



COMMISSIONER
Chris Traylor

September 1, 2011

To: Consumer Directed Services Agencies

Subject: Information Letter No. 11-112
Implementation of Senate Bill 223 - Related to Criminal Conviction Check on Behalf of
Consumer Directed Services Employers

The purpose of this letter is to inform Consumer Directed Services Agencies (CDSA) of changes to the criminal conviction check procedures, form and training materials for Consumer Directed Services (CDS) employers. These changes are effective September 1, 2011.

This letter replaces Information Letter 2009-79, Criminal Conviction Checks for Consumer Directed Services Agencies.

Senate Bill (S.B.) 223, 82nd Legislature, Regular Session, 2011, amends Health and Safety Code, Title 4, Subtitle B, Sections 250.001 through 250.009 to grant CDSAs the authority to conduct criminal conviction checks using the Texas Department of Public Safety's (DPS) secure website. CDSAs must forward this privileged information to the CDS employer for the sole purpose of making a hiring decision.

CDSAs and CDS employers must comply with the confidentiality requirements as defined in Health and Safety Code, Section 250.007.

Training for CDS Employers

CDSAs are responsible for training CDS employers on criminal conviction check procedures at the initial orientation and when procedures change. The [CDS Employer Handbook](#), Chapter 3, Being an Employer, has been updated. When reviewing this information with new and current CDS employers, CDSAs must communicate the following information about criminal conviction and registry checks:

- A criminal conviction check using the secure site provides arrest information as well as convictions, which will allow a CDS employer to make a more informed decision about hiring a particular applicant.
- A criminal conviction check from the secure DPS website costs less compared to the criminal conviction check on the public website. In accordance with 40 Texas Administrative Code, (TAC) Section 41.225, the CDS employer's budget may include the cost of a criminal conviction check.

- The CDSA must forward the criminal history check results, using a secure method including fax, mail or encrypted e-mail, to the CDS employer for the sole purpose of making a hiring decision.
- Criminal history results are privileged information; sharing this information can be prosecuted as a Class A misdemeanor. The CDS employer must not show the criminal history results to anyone, including family members or friends. The CDS employer must keep the criminal history results separate from all other personnel information, preferably in a lock box or drawer that locks.
- The CDS employer must shred criminal history results for those applicants who were not hired.

As outlined in Section 41.225, Criminal Conviction History Checks, a CDS employer may choose to run their own criminal conviction check using the DPS public website. A CDSA must verify the criminal conviction search and inform the CDS employer whether or not the applicant can be hired, without disclosing details.

Changes to Form 1725 - Employer Acknowledgement of Responsibility to Protect Privileged Information

[Form 1725](#), Criminal Conviction and Registry Check has been revised and Section II, completed by the employer, includes a new certification statement. If the CDS employer asks the CDSA to conduct the criminal conviction check, the CDS employer must sign a statement certifying that he or she understands criminal conviction information is privileged and sharing the information with anyone can be prosecuted as a criminal offense. In addition, the CDS employer acknowledges in the statement an applicant cannot be employed and paid prior to the CDSA verification that the applicant meets the qualifications criteria.

Additional changes to Form 1725, include a check box to indicate more clearly who (i.e., the CDS employer or CDSA staff) will conduct the criminal conviction check. The employer or the CDSA staff who conducts the check must complete Section III of the Form, Criminal Conviction Results, and sign and date at the bottom of the form before the first date of employment. The employer must keep Form 1725, with the personnel file. The CDSA uses the Form 1729, Employee Verification Form, to inform the CDS employer in writing that the person can be hired based on all of the qualification criteria, including the criminal conviction check.

The remaining procedure outlined in 40 TAC, Section 41.225 is consistent with the amendments to Chapter 250 of the Health and Safety Code. The list of convictions which bar employment has been updated. House Bill (H.B.) 2609, 82nd Legislature, Regular Session, 2011, amended Health and Safety Code Section 250.006(a) by adding an offense under Section 36.06, Penal Code (obstruction or retaliation), adding Section 42.092, Penal Code (cruelty to non-livestock animals) and amending reference to Section 42.09, Penal Code (cruelty to livestock animals). The Department of Aging and Disability Services updated the list of offenses that bar employment found in Appendix II of the [CDS Employer Handbook](#).

CDSAs are not required to re-run all previous criminal conviction checks using the secure DPS website, unless the CDS employer requests.

CDS Budget Workbooks

If the CDS employer requests the CDSA to run the criminal conviction checks, the CDS employer, with assistance from the CDSA, must revise the CDS budget workbook to reduce the funds currently budgeted for criminal conviction checks and reallocate those funds. The CDS employer and the CDSA must sign the revised budget.

If you have additional questions, please send an e-mail to cds@dads.state.tx.us.

Sincerely,

[signature on file]

Teresa Richard
Director
Center for Policy and Innovation

TR:ej