions to the individual's service plan if needed.

(h) If the individual's service planning team recommends termination of participation in the CDS option, the CDSA must:

(1) provide a final report as described in §41.219 of this chapter (relating to CDSA Reports) to the employer and the case manager or service coordinator within five working days after an individual's termination;

(2) provide copies to the employer of documentation as received and filed on behalf of the employer following the individual's termination from the CDS option; and

(3) submit a satisfaction survey to the employer within five working days after the termination date in accordance with §41.331 of this chapter (relating to Annual Evaluation of Job Performance and Satisfaction).

(i) The individual's case manager or service coordinator must meet requirements of the individual's program and this chapter for termination of service to include documentation of all proceedings and notices in accordance with the individual's program requirements.

(j) If the service planning team recommends terminating participation in the CDS option, an individual's case manager or service coordinator must document:

(1) the reasons for the recommendation;

(2) the conditions and time frame established by the individual's service planning team that the individual must meet prior to re-enrollment in the CDS option;

(3) justification for any time period for a termination in excess of the minimum 90-day requirement; and

(4) if applicable, the conditions and time frame specified by a hearing officer as the result of a fair hearing that upholds the termination.

(k) When an individual's participation in the CDS option is terminated, the case manager or service coordinator must take steps and interventions in accordance with the requirements of the individual's program to:

(1) ensure continuity of delivery of program services that were being delivered through the CDS option; and

(2) document arrangements made for delivery of program services that were being delivered through the CDS option to be delivered by the individual's program provider or other resources.

§41.409. Re-enrollment for Participation in the CDS Option.

Effective: January 1, 2007

(a) Following suspension or termination of participation in the CDS option, an individual or LAR must request re-enrollment in the CDS option by notifying the individual's case manager or service coordinator.

(b) If an individual or LAR wishes to re-enroll in the CDS option, the case manager or service coordinator must:

(1) review the reason that the individual was suspended or terminated from the CDS option;

(2) verify that the individual has fulfilled the minimum 90-day period and any conditions specified by the individual's service planning team or a hearing officer, if applicable;

(3) verify how each issue that contributed

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to the suspension or termination has been resolved; and

(4) refer the request for re-enrollment in the CDS option to the individual's service planning team and follow requirements of the individual's program, including:

(A) revising the individual's service plan and re-enrolling the individual in the CDS option upon approval; and

(B) issuing a denial and providing information related to requesting a fair hearing if the request is not approved.

(c) If approved for re-enrollment, the CDSA must:

(1) provide an initial orientation in accordance with §41.307 of this chapter (relating to Initial Orientation of an Employer) following the individual's re-enrollment in the CDS option if the current employer or DR has not received initial orientation; and

(2) notify the employer, DR, and the individual's case manager or service coordinator in writing within two working days after any repeat of prior noncompliance or additional noncompliance with requirements of the individual's program or this chapter during the individual's participation in the CDS option.

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§41.501. Budget Development.

Effective: January 1, 2007

(a) The employer or DR, with assistance obtained from the CDSA or others, must:

(1) develop a budget for each program service to be delivered through the CDS option;

(2) project expenditures of funds allocated in the individual's authorized service plan for the effective period of the service plan;

(3) use applicable budget workbooks available through DADS at www.dads.state.tx.us/business/communitycare/cds/CDSforms.html;

(4) request assistance from the CDSA as needed;

(5) submit each budget to the CDSA for review; and

(6) obtain written approval for each budget from the CDSA before initiating services or making purchases for payment.

(b) The CDSA must:

(1) provide assistance as requested or needed by the employer or DR to develop a budget for each service to be delivered through the CDS option;

(2) use appropriate budget workbooks available through DADS to review, calculate, and validate each budget; and

(3) provide written approval to the employer or DR of each budget before implementation.

§41.503. Financial Management Services.

