NOTE: These questions and answers (Q&A) are solely for agencies with the Department of Aging and Disability Services (DADS) contracts to provide financial management services to individuals who use the Consumer Directed Services (CDS) option and individuals who use the CDS option. The Q&A is based on questions asked during the June 26, 2013 webinar on Changes to the CDS option rules. The questions are grouped by category.

This Q&A is not for licensed home health providers or nursing homes.

The CDS option allows individuals or their legally authorized representative to hire, manage, supervise and fire, if necessary, their own providers. Financial management services agencies (FMSAs, formerly called consumer directed services agencies (CDSAs)) provide financial management services which means they perform payroll and file taxes on behalf of CDS employers.

CRIMINAL HISTORY AND REGISTRY CHECKS

Q: Annual check should be done on a certain date for all. Since we can't have check on their anniversary for different employees.

A: The FMSA is required to note the date for which each employee is hired by the CDS employer. Documents signed at the time of hire would be useful in providing a start date. The Employee Misconduct Registry (EMR) and the Nurse Aide Registry (NAR) must be checked each year for each employee. To clarify, result of a registry check the initial check, BEFORE the employee is hired, must be obtained within 30 calendar days before the hire date. The annual check of the EMR and NAR must be completed within 30 calendar days after each annual employment anniversary.

Q: Do we have to print them out unless employer requests it as long as we have checked it. Since form 1725 is in place?

A: Regarding the criminal history report from the secure Department of Public Safety (DPS) website, you do not need to print the report unless the employer wants to see the original. You also have the option to send the original report via DPS secure e-mail.

Q: Form 1725 - How do we get Employer and Employee to sign 1725 if something comes up on ongoing registry checks (yearly, monthly)?

A: Form 1725 is completed once. When the applicant and employer initially sign Form 1725, they are giving permission to the FMSA to check the EMR and NAR on an annual basis and the list of individuals and entities excluded from Medicaid (LEIE) on a monthly basis.
Q: Must the 1725 be sent using a secure method also? Is this only required if we are sending the criminal history report?

A: No, the FMSA does not need to use a secure method to send Form 1725 to the employer or DR.

Q: Who does the criminal background check?

A: The FMSA.

Q: If the retention time is different from the current (5 day rule), should the criminal checks get destroyed?

A: To clarify, the retention dates described in §41.243 and §41.339 refer to Form 1725. Per the revised rules effective July 1, 2013, a criminal history report obtained from the DPS secure website must be destroyed within five days of the hiring decision. Failure to destroy criminal history record could result in DPS shutting down the FMSAs account.

Q: What is the current retention time for criminal history checks?

A: Per §41.339, the retention period for all CDS records is for at least five years and, if any litigation or claim involving records is ongoing at the conclusion of five years, the FMSA must maintain the records until all litigation or claims are resolved or a longer period than five years if required by an applicable government agency.

Q: Can criminal history report be faxed to employer?

A: No. The criminal history report obtained from the secure DPS website can only be disseminated by secure methods. DPS secure methods include:

- DPS approved encrypted e-mail
- Certified mail
- Verbal transmission

Q: In reading a criminal history check, if there is a code that is not clear, where do we call for clarification. There is this code 32.51 that we do not know if the applicant is employable or not.

A: Texas Health and Safety Code Chapter 250.006 (a) and (b) list the convictions that bar employment, 32.51 is not on the list convictions that statutorily bar employment. What this means is that as an FMSA, you cannot indicate on Form 1725 the applicant is barred from employment. You can inform the employer. It is the employer’s decision to hire or not based on the information.

Q: If we receive old 1725's can we still use them or do we have to get the employer to fill out a new one? Do they have a choice?

A: The new form should be used for anyone hired after September 1, 2013.
Q: If we send the original report from DPS, what shall we have in the file to show that the check was done?

A: The completed and signed Form 1725.

Q: We provide the original Criminal history check (CHC) to employer and they are responsible to destroy it within 5 days, is that right?

A: If the employer requests the report, that is correct.

Q: In the hiring process, am I to understand that an employee may start working only after the employee has passed the CHC or may they start and have the CHC ran within 30 days of hire?

