



COMMISSIONER
Jon Weizenbaum

December 30, 2015

To: Financial Management Services Agencies (FMSAs)

Subject: Information Letter No. 15-83
Abuse, Neglect and Exploitation (ANE) Investigation Procedures for the Consumer Directed Services (CDS) Option in the Primary Home Care (PHC) and Medically Dependent Children Programs (MDCP)

Effective September 1, 2015, the Texas Department of Family and Protective Services (DFPS) Adult Protective Services (APS) Provider Program investigates an allegation of ANE of an adult or child receiving services through the CDS option. The APS Provider Program provides the investigation report to the CDS employer so that the CDS employer can take action to alleviate current and prevent future ANE.

Prior to September 1, 2015, the APS In-Home Program investigated an allegation of ANE of an adult receiving services through the CDS option and, as appropriate provided protective services when ANE was validated. Allegations of ANE of a child using the CDS option were not investigated by DFPS.

This change is a result of Senate Bill (SB) 1880 and SB 760 (84th Texas Legislature, Regular Session, 2015), which amended Texas Human Resources Code, Chapter 48, Subchapter F and Family Code, Chapter 261, Subchapter E.

The APS Provider Program investigates an allegation if one of the following persons is the alleged perpetrator of ANE involving an individual receiving service through the CDS option:

- a CDS employee;
- a legally authorized representative (LAR);
- a designated representative (DR);
- a case manager;
- a service coordinator; or
- a representative of an FMSA.

This letter describes the process followed for an allegation of ANE involving an individual receiving service through the CDS option if a CDS employee, DR, or representative of an FMSA is the alleged perpetrator. A subsequent information letter will address the process followed for an allegation of ANE involving an individual receiving service through the CDS option if an LAR, case manager, or service coordinator is the alleged perpetrator.

The procedures for reporting an allegation of ANE have not changed. To report ANE, call 1-800-252-5400 or visit www.txabusehotline.org.

Responsibilities of FMSAs if a CDS Employee or DR is the Alleged Perpetrator

Initial Intake Report

- When DFPS receives an allegation of ANE related to services delivered through the CDS option and a CDS employee or DR is the alleged perpetrator, APS will provide the initial intake report to the CDS employer and the individual's FMSA.
- The FMSA must, using a secure method, provide a copy of the initial intake report, within one business day after receipt of the report, to the individual's DADS regional office.
- The DADS regional office will give the initial intake report to the individual's case manager along with a copy of this IL.
- The case manager will convene a service planning team (SPT) meeting in person or by phone within four business days after receipt of the initial intake report, in which:
 - the SPT discusses the actions the CDS employer has taken or will take to protect the individual during the APS investigation, which may include implementing the service backup plan to allow someone other than the CDS employee who is the alleged perpetrator to provide services; and
 - the case manager documents in writing any actions that have been or will be taken as a result of the allegation.
- If appropriate, the case manager may recommend termination of the CDS option in accordance with Texas Administrative Code (TAC), Title 40, Part 1, Chapter 41, §41.407(e).

Final Investigation Report

- After the investigation is complete, APS will send a final investigation report, including findings, to the CDS employer and the individual's FMSA.
- The FMSA must, using a secure method, provide a copy of the final investigation report, within one business day after receipt of the report, to the individual's DADS regional office.
- The DADS regional office will give the final investigation report to the individual's case manager.
- The FMSA must complete Form 1719, Notification of Investigatory Findings, using the final investigation report received from APS, and send the completed form to the alleged perpetrator within five business days after receipt of the report.
- The case manager will convene an SPT meeting in person or by phone, within four business days after receipt of the final report, if there is a confirmed or inconclusive finding of ANE or if concerns and recommendations are included in the report, in which:
 - the SPT discusses the findings or concerns and recommendations; and
 - the case manager documents, in writing, any actions that have been or will be taken by the CDS employer as a result of the findings or concerns and recommendations. (DADS Form 1741, Corrective Action Plan, may be used for this purpose.)
- If appropriate, the case manager may recommend termination of the CDS option, in accordance with 40 TAC, §41.407(e).

Responsibilities of FMSAs if an FMSA Representative is the Alleged Perpetrator

Initial Intake Report

- When DFPS receives an allegation of ANE related to services delivered through the CDS option and an FMSA representative is the alleged perpetrator, APS will provide the initial intake report to the CDS employer and the individual's FMSA.
- The FMSA must immediately assign a different FMSA representative to perform duties related to the CDS employer during the investigation.
- The FMSA must, using a secure method, provide a copy of the initial intake report, within one business day after receipt of the report, to the individual's DADS regional office.
- The DADS regional office will give the initial intake report to the individual's case manager along with a copy of this IL.
- The case manager will convene a service planning team (SPT) meeting in person or by phone within four business days after receipt of the initial intake report, in which:
 - the SPT discusses the actions the CDS employer has taken or will take to protect the individual during the APS investigation, which may include transferring to a different FMSA; and
 - the case manager documents in writing any actions that have been or will be taken as a result of the allegation.

Final Investigation Report

- After the investigation is complete, APS will send a final investigation report, including findings, to the CDS employer and to the individual's FMSA.
- The FMSA must, within five business days after receipt of the final investigation report:
 - complete Form 1719, Notification of Investigatory Findings, using the final investigation report received from APS, and send the completed form to the alleged perpetrator; and
 - take appropriate action in response to the APS investigation.
- The FMSA must, using a secure method, provide a copy of the final investigation report, within one business day after receipt of the report, to the individual's DADS regional office.
- The DADS regional office will give the final investigation report to the individual's case manager.
- The case manager will convene an SPT meeting in person or by phone, within four business days after receipt of the final report, if there is a confirmed or inconclusive finding of ANE or if concerns and recommendations are included in the report, in which:
 - the SPT discusses the findings or concerns and recommendations; and
 - the case manager documents, in writing, any actions that have been or will be taken by the CDS employer as a result of the findings or concerns and recommendations. (DADS Form 1741, Corrective Action Plan, may be used for this purpose.)