Effective: January 1, 2007

An employer or DR must budget the amount established by the Health and Human Services Commission for payment of FMS delivered by the CDSA for each program service to be delivered through the CDS option.

§41.505. Payroll Budgeting.

Effective: March 20, 2016

(a) An employer or DR must, when developing a budget that includes payroll expenses for an employee:

(1) budget to pay:

(A) subject to subparagraph (B) of this paragraph, an employee at least the minimum hourly wage required by law before withholdings and garnishments; and

(B) the following employees at least \$8.00 per hour, if the rate required by this subparagraph exceeds the minimum wage required by law:

(i) an employee providing primary home care, family care, or community attendant services;

(ii) an employee providing flexible family support and respite services in the Medically Dependent Children Program;

(iii) an employee providing habilitation or CFC PAS/HAB in the Community Living Assistance and Support Services Program;

(iv) an employee providing residential habilitation or CFC PAS/HAB in the Deaf Blind Multiple Disabilities Program;

(v) an employee providing personal attendant services in the Consumer Managed Personal Attendant Services Program;

(vi) an employee providing supported home living or CFC PAS/HAB in the Home and Community-based Services Program; and

(vii) an employee providing community support or CFC PAS/HAB in the Texas Home Living Program;

(2) budget employee benefits, if chosen by the employer or DR:

(A) as provided in:

(i) this chapter;

(ii) Section 1000, Wages and Benefits Plan, of the *Consumer Directed Services Handbook* available at <http://www.dads.state.tx.us/handbooks/CDS/1000/index.htm>; or

(iii) Appendix XI, Allowable and Non-Allowable Expenditures, in the *Consumer Directed Services Handbook* available at <http://www.dads.state.tx.us/handbooks/CDS/appendix/XI/index.htm>;

(B) that are in accordance with requirements of the individual's program:

(i) an allowable cost, as defined in

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§41.103 of this chapter (relating to Definitions);

(ii) reasonable, with regard to the cost of the service, good, or item; and

(iii) necessary to meet employer responsibilities;

(C) that are within the approved rate and spending limits established for the service;

(D) that are accrued and paid based on actual hours worked; and

(E) that may include any of the following:

(i) increased wages;

(ii) paid vacation;

(iii) paid holiday;

(iv) paid sick leave;

(v) medical insurance;

(vi) taxable work-related expenses;

(vii) coverage of work-related injuries or illnesses for employees, including workers' compensation or options listed in "Liability Notice to Applicants for Employment," Section II, of Form 1728, Liability Acknowledgment;

(viii) a hire-on bonus, paid when an employee is hired, and the amount budgeted for the bonus must be accrued from hours worked by the person within the first three months of employment;

(ix) a bonus, based on the employee's job performance, that is budgeted and accrued from hours worked as a portion of the budget unit rate from hours worked by the employee, not to extend beyond the end date of the individual's service plan;

(x) a bonus, based on the employee's length of employment, with the employer, if budgeted and accrued as a portion of the budget unit rate from hours worked by the employee, not to extend beyond the end date of the individual's service plan; and

(xi) employer contributions for employee benefits;

(3) make budget revisions if necessary to compensate for payment of overtime pay that must be calculated and paid in accordance with current state and federal labor laws and regulations.

(b) An employer or DR must:

(1) complete, but not sign, Form 1730, Employee Wage and Benefits Plan, for each employee at the time of hire and when an employee's wages or benefits are being changed;

(2) submit the form to the FMSA for approval;

(3) obtain written approval from the FMSA; and

(4) after FMSA approval, sign the form and obtain the employee's signature on Form 1730 on or before the employee's first day of work or the effective date of the change.

(c) An FMSA must:

(1) review the employer's budgeted payroll spending decisions;

(2) review Form 1730 for each employee at time of hire and as revised by the employer or DR;

(3) verify that each applicable budget workbook and Form 1730 is within the approved budget; and

(4) notify the employer in writing of the approval or disapproval of Form 1730 and work with the employer or DR to resolve those issues that prevent the approval of the Form 1730.

