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FROM: Linda Franks
LWIA 24 Equal Opportunity Officer

RE: **EQUAL OPPORTUNITY DIRECTIVE 2015-EO-6, Procedures for
Gathering, Disclosing, Using, and Storing Medical Information**

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We are part of the system of delivering federally-assisted workforce development programs and activities, and this system is governed by nondiscrimination and equal opportunity requirements of (1) Section 504 of the Rehabilitation Act of 1973, at 29 U.S.C. § 794, as amended, (2) the Americans With Disabilities Act of 1990, at 42 U.S.C. § 12101 *et seq.*, as amended (ADA), and (3) Section 188 of the Workforce Innovation Opportunity Act (WIOA) of 2014, at 29 U.S.C. § 2938. As a whole, these statutes prohibit discrimination on a variety of bases, including disability, in our delivery of WIOA Title I-financially assisted programs and activities.

In the course of operating these programs and activities, we may become privy to medical information of individuals, such as to determine whether an individual meets the essential eligibility requirements for a program or activity, or to assess an individual's disability-related accommodation request.

In order to ensure compliance with applicable federal civil rights laws, this directive sets forth procedures you shall use to properly gather, disclose, use, and store medical and disability-related information. These procedures are designed to respect an individual's privacy, and to deter disability-related discrimination. For procedures related to serving persons with disabilities, see EQUAL OPPORTUNITY DIRECTIVE 2015-EO-3, Procedures for Serving Persons with Disabilities.

Based on the foregoing, EQUAL OPPORTUNITY DIRECTIVE 2015-EO-6 is being issued, and is **effective immediately**.

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✓ **Service-related activities versus employment-related activities.**

The first step in determining what, if any, medical or disability information may be collected as well as the circumstances under which this information may be used or disclosed, is to know the nature of the program or activity at issue. Importantly, the rules for our employment-related activities differ from the rules applicable to our service-related activities. The chart on the next page provides examples of the differences between service-related activities and employment-related activities.

The following chart defines these two categories of activities:

Employment-related activities	Service-related activities (the provision of services, aid, and benefits)
<p>This category includes activities of employment-related training, job placement, and job referral. Employment-related training is "training that allows or enables an individual to obtain employment" such as occupational skills training, on-the-job training, or job-readiness training.</p> <p>The category also includes employment-related activities of any entity acting as an "employment agency" (such as Southwestern Illinois workNet™ Centers, formerly known as One Stop Centers) to the extent that the entity "regularly" has a "principle function" of either (1) procuring employees for at least one employer, or (2) procuring work opportunities for customers.</p>	<p>This category of activities involves the provision of services, aid, and/or benefits to qualified members of the public (<i>i.e.</i> persons who meet the essential eligibility requirements for the services, aid, or benefits at issue).</p> <p>Some examples include determining eligibility for federally assisted programs in the areas of child care, transportation, and housing assistance.</p> <p>Also included would be benefits counseling services, such as assisting a customer in applying for unemployment insurance benefits.</p> <p>And, this category includes assessing the skills, prior work experience, and employability of a customer as well as creating a service strategy for that</p>

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So, for example, if you are assisting a customer with a job referral, you will apply the laws governing employment-related activities. On the other hand, if you are assisting a customer in determining his or her eligibility for unemployment insurance benefits, you will follow the laws applicable to service-related activities.

✓ **The applicable laws.**

Guidance set forth in these procedures stems from the following statutes:

Employment-related activities	Service-related activities (the provision of services, aid, and benefits)
<p>Title I of the ADA</p> <p>Select parts of Section 504 of the Rehabilitation Act (see 29 C.F.R. Part 32, subparts B and C)</p>	<p>Title II of the ADA</p> <p>Section 504 of the Rehabilitation Act</p>

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✓ **What we can ask and how we ask it.**

Once you identify the nature of your program or activity (employment-related or service-related), you will adhere to the following guidance with regard to gathering medical and disability-related information from a customer:

Employment-related activities	Service-related activities (the provision of services, aid, and benefits)
<p>As a general rule, medical and disability-related inquiries are <i>illegal</i>. Some examples of circumstances under which it is illegal for you to seek to gather medical or disability-related information include (1) when you are deciding whether to refer a customer to a particular job, or (2) when you are an employer or training instructor and a customer is not performing well.</p> <p>Instead, you may ask whether the customer can perform specific job functions, and has the needed experience, education, and/or licenses. You may also inquire about non-disabling impairments (such as, "How did your sprain your ankle?"). And, if the customer discloses a disability without being asked to do so, or if the customer has an obvious disability, you can ask whether the customer will need accommodation for the <i>application process</i> (keep in mind, you still cannot ask such questions for referral for a job). Finally, you may ask questions about the</p>	<p>Here, you have broad discretion in making medical and/or disability-related inquiries. Some examples of service-related activities where you may make such inquiries include (1) screening customers with employment difficulties to determine whether there are hidden disabilities (<i>i.e.</i> cognitive),</p> <p>(2) determining a customer's eligibility for "targeted" programs, and (3) determining whether, and which, reasonable accommodation would help the customer succeed in employment.</p> <p>The customer is not required to respond to your inquiries, but may do so voluntarily. For this reason, it is a good practice to tell the customer why you are seeking the information so that the customer may decide whether to disclose the information.</p>

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<p><i>current</i> illegal use of drugs (be aware that alcohol-related questions are limited).</p> <p>One of the few exceptions to the foregoing prohibition is when you are under an affirmative action plan, or are engaged in correcting prior discriminatory practices (either voluntarily or otherwise). Here, the customer may be invited to "self-identify" any disability or medical condition on a <i>voluntary</i> basis. Under these limited circumstances, you must inform the customer that the information will be used solely for remedial actions, or for voluntary or affirmative action efforts.</p>	
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Prior to asking any medical or disability-related questions (regardless of whether you are engaged in employment-related or service-related activities), you must notify the customer of the following:

- Provide information voluntary;
- Information will be kept confidential as provided by law;
- Refusal to provide the information will not subject the customer to any adverse treatment; and
- The information will be used only in accordance with the law.

