



COMMISSIONER
Jon Weizenbaum

October 27, 2014

To: Financial Management Services Agencies
Consumer Directed Services Employers

Subject: Information Letter 14-71
Employee Misconduct Registry Training and Reporting Requirement for
Consumer Directed Services Employers and their Employees

The purpose of this letter is to explain additional requirements for Consumer Directed Services (CDS) employers relating to the Employee Misconduct Registry (EMR). Financial Management Services Agencies (FMSAs) must share this information letter with CDS employers by November 10, 2014.

The EMR is a public database maintained by the Department of Aging and Disability Services (DADS) in accordance with Texas Health and Safety Code (THSC) Chapter 253. The purpose of the EMR is to ensure unlicensed personnel who commit reportable conduct against individuals receiving DADS services are not employed in a DADS program. The EMR applies to employees who provide personal care services, treatment, or any other personal services and are not licensed by the state to perform the services.

Prior to January 1, 2014, 40 TAC, Part 1, Chapter 41, CDS Option, required an EMR check and prohibited employment of a person listed in the EMR, however, the law regarding the EMR, THSC Chapter 253, did not include "reportable conduct" committed by a person as a CDS employee. Effective January 1, 2014, Chapter 253 was amended to include a CDS employee as a person who can be listed in the EMR and prohibited by law from employment.

To implement the changes in THSC Chapter 253, amendments to 40 TAC, Part 1, Chapter 93, EMR, were adopted effective October 19, 2014, to clarify that individual employers, Financial Management Services Agencies (FMSAs), and employees hired by CDS employers are subject to EMR requirements.

The Department of Family and Protective Services (DFPS) investigates allegations of abuse, neglect, and exploitation made against a CDS employee. In addition to the rules at 40 TAC, Part 1, Chapter 93, DFPS rules at 40 TAC, Part 19, Chapter 711, Subchapter O, Employee Misconduct Registry, govern the EMR investigations, findings, and hearing rights provided by DFPS.

The FMSA checks the EMR on behalf of CDS employers before an employee is hired, and annually thereafter. EMR rules and the CDS rules state that a CDS employer must not hire, or continue to employ, a person listed on the EMR.

Before this change in the law, a CDS employee who committed “reportable conduct” was not listed in the EMR and could be hired by other CDS employers without being aware of the conduct. DFPS defines reportable conduct in 40 TAC, Part 19, Section 711.1408(a), as:

- (1) abuse or neglect that causes or may cause death or harm to an individual receiving services;
 - (2) sexual abuse of an individual receiving services;
 - (3) financial exploitation of an individual receiving services in an amount of \$25 or more; and
 - (4) emotional, verbal, or psychological abuse that causes harm to an individual receiving services.
- Abuse, neglect, harm, and financial exploitation are defined in subsections (b), (c), and (d) of 40 TAC, Part 19, Section 711.1408.

Requirements for CDS Employers

Informing Newly Hired Employees about the EMR

Beginning October 19, 2014, CDS employers must provide information to newly hired employees about the EMR and how it works. Effective October 19, 2014, 40 TAC, Part 1, Section 93.3(c), relating to Employment and Registry Information, states that within five working days after an employee has been hired by a CDS employer, the CDS employer must provide written information to the employee explaining:

- the EMR is governed by 40 TAC, Part 1, Chapter 93 and THSC, Chapter 253; and
- a person who is entered in the EMR with reportable conduct cannot be hired to provide services.

To provide this written information, DADS has developed an EMR Addendum to Form 1732, Management and Training of Service Provider. Employers must document employee acknowledgement on this form and provide a copy to the employee within five working days after hire.

Information listed on the EMR

The following information is entered in the EMR, as specified in 40 TAC, Part 1, Section 93.8, and in accordance with THSC, Section 253.007:

- the employee's name;
- the employee's address;
- the employee's social security number;
- a notation that the employee was an employee of an individual employer;
- the city and state of the individual employer;
- the date the reportable conduct was committed; and
- a description of the reportable conduct committed.

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Reporting Misconduct to the EMR

If a CDS employer needs to report or file a complaint against an unlicensed employee for misconduct, the employer can call the DFPS Abuse Hotline at 1 (800) 252-5400.

For questions regarding the content of this letter, contact DADS at: CDS@dads.state.tx.us

Sincerely,

[signature on file]

Donna Jessee
Director
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[signature on file]

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