

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 17-07

Date: March 1, 2007

Keyword: Equal Opportunity

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Storage and Use of Disability-Related and Medical Information**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with requirements for the storage and use of disability-related and medical information.

REFERENCE:

Workforce Investment Act, §188

United States Department of Labor, Implementation of the Nondiscrimination and Equal Opportunity Provisions of The Workforce Investment Act of 1998 [29 C.F.R. §32.15(d) and §37.37(b)]

Rehabilitation Act of 1973, §504, as amended

State of Texas Methods of Administration:

<http://intra.twc.state.tx.us/intranet/pi/docs/moa.pdf>

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

The U.S. Department of Labor provides guidance to Boards on implementing the nondiscrimination and equal opportunity provisions of Workforce Investment Act (WIA) §188 for recipients of WIA Title I financial assistance. Specifically, 29 C.F.R. §37.37(b)(1) sets forth recipient responsibilities for data and information collection and maintenance, stating: “The system and format in which data and records are kept must be designed...to conduct statistical or other quantifiable data analyses and verify the recipient’s compliance with section 188 of WIA and this part.” Furthermore, 29 C.F.R. §37.37(b)(2) states:

Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrator, participant, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

Additionally, 29 C.F.R. §32.15(d) requires that medical information or history be collected and maintained on separate forms that must be kept confidential, as follows:

- (d) *Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:*
 - (1) *employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list;*
 - (2) *supervisors and managers may be informed regarding restrictions on the work or duties of qualified handicapped persons and regarding necessary accommodations;*
 - (3) *first aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and*
 - (4) *government officials investigating compliance with the Act shall be provided information upon request.*

Section 504 of the Rehabilitation Act of 1973 requires that individuals with disabilities be afforded equal opportunity to participate in and benefit from WIA §188 services and activities.

Element 6 of the *State of Texas Methods of Administration*, available on the Intranet at <http://intra.twc.state.tx.us/intranet/pi/docs/moa.pdf>, provides Boards with requirements for collection and maintenance of all records and data.

[Note: The Intranet site is not available to the general public.]

PROCEDURES:

Boards must:

- develop and implement written procedures to address the storage and use of disability-related and medical information as required by WIA §188, 29 C.F.R. §32.15(d) and §37.37(b)(1)–(2), §504 of the Rehabilitation Act of 1973, and the *State of Texas Methods of Administration*;
- ensure that the procedures include guidelines for storing information in a manner that provides confidentiality; and
- ensure that the procedures include prohibitions on the use and disclosure of information, except as provided in 29 C.F.R. §32.15(d).

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ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries regarding this WD Letter to the Equal Opportunity Officer for your local workforce development area or to EO.Reports@twc.state.tx.us.

Rescissions: None	Expiration: Continuing
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