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✓ **Demographic data is requested of everyone.**

Regardless of whether you are engaged in employment-related or service-related activities, you must request demographic data (see 29 C.F.R. § 37.37(b) (2) of every:

- Inquirants
- Applicants
- Registrants
- Employees
- Exiters
- Exiters In Follow-up

Inquirants, Applicants and Registrants are required to provide personal information, such as name or Social Security number, at the request of the recipient or service provider. However, to comply with the nondiscrimination laws inquirants, applicants and registrants may voluntarily self-identify their race/ethnicity/gender/disability. The following categories of data may be collected from these individuals:

“Demographic data” is defined as the individual’s:

- Race/Ethnicity
- Sex
- Age
- Disability status (if known)

Prior to requesting this data, you must inform the individual that (1) the response with regard to his/her disability status is voluntary, and (2) disability or medical related information will be stored separately from other information maintained on the individual.

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✓ **Disclosing medical or disability-related information.**

In the context of employment-related and service-related activities, confidentiality of an individual's medical or disability-related information is a priority. This means that disclosure of such information is extremely limited. Pursuant to U.S. Department of Labor Civil Rights Center (CRC) guidance, disclosure may be made, as needed, to: (1) supervisors, managers, and trainers (in your agency or at a training provider), but only to explain the customer's limitations or reasonable accommodations; (2) first aid and safety personnel, but only if the condition may require emergency treatment (including evacuation); and (3) others only on a "need-to-know" basis. No medical or disability related information may be sent electronically.

Within 30 days from the date of issuance of this directive, each entity that is part of delivering WIOA Title I-financially assisted programs and activities shall provide me with the name and contact information of the highest-ranking individual at your location who shall be responsible for custody and control of medical and disability-related information. Access to this information will be *extremely limited* in accordance with CRC guidance. I will have access to the information for purposes of performing the legally-required duties of my position as the designated EO Officer for our service area.

In the context of employment-related activities, you are prohibited from disclosing medical or disability-related information to an employer (1) to whom you are referring a customer, or (2) who is considering hiring a customer. The only exception to this prohibition is when: (1) the job-seeker customer made an independent decision to disclose the information to the employer, (2) the customer specifically requested you or another agency staff member to make the disclosure on his or her behalf, and (3) the disclosure request was initiated by the job-seeker customer, not by you or another staff member at the agency.

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✓ **Using medical or disability-related information.**

The uses of medical or disability-related information differ depending on whether you are engaged in employment-related activities versus service-related activities. The following chart provides guidance on disclosure for these types of activities:

Employment-related activities	Service-related activities (the provision of services, aid, and benefits)
<p>Uses of medical or disability-related information are <i>very narrow</i>. This information cannot be used as the <i>sole basis</i> for (1) deciding whether to refer a customer to a particular job, or (2) suggesting a career path to a customer.</p> <p>“Steering” is <i>illegal</i>. Steering means, based on a person’s disability, you refer the person to a particular job or employer, or you direct the person to a particular profession. Each person with a disability is entitled to <i>individualized</i> treatment.</p> <p>On the other hand, you may use the information to talk to the customer about (1) whether s/he needs reasonable accommodations in <i>the application process</i> (not for the job); or (2) whether s/he is interested in special employment programs for persons with disabilities.</p>	<p>Uses of medical or disability-related information are broader. Some examples include determining reasonable accommodations or modifications, auxiliary aids and services, and assistive technologies.</p>

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✓ **Storing medical or disability-related information.**

Regardless of the nature of the activity, it is important to reiterate that medical and disability-related information must be kept in a separate, secure location with limited access. This means that medical and disability information for a customer must be maintained in a file that is separate and apart from the registrant's file. In addition, medical and disability-related information must be kept separate and apart from any discrimination complaint investigation file.

As of the date of issuance of this directive, confidential medical and/or disability-related information gathered from individuals in the course of delivering our WIOA Title I-financially assisted programs and activities is maintained separately from registrants' files as follows:

Physical location(s) of files containing medical and/or disability-related information	Name(s) and title(s) of person(s) with access to the files <i>in addition to</i> the LWIA 24 EO Officer
19 Public Square, Suite 200 Belleville, IL 62220	Richard Stubblefield
4519 West Main Street Belleville, IL 62226	Richard Stubblefield Stephanie Webly
1 Taylor St. Chester, IL 62233	Richard Stubblefield Michele Cross
851 Fairfax Carlyle, IL 62231	Richard Stubblefield Madeline Beckmann
455 South Washington St., Rm. 32 Nashville, IL 62263	Richard Stubblefield Dianne Weihe
100 S. Main St., Rm. 19 Waterloo IL 62298	Richard Stubblefield Kathi Weilbacher

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Medical or disability information should be made available only to persons on a "need-to-know" basis as outlined under our above-stated disclosure guidance.

√ Questions

If you have any questions regarding gathering, disclosing, using, and storing medical information, contact me:

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