§41.507. Employer Support Services Budgeting.

Effective: March 20, 2016

(a) An employer or DR may budget employer support services and start-up expenses, through the services that are delivered by one or more employees in the CDS option.

(1) Employer support services:

(A) include:

(i) employment-related expenses, as described in subsection (d) of this section;

(ii) employer-related expenses, as described in subsection (e) of this section; and

(iii) support consultation services, as described in subsection (f) of this section when available in the individual's program; and

(B) exclude non-allowable expenditures listed in Appendix XI, Allowable and Non-Allowable Expenditures, in the *Consumer Directed Services Handbook* available at <http://www.dads.state.tx.us>.

(2) Start-up expenses must be:

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(A) budgeted for purchases projected before the delivery of services through the CDS option; and

(B) accrued from the budgeted unit rate for services scheduled for delivery through the CDS option within the first three months of initiation of the CDS option.

(b) An employer or DR:

(1) may budget up to 10 percent of the amount available, after the FMSA portion is calculated, in those services delivered by one or more employees;

(2) must not budget more than \$600 annually or more than \$50 per month if less than 12 months remain in the service plan for employer support services, including:

(A) employment-related expenses; and

(B) employer-related expenses;

(3) must not budget more than the remaining amount of the 10 percent maximum for support consultation services; and

(4) may budget any remaining amount in the affected program service for employee compensation.

(c) An employer or DR must, for funds remaining in employer support services, budget the remaining funds to:

(1) employee compensation (wages and benefits); or

(2) with approval of the individual's service planning team, support consultation services in accordance with subsection (f) of this section and Subchapter F of this chapter (relating to Support Consultation Services and Support Advisor Responsibilities).

(d) An employer or DR may budget allowable, necessary, and reasonable employment-related services, goods, or items, including:

(1) recruiting expenses;

(2) obtaining a criminal history report from the Texas Department of Public Safety, except for the report of an applicant or employee who is:

(A) only providing CFC PAS/HAB; or

(B) providing support consultation to an individual who is receiving only CFC PAS/HAB through the CDS option;

(3) purchased employee job-specific training;

(4) cardio-pulmonary resuscitation training;

(5) first-aid training;

(6) supplies required for an employee or provider of the service to perform a task, if not available through the individual's program or other source and the purchase is allowable through the individual's program;

(7) non-taxable employee benefits; and

(8) services, goods, and items specifically approved by the individual's program as an employer support service or included as allowable expenditures in Appendix XI, Allowable and Non-Allowable Expenditures, in the *Consumer Directed Services Handbook* available at <http://www.dads.state.tx.us/handbooks/CDS/appendix/XI/index.htm>.

(e) An employer or DR may budget employer-related services, goods, or items required to meet employer responsibilities, including:

(1) basic office equipment, which may include a basic fax machine for the purpose of submitting documents to the FMSA;

(2) mailing costs;

(3) expenses related to making copies;

(4) file folders and envelopes; and

(5) services, goods, and items specifically approved by the individual's program as an employer support service or included as allowable expenditures in Appendix XI, Allowable and Non-Allowable Expenditures, in the *Consumer Directed Services Handbook*.

(f) If support consultation services are approved by the individual's service planning team, the employer or DR must budget the service within the spending limits in subsection (b) of this section for employer support services and obtain approval of the budget from the FMSA before implementation of the service.

(g) An employer or DR must, before requesting additional funds available for support consultation:

(1) provide the individual's case manager or service coordinator with justification for the specific services requested through support

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consultation;

(2) verify with the case manager or service coordinator the availability of non-program resources for the requested service; and

(3) obtain approval from the individual's service planning team for additional funds for support consultation in accordance with subsection (h) of this section.

(h) If the service planning team approves additional funds for support consultation, the team must reallocate funds within the individual's service plan without increasing the total cost of the individual's service plan.

