Agenda

• Department of Public Safety - Criminal History Reports and DPS audits - Paul Gajkowski

• Upcoming Rule and Programmatic Changes and Service Expansion - Laurie Hernandez & Elizabeth Jones
Upcoming Changes

Changes effective 9/1/2014

• Chapter 49, Contracting for Community Services
• Chapter 41, CDS Option
• Chapter 53, MDCP, Chapter 9, HCS, and Chapter 9, Subchapter N. TxHmL rules affecting CDS services
• CDS rules and Chapter 49 Attendant Compensation
• CDS Forms

Changes effective 10/1/2014

• Chapter 93 amendments relating to Employee Misconduct Registry
Chapter 49 Revisions, Effective 9/01/14

- FMSA contracting requirements moved from Chapter 41 to Chapter 49

- FMSA financial monitoring outlined in Chapter 49 (Section 49.412) – scores below 90% considered out of substantial compliance

- Any new CDS contract enrollments completed on or after September 1, 2014 will have a two-year provisional end date. FMSAs will have to score 90% or above on their initial monitoring visit to qualify for a standard contract.

- Effective September 1, 2014, a CDS contract can be terminated for not serving individuals for 12 consecutive months (1 year). The exclusionary or application denial period will be one year. In other words, an FMSA contractor cannot obtain another CDS contract until one year after the termination of any former CDS contract.
DADS Coordinated Approach to CDS and Program Rules Revisions

• **ALL** CDS related program requirements for **CDS Employers** and **FMSAs** are in the process of being moved from program chapters to Chapter 41.

• Some cross references to Chapter 41 included in program chapters.

• Minimal information for case managers and service coordinators included in program chapters with reference to Chapter 41 for CDS specific functions.
DADS Approach---Bottom Line

• Program chapters are not written for FMSAs. They are written for program providers (such as HCS providers or MDCP providers.)

• FMSAs and CDS employers need to focus solely on Chapter 41 and the Service Provision Requirements Addendum to Form 1735.

• FMSAs also need to follow Chapter 49.
Chapter 41 Revisions
Effective 9/01/14

New Section-
§41.108- List services available through the CDS option

Repealed Section-
§41.201-Employer Responsibilities
• deletes rules relating to employer responsibilities because many of the requirements in that section are addressed in other sections of Chapter 41 and the remaining requirements have been moved to proposed new §41.238 regarding service delivery requirements.
§41.207 - Initial Orientation of an Employer

- Specifies an employer or DR must complete an initial orientation conducted by an FMSA.
- Complete various DADS forms, including Service Provision Requirements Addendum to DADS Form 1735, the employer or DR’s agreement with the FMSA.
- **Removes the requirement for completing Rules Acknowledgement, Form 1738.**
- Send copies of the forms to the FMSA.
- CDS Employer retains the completed DADS forms.

**NOTE:** In response to comments received, the adopted version of this section no longer specifies who keep originals.
- In response to comments, employer ensures services will not start until FMSA received completed forms.
The employer or DR must ensure services provided through the CDS option:

- are included on the individual's DADS authorized service plan;
- are budgeted in the employer budget;
- are provided only to the individual;
- are not provided if the individual becomes ineligible for program services (such as hospitalization); and
- meet requirements for payment in accordance with program and §41.241 (payment for services)
If nursing services or MDCP respite or flexible family support are included on the service plan, the employer or DR must:

- ensure the hired RN completes DADS Form 1747, Acknowledgment of Nursing Requirements, before the RN provides nursing services or MDCP respite or flexible family support;

- ensure an LVN completes DADS Form 1747-LVN, Licensed Vocational Nurse Supervision Certification (*NEW FORM), before the LVN provides nursing services or MDCP respite or flexible family support;

- 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.....
If program rules require that the individual's program provider's nurse complete the initial and annual nursing assessment the employer or DR must:

- provide a copy of the program provider's nursing assessment, including the number of nursing hours authorized, to the CDS nurse; and
- if the CDS nurse disagrees with 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.

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).
§41.217- Employer Responsibility regarding Service Backup Plans

- Specifies an employer or DR must develop a service backup plan if requested by the CM or SC.

- Adds a requirement for the CDS employer to revise the backup plan if the CM or SC determines that a backup plan is ineffective.
New Section Spells out Case Manager and Service Coordinator Role Related to CDS Service Backup Plans

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

- Specifies the service planning team must determine if a service is critical to the individual's health and safety;

- Describes when a CM or SC must request an employer or DR develop a service backup plan;

- Establishes the CM or SC must approve a service backup plan before it can be implemented;

- Requires the CM or SC review each service backup plan during monitoring and at the annual service plan meeting to determine if the plan was implemented and effective;

- Specifies that, if the CM or SC determines the backup plan is ineffective, the employer or DR must revise the plan.

- Removes FMSA approval of CDS Service Backup Plan
§41.233 - Training and Management of Service Providers
(Repeals old §41.233. Management of Service Providers)

• An employer or DR must use DADS form 1732, Management and Training of Service Providers to document:
  ➢ training activities required by the Service Provision Requirements Addendum to DADS from 1735, Employer and FMSA Agreement;
  ➢ on-going training and management activities; and
  ➢ an evaluation of the service provider’s job performance at least annually.

• Requires an employer or DR to send a copy of DADS Form 1732 to the FMSA within 30 days after hiring a service provider and after each annual evaluation.
Ch. 41 Revisions, Effective 9/01/14
New Amendments

§41.301 - Contracting as an Financial Management Services Agency

• Requires an FMSA to comply with Ch.49, Contracting for Community Services rules.
• Requires an FMSA to have at least one eligible employee or contractor to provide support consultation services.
• Requires FMSA participate in all mandatory training provided or authorized by DADS.
• An FMSA must not provide FMS to an individual receiving case management or service coordination from the FMSA or controlling person, except in CMPAS.
• An individual receiving FMS (or LAR or DR) must not be the individual’s FMSA or a controlling party of the FMSA.