A: An applicant must pass the criminal history check before he or she can begin work. A criminal history report must be dated no more than 30 calendar days before the applicant's date of hire.

Q: Should criminal history checks be performed annually and form 1725 filed annually also?

A: No. Only the Employee Misconduct Registry (EMR) and the Nurse Aide Registry (NAR) must be checked annually for each employee.

Q: If an employer wants his employee to start immediately, how do we go about the criminal check?

A: If you are referring to someone who is just starting the CDS option, the employee CANNOT begin work until the criminal history check is complete, the service plan has been authorized in the system (either TMHP or CARE.), the service provider agreements have been signed, the CDS budget has been signed by the employer and validated by the FMSA, all training requirement met. Please review the CDS rules and Form 1735. If the employee begins work before any of the above are in place, the FMSA cannot bill for those service provided. The CDS employer may be asked to pay for those services out of pocket.

Q: Do we need to destroy criminal background checks that we currently have on file?

A: Only if the FMSA obtained them from the DPS SECURE criminal history website.

**PROOF OF GUARDIANSHIP**

Q: Does a parent of a minor have to have proof of guardianship?

A: Proof of guardianship as referenced in the CDS rules refers to a court-appointed guardian. If a minor has a court-appointed guardian, then yes proof of guardianship is required. Proof of guardianship is not required for parents of minors.

Q: If an individual moves from one FMSA to another, can we get proof of guardianship from the previous FMSA, or do we need to ask for a copy again?

A: The CDS employer should be able to give you proof of guardianship papers.
Q: If every year a letter requesting guardianship is sent but guardianship is not obtained, is the annual letter acceptable?

A: If guardianship is not obtained, then there is no court appointed guardian. The CDS rules deal with requesting proof of guardianship, not with requesting guardianship. If you are referring to a person who serves as the employer and verbally indicates year after year he or she is in the process of obtaining guardianship of the individual who is 18 years or older, then a letter saying that they are in the process of obtain guardianship is not acceptable. If there is not a court appointed guardian when the individual turns age 18, the individual becomes the employer.

Q: What do we do if the client does not provide the proof?

A: If the question relates to proof of guardianship or proof of efforts to obtain the proof of guardianship, the court appointed guardian cannot serve as the employer of record for an individual who is 18 years of age or older.

Q: We have two days to get new codes entered in our software?

A: DADS expects FMSAs to begin using the new bill codes no later than September 1, 2013. This grace period allows time for FMSAs to complete any necessary billing programing.

Q: If an individual switches FMSA’s in the middle of a service year, can we get proof of guardianship from the previous FMSA?

A: The LAR provides a copy of the documentation to the new FMSA.

Q: How long is proof of effort acceptable?

A: Proof of effort refers to effort to obtain proof of guardianship. DADS include the proof of effort clause because each locale operates differently. Some do not always give guardianship documentation.

BILL CODES

Q: Will the DADS caseworker need to know how much to put in the system for each category? Benefits, wages, and taxes?

A: Regarding the new bill codes, case managers will not authorize amounts to be paid for taxes and Employer Support /benefits. There will be no change to the amount authorized (the service code). The separate bill codes are designed to provide a clearer audit trail related to billing. Each service code authorized now has three related bill codes instead of one. One bill code is to bill for direct payment to the attendant. The second bill code is for billing employer taxes related to that service/attendant. The third bill code is for billing employer support or benefits billed to that service (paid to the attendant).
Q: Where do you find the billing codes?

A: Bill codes are found on the DADS long-term care bill code crosswalk: http://www.dads.state.tx.us/providers/hipaa/billcodes/index.html#ltc

Q: Will the detail information about bill codes (what is considered Employee Support, Benefits, etc.) also be posted on the DADS website?

A: This information is provided below and will be provided in an Information Letter.

Q: Is vacation a benefit?

A: Yes, the CDS rules define benefits. See § 41.505 (a) (2) (E).

Q: What would fall under employee benefits?