§41.509. Budget Approval.

Effective: January 1, 2007

(a) An employer or DR must, for each initial and annual budget:

(1) request assistance from the CDSA as needed;

(2) complete and modify budgets as directed by the CDSA; and

(3) receive written approval from the CDSA before implementation of the budget and initiation of service delivery through the CDS option.

(b) A CDSA must:

(1) review each budget and notify the employer of any issue, spending limit, or of any services, goods, or items in the budget that prevent approval of the budget;

(2) assist the employer or DR in developing and revising a budget so that the budget can be validated by the CDSA; and

(3) provide written approval for each initial and annual budget to the employer.

§41.511. Budget Revisions and Approval.

Effective: January 1, 2007

(a) An employer or DR must make budget revisions if:

(1) a change to the individual's authorized service plan affects funding for a program service delivered through the CDS option;

(2) a budget has been or will be exceeded before the end date of the service plan;

(3) authorized units, unit rate, or amount of funds allocated have changed;

(4) an amount paid for one or more services, goods, or items affects the approved budget;

(5) strategies are added or revisions are made to a service back-up plan;

(6) funds budgeted for a service back-up plan are not used or needed; or

(7) the CDSA, the case manager or service coordinator, the individual's service planning team, or a DADS representative require a revision.

(b) An employer or DR must:

(1) submit budget revisions to the CDSA for approval; and

(2) not implement revised budgets until written approval is received from the CDSA.

(c) A CDSA must:

(1) provide assistance to the employer or DR related to budget revisions as requested or needed by the employer;

(2) validate the budget; and

(3) provide written approval to the employer or DR before the revision is implemented by the employer or DR.

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Subchapter F - Support Consultation Services and Support Advisor Responsibilities

§41.601. Support Consultation Services.

Effective: January 1, 2007

(a) Support consultation, if available through the individual's program, is an optional service available to an individual participating in the CDS option. Support consultation is delivered to:

- (1) an employer;
- (2) an employer's DR; or
- (3) an individual receiving services through the CDS option if that individual will be the employer within six months of the initiation of support consultation services to the individual.

(b) Support consultation is provided by a person who meets the qualifications of a support advisor. A support advisor may be:

- (1) a contractor of the employer; or
- (2) an employee or contractor of:
 - (A) a CDSA; or
 - (B) another entity.

(c) Support consultation must provide:

(1) a level of training, assistance, and support that does not duplicate or replace the services delivered through FMS, case management services, or other available program or non-program service or resource;

(2) practical skills training and assistance to successfully manage service providers for authorized program services delivered through the CDS option; and

(3) skills training and assistance for:

- (A) recruiting, screening, and hiring workers;
- (B) developing and documenting job descriptions;
- (C) verifying employment eligibility and qualifications;
- (D) completing documents required to:

- (i) employ an individual;
- (ii) retain a contractor or vendor;

and

- (iii) manage service providers;

(E) communicating effectively, solving problems, and documenting employer responsibilities in the CDS option;

(F) developing, revising, and implementing service back-up plans;

(G) performing employer responsibilities;

(H) complying with the individual's program and this chapter; and

(I) developing ongoing decision making skills for employer-related and employment-related situations.

(d) An employer or DR may budget and initiate support consultation services while the individual is participating in the CDS option. Before initiation of the service, the employer or DR must:

(1) identify the person or persons (the employer, the DR, or the individual within six months after becoming the employer) to receive the service and establish goals specific to the service;

(2) obtain approval of the goals established for the service from the individual's service planning team;

(3) develop a budget for support consultation; and

(4) obtain approval of the budget from the CDSA.

(e) An employer or DR, a case manager or service coordinator, a CDSA, or a DADS representative may recommend that the individual's service planning team approve support consultation services for an individual if:

(1) the individual receiving services through the CDS option will become the employer within six months after the service is initiated;

(2) the employer or DR demonstrate a need for the service;

(3) the individual's health and welfare may regress without additional support for managing and directing service providers; or

(4) other reasons that the service planning team has determined justify the need for the service.