§41.339 - Records

• Removes provisions that are addressed in proposed Chapter 49, Contracting for Community Services or elsewhere in Chapter 41.
Implementation of Chapter 41 Changes

- Information Letter to FMSAs

- Revised Forms

- Webinar for CDS Employers to explain the changes affecting them

- Adopted version of Chapter 41 amendments to be published in Texas Register
Changes in the HCS Program 9/1/2014

CDS nursing added August 1, 2014, See Information Letter 2014-42 and attachments, CDS employer webinar available on CDS and HCS pages. CDS HCS Nursing Assessment Form 8584-CDS on CDS and HCS forms webpages

CARE system authorization of both CDS and non-CDS nursing fully operational August 1, 2014.

HCS Rules amendments effective 9-1-2014
- Clarifies that HCS nurse is responsible ONLY for HCS delivered services in which a nursing task is delivered (such as day hab)
- Camp is now a respite service (ADDED to the HCS Service Provision Requirements Addendum)
- Added definitions and provider qualifications for Supported Employment, Employment Assistance and Cognitive Rehabilitation Therapy
- Clarify that supported employment and employment assistance cannot be provided at the same as other HCS services

CDS budget with all new HCS CDS services on DADS CDS webpage
Note: Additional clean up to be done on HCS rules to remove most of the CDS sections that are redundant with Chapter 41.
Changes to the Texas Home Living Program
9/1/2104

• Camp is now a respite service (added to the TxHmL Service Provision Requirements Agreement.)

• Updated definitions and qualifications for Supported Employment and Employment Assistance
Changes to MDCP (all added to MDCP Service Provision Requirements Addendum) 9/1/2014

- CRP certification is now a requirement for respite and flexible family supports providers. **Start notifying CDS employers NOW!!**

- In-home record or service delivery log no longer a requirement.

- Supported Employment and Employment Assistance will be available through the CDS Option.

- Educational requirements clarified.

- DADS removed from the rules the proposed requirement that the respite provider cannot live in the same household.
Attendant Wage Compensation

Effective September 1, 2014, CDS employers must pay at least $7.86 to the employees of the following:

- primary home care, family care, or community attendant services;
- flexible family support and respite services in the Medically Dependent Children Program;
- habilitation in the Community Living Assistance and Support Services Program;
- residential habilitation in the Deaf Blind Multiple Disabilities Program;
- personal attendant services in the Consumer Managed Personal Attendant Services Program;
- supported home living in the Home and Community-based Services Program; and
- community support in the Texas Home Living Program.

Rules: §41.505 Payroll Budgeting and § 49.312 Personal Attendants
Attendant Wage Compensation

• FMSAs need to begin reaching out the CDS employers who pay providers of the services listed on the previous slide less than $7.86 to tell CDS employers:

  • to revise their employer budgets; and,
  • to **complete a new Form 1730 prior to the first payroll in September.**
Chapter 93 amendments relating to Employee Misconduct Registry

- Amendments add CDS employees as employees who can be listed on the Employee Misconduct Registry

- Amendments posted in the Texas Register for a 30-day public comment period until August 24, 2014.

- See Provider Alert posted on 7/29/14.
DOL Companionship Exemption

• Effective January 1, 2014, CDS employers will be required to pay overtime unless the new more narrow companionship definition can be met.

Under the new rule, the companionship exemption from paying overtime and minimum wage is not applicable when the employee:
- spends more than 20 percent of his or her work week assisting with activities of daily living (ADLs) or Instrumental Activities of Daily Living (IADLs); or
- performs medically related tasks.

Unless there is a delay in DOL implementation, in August, DADS will be releasing an information letter to FMSAs with instruction to begin working with CDS employers who currently use the exemption to assess their individual situations and to either revise their employer budgets to pay overtime or to hire additional staff.
DOL Administrator’s Interpretation


• The guidance suggested that based on the “economic realities” test the majority of consumer direction programs involve joint employment of a public or private entity.

• DADS is currently assessing whether or not the Texas CDS model involves joint employment.
CDS Form Revisions

• Nearly all of the CDS forms have been updated and posted online. Please ensure you are using the most current version.

New Forms:
• 1747-LVN- Licensed Vocational Nurse Supervision Certification
• 8584-CDS- CDS Option Comprehensive Nursing Assessment and Plan of Care- HCS Program
  • HCS nursing assessment of individual to be completed by a registered nurse

Revised Forms (will be posted prior to September 1, 2014):
• 1740- Service Back-up Plan
• 1745- Service Delivery Log- added reminder language the employer cannot submit a timesheet to the FMSA for time worked by the employee while the individual was in the hospital.
• Service Provision Requirements Addendums to DADS Form 1735, the employer agreement with the FMSA.
  • Employers or DRs must initial each section to acknowledge program requirements.
  • Adds service definitions and provider qualifications for NEW services
  • Adds program rule updates
CDS Form Revisions

Revised Forms cont:

Form 1726, Relationship Definitions in Consumer Directed Services Employer's Acknowledgement and Certification
- Spouse definition url address updated
- Updated and reworded “service provider must not be...” section
- Replaced CDSA with FMSA

Form 1734, Service Provider and Employer Certification of Relationship Status for CDS
- Removed questions #10-b and #11 of service provider section which are no longer in rules
- Made new section for CLASS only with questions related to respite provider living in the home

Form 1747, Acknowledgement of Nursing Requirements
- Deleted CBA
- Added form must be complete “before nursing services can be provided”
- Updated wording for HCS and TxHmL
- Changed “consumer” references to “individual”