A: As described in the CDS rules, §41.501. Budget Development, Employer Supports and Benefits (ES/Benefits) include:

- recruiting expenses;
- criminal conviction history checks from the Texas Department of Public Safety;
- acquiring other background checks of a potential service provider;
- purchased employee job-specific training;
- cardio-pulmonary resuscitation training;
- first-aid training;
- hepatitis B vaccination if elected by an employee;
- 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;
- basic office equipment, which may include a basic fax machine for the purpose of submitting documents to the FMSA;
- mailing costs;
- expenses related to making copies;
- file folders and envelopes;
- services, goods, and items specifically approved by the individual’s program as an employer support service or included in Appendix XI, Allowable and Non-Allowable Expenditures;
- bonuses;
- paid vacation;
- paid holiday;
- paid sick leave;
- medical insurance;
- taxable work-related expenses; and
- coverage of work-related injuries or illnesses for employees, including workers’ compensation.
Q: What is the bill code for employer taxes for CDS?
   A: The bill code will vary depending on the service code. See the Long Term Care bill code crosswalk: http://www.dads.state.tx.us/providers/hipaa/billcodes/index.html#ltc

Q: Is there a separate code for employer support services?
   A: No.

MISCELLANEOUS

Q: If we already have a contract we don’t need to sign up for FMSA right?
   A: No, if you already have a contract as a CDSA, you do not need to obtain another contract as an FMSA.

Q: Is it retroactive?
   A: None of these changes are retroactive.

Q: How do we verify their Social Security number?
   A: Social Security numbers can be verified with the U.S. Social Security Administration. For more information, see: http://www.ssa.gov/employer/ssnv.htm.

Q: Do we still have to complete form 8821 with the CDS employers?
   A: Yes.

Q: Can we now use form 1745 as a timesheet for TxHmL and HCS instead of 2122 for TxHmL and 4118 & 4121 for SHL?
   A: Yes, either time sheet is acceptable now.

Q: Is it required that the employee have CPR?
   A: Specific program rules require CPR certification. Currently, the CLASS and DBMD programs require CPR certification. The MDCP rules are being amended to include CPR certification for respite and flexible family support.
Q: For the Managed care programs, did you say our contracts will automatically be sent to those groups?

A: To become prepared for managed care transitions, sign up for HHSC e-mail alerts at: [http://www.hhsc.state.tx.us/](http://www.hhsc.state.tx.us/) In addition to checking HHSC e-mail alerts, continue to check DADS e-mail alerts for information about managed care expansion. DADS and HHSC will announce the schedule for the managed care transitions, including webinars and or stakeholder meetings for providers. Do not try to contact MCOs until the expansion is announced. For example, it is premature to contact MCOS about being included in the network as an FMSA for the MDCP program. TMHP does not handle enrollment or billing for MCOs. Individuals, not contracts, will automatically be transferred. FMSA are encouraged to enroll with all MCOs once the expansion is announced.

Q: Any guidance when fraud is in Managed Care?

A: FMSA are required to report suspected fraud, including Medicaid managed care fraud to the Office of Investigator General. FMSAs are to notify the managed care service coordinator of the fraud referral, per §41.313, Individual Service Planning Process.

Q: What if the service plan is not available at the CDS Orientation? On what should budget be based? Must the FEIN be obtained even if employer fails to hire employees within 30 days?

A: Work with the case manager or service coordinator to determine when the service plan will be ready and plan an in-person orientation based on that date. FMSAs can begin some of the orientation process over the phone and by faxing forms such as the criminal history check. In some programs case managers or service coordinators will give the FMSAs and CDS employers a preliminary service plan (a plan that is developed but not yet authorized) from which to DRAFT the CDS budget. In those cases, the FMSA will need to stress to the employer that the budget has not yet been authorized. Most importantly, the FMSA will need to check MESAV to ensure that the service plan matches the authorized service plan.

Yes, an FEIN must be obtained regardless of when the employees are hired.

Q: If an employer appoints a relative as DR will they still need copy of 1720?

A: Yes.

Q: Will existing FMSAs have to pass those qualifications (Payroll expertise, etc...)? How long before they have to comply?

A: Existing FMSAs are expected to have expertise to carry out the functions of a vendor fiscal/employer agent. The rules do not stipulate that current FMSA must go through the enrollment training again. However, existing FMSA are now required to participate in all mandatory FMSA training sponsored by DADS.