(f) If the individual's service planning team authorizes support consultation, the team must:

(1) approve the funds, the duration, and the frequency of the service;

(2) assist with development of goals and

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ensure that the activities required to meet the goals through support consultation comply with this chapter;

(3) approve the goals for support consultation and the person or persons who will receive the service (the individual, employer, or DR); and

(4) terminate the service when goals are met.

§41.603. Support Advisor Qualifications.

Effective: January 1, 2007

(a) A person must meet the following qualifications to be eligible to deliver support consultation as a support advisor:

(1) be:

(A) at least 18 years old;

(B) a high school graduate or possess certification of equivalency; and

(C) a person who does not provide a program service to the individual, other than support consultation and FMS through the CDS option;

(2) have documentation of attendance and completion of:

(A) initial training required by and conducted or authorized by DADS; and

(B) ongoing training if required by and conducted or authorized by DADS;

(3) meet criteria of:

(A) §41.225 of this chapter (relating to Criminal Conviction History Checks);

(B) §41.227 of this chapter (relating to Required Registry Checks);

(C) §41.231 of this chapter (relating to Verification of Eligibility of an Employee or Contractor) if contracted by the employer; and

(D) requirements of the individual's program when applicable; and

(4) be:

(A) retained by the employer; or

(B) an employee or contractor of:

(i) a CDSA; or

(ii) another entity.

(b) To provide support consultation as a support advisor, a person must demonstrate competency in the delivery of support consultation services as determined by DADS. To be a support

advisor, the person must demonstrate competency to DADS in:

(1) principles of self-determination;

(2) the provisions of this chapter;

(3) the provisions and requirements of DADS home and community-based programs offering the CDS option, including:

(A) the scope and definition of services provided by each program;

(B) requirements for documentation of service delivery;

(C) allowable and non-allowable expenditures; and

(D) the application of CDS in each program;

(4) methods for accessing information and resources timely through government agencies, including DADS, related to the CDS option and employer responsibilities;

(5) documentation requirements to meet employer responsibilities; and

(6) roles and responsibilities of:

(A) the support advisor;

(B) the CDSA;

(C) the case manager or service coordinator;

(D) the individual receiving services;

(E) the employer;

(F) service providers;

(G) the DR; and

(H) traditional program providers and agencies.

(c) An employer or DR must not retain a support advisor applicant for service delivery before:

(1) receiving authorization for support consultation by the individual's service planning team;

(2) obtaining written approval from the CDSA of the budget for funds for the service; and

(3) obtaining written approval from the CDSA of the applicant's eligibility.

(d) An employer or DR must ensure that a support advisor meets the service provider requirements of this chapter, including:

(1) obtaining documentation required to verify the applicant's qualifications and eligibility

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to provide support consultation services; and

(A) submit documentation to the CDSA for review of the person's eligibility;

(B) obtaining approval from the CDSA of the person's eligibility to provide support consultation services; and

(C) maintaining documentation to verify continued eligibility during service delivery;

(2) entering into a service agreement with the contractor using the appropriate DADS form;

(3) assisting the CDSA in obtaining a completed service agreement between the support advisor and the CDSA before initial payment for delivery of services; and

(4) retaining documentation of services delivered by the contractor.

(e) Upon retaining a support advisor employed by or contracted with a CDSA or an entity, the employer must obtain from the CDSA or the entity documentation required to verify the individual's qualifications and ongoing eligibility to provide support consultation services.

§41.605. Support Advisor Responsibilities.