Responsibilities of CDS Employers

In the event of an APS investigation, a CDS employer must:

- protect the individual receiving services;
- preserve evidence, such as timesheets and other employee-related documentation, in accordance with DFPS instructions; and
- cooperate with the APS investigation, including providing requested documentation and participating in interviews as requested by DFPS.

Additional Responsibilities of FMSAs

- The FMSA must retain the initial intake and final investigation report received from APS in the CDS employer's records.
- The FMSA may participate as a member of an SPT meeting if requested by the CDS employer and agreed to by the FMSA, in accordance with 40 TAC, Part 1, Chapter 41, §41.313(a).
- FMSAs must provide a copy of the attached letter to CDS employers by January 31, 2016.

If you have questions about this letter, please contact DADS at CDS@dads.state.tx.us.

Sincerely,

[signature on file]

S. Michelle Martin
Director
Center for Policy and Innovation

[signature on file]

Elisa J. Garza
Assistant Commissioner
Access and Intake

Attachment



COMMISSIONER
Jon Weizenbaum

December 30, 2015

To: Consumer Directed Services (CDS) Employers

Subject: Abuse, Neglect and Exploitation Procedures for the CDS Option

Effective September 1, 2015, the Texas Department of Family and Protective Services (DFPS) Adult Protective Services (APS) Provider Program investigates an allegation of abuse, neglect, or exploitation (ANE) of an adult or child using the consumer directed services (CDS) option. Prior to September 1, 2015, the APS In-Home Program investigated an allegation of ANE of an adult using the CDS option and focused on the provision of protective services to an individual. Allegations of ANE of a child using the CDS option were not investigated by DFPS. The APS Provider Program provides the investigation report to the CDS employer so the CDS employer can take action to alleviate and prevent ANE.

The APS Provider Program investigates an allegation if one of the following persons is the alleged perpetrator of ANE involving an individual receiving service through the CDS option:

- a CDS employee;
- a legally authorized representative (LAR);
- a designated representative (DR);
- a case manager;
- a service coordinator; or
- a representative of a financial management services agency (FMSA).

This letter describes the process for an allegation of ANE involving an individual receiving service through the CDS option if a CDS employee, DR, or representative of an FMSA is the alleged perpetrator. The Department of Aging and Disability Services (DADS) will issue another letter to address the process for an allegation of ANE involving an individual receiving service through the CDS option if an LAR, case manager, or service coordinator is the alleged perpetrator.

The procedures for reporting an allegation of ANE have not changed. To report ANE, call 1-800-252-5400 or visit www.txabusehotline.org.

ANE Procedures for the CDS Option

- When an allegation of ANE is reported to DFPS, the APS Provider Program sends the initial intake report to:
 - the CDS employer; and
 - the individual's FMSA.
- The individual's FMSA will provide the initial intake report to the appropriate program provider, case management agency (CMA), local intellectual and developmental disability authority (LIDDA) or DADS regional office, except when the individual's FMSA is also the CMPAS provider.
- The individual's case manager or service coordinator will convene a service planning team (SPT) meeting, in person or by phone, after the initial intake report is received to ensure the CDS employer protects the individual receiving services during the APS Provider Program investigation.
- APS Provider Program sends the CDS employer and the individual's FMSA a copy of the final investigation report, including findings and any concerns and recommendations.
- The individual's FMSA will provide the appropriate program provider, CMA, LIDDA, or DADS regional office with a copy of the final investigation report, including findings and any concerns and recommendations, except when the individual's FMSA is also the CMPAS provider.
- If there is a confirmed or inconclusive finding of ANE or concerns and recommendations are included in the report, the case manager or service coordinator will convene a second SPT meeting, in person or by phone, with the CDS employer and document any actions that have been or will be taken by the CDS employer as a result of the findings.
- The case manager or service coordinator may recommend termination of the CDS option in accordance with Texas Administrative Code (TAC), Title 40, Part 1, Chapter 41, §41.407(e).
- The individual's FMSA will notify the alleged perpetrator of the final findings from APS by completing and sending Form 1719, Notification of Investigatory Findings.

CDS Employer Responsibilities

- A CDS employer must ensure protection of the individual receiving services by participating on the SPT and developing a plan for protection which may include implementing the service backup plan to allow someone other than the CDS employee who is the alleged perpetrator to provide services.
- A CDS employer must cooperate with an APS Provider Program investigation including:
 - providing requested documentation and participating in interviews as requested by DFPS; and
 - preserving evidence of employee records, such as training documentation and timesheets, in accordance with DFPS instructions.

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CDS Employer's Right to Request a Review of Methodology or Findings

A CDS employer may request a review of the investigation report methodology or findings using the process provided for an administrator or contractor CEO at 40 TAC, Part 1, Chapter 711, §711.1003 and §711.1005.

If you have questions about this letter, please contact DADS at CDS@dads.state.tx.us.

Sincerely,

[signature on file]

S. Michelle Martin
Director
Center for Policy and Innovation

[signature on file]

Elisa J. Garza
Assistant Commissioner
Access and Intake