Effective: January 1, 2007

(a) A support advisor must provide practical skills training in accordance with the individual's service plan, including:

(1) principles of self-determination;

(2) compliance requirements of the individual's program as related to services delivered through the CDS option;

(3) completion of forms, assessments, and other documents required for the individual's program that require individual or LAR input or completion;

(4) recruiting, screening, and hiring workers, preparing job descriptions, verifying employment eligibility and qualifications, and training for employees;

(5) completion of documents required to employ an individual, retain a contractor or vendor, and manage service providers;

(6) recruitment and procurement of employees, contractors, and vendors;

(7) negotiations of service agreements, including pricing and scheduling of services,

goods, and items;

(8) management of service providers for authorized program services delivered through the CDS option;

(9) effective communication, decision making, and problem-solving skills to meet employer responsibilities;

(10) development, revision, and implementation of service back-up plans;

(11) compliance with the individual's program and this chapter;

(12) tools for accessing information, resources, and assistance timely through government agencies, including DADS, as needed through means available to the individual, employer, or DR;

(13) contacting appropriate persons or entities based on their roles, responsibilities, and eligibility related to the individual's program or the CDS option, including:

(A) a case manager or service coordinator;

(B) potential and current service providers, including:

(i) an employee;

(ii) a contractor;

(iii) a vendor;

(iv) a CDSA; and

(v) a support advisor;

(C) traditional program provider agencies;

(D) government agencies, including DADS and the Department of Family and Protective (DFPS); and

(E) the employer, the individual, and the DR; and

(14) ongoing employer-related skills.

(b) A support advisor must provide assistance, as required in accordance with the individual's service plan, including:

(1) completing forms, assessments, and other documents required by the individual's program that require individual or LAR input or completion;

(2) recruiting, screening, and hiring workers, preparing job descriptions, verifying employment eligibility, qualifications, and training

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for employees;

(3) completing documents required to employ an individual, retain a contractor or vendor, or managing service providers;

(4) recruiting and retaining employees, contractors, and vendors;

(5) negotiating service agreements, including pricing and scheduling of services, goods, and items;

(6) managing service providers for authorized program services delivered through the CDS option;

(7) helping an individual to meet employer responsibilities by using effective communication, decision making, and problem-solving skills;

(8) developing, revising, and implementing service back-up plans;

(9) accessing information, resources, and assistance through government agencies, including DADS, as needed through means available to the individual, employer, or DR;

(10) contacting appropriate persons or entities based on their roles, responsibilities, and eligibility related to the individual's program or the CDS option, including:

(A) a case manager or service coordinator;

(B) potential and current service providers including:

(i) an employee;

(ii) a contractor;

(iii) a vendor;

(iv) a CDSA; or

(v) a support advisor;

(C) traditional program provider agencies;

(D) government agencies, including DADS and DFPS; and

(E) the employer, the individual, and the DR; and

(11) ongoing employer-related skills.

(c) A support advisor must document service delivery in accordance with the requirements of the individual's program.

(d) A support advisor must notify the individual's case manager or service coordinator:

(1) when service goals have been met;

(2) if the person receiving support consultation is unable or unwilling to cooperate with service delivery; or

(3) of the progress and status of the service required by the individual's program.

**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 41, CONSUMER DIRECTED SERVICES OPTION
SUBCHAPTER G – REPORTING ALLEGATIONS**

Subchapter G - Reporting Allegations

§41.701. Reporting Allegations.

Effective: January 1, 2007

If a person to whom this chapter applies suspects or has knowledge of abuse, neglect, or exploitation of an individual, that person must report it in accordance with existing state laws and DADS rules.

**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 41, CONSUMER DIRECTED SERVICES OPTION
SUBCHAPTER H – OVERSIGHT**

Subchapter H – Oversight

§41.801. Oversight.

Effective: January 1, 2007

DADS oversees roles and responsibilities of the following:

- (1) an individual or LAR who elects to be the employer for services delivered through the CDS option;
- (2) a DR;
- (3) a CDSA;
- (4) a support advisor;
- (5) a service provider;
- (6) a case manager; and
- (7) a service coordinator.