

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 52. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §52.2

The Office of the Attorney General, Human Resources Division, adopts amendments to §52.2 of Title 1 of the Texas Administrative Code, regarding agency employee education and training. The amended section is adopted without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8077) and will not be republished.

The amendments are adopted in order to address provisions included in HB 3337, which passed during the 84th Texas legislative session.

No comments were received regarding adoption of the amendments during the comment period.

The amendments are adopted in accordance with Texas Government Code §656.048(a), which requires the Office of the Attorney General to adopt rules relating to the eligibility of the agency's employees for training and education, and the obligations assumed by the employee on receiving the training and education.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600905

Amanda Crawford

General Counsel

Office of the Attorney General

Effective date: March 15, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 936-7940



PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73, concerning Information Security Standards, to clarify and update the processes and policies of current practices. The rules are adopted without changes to the proposal as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8078).

In 1 TAC §202.2, an exception was created for public junior colleges. This amendment is necessary to align the definition with Texas Government Code §2054.0075.

In 1 TAC §202.21(b)(4), department staff recommended amendments to language to clarify existing policies and best practices.

In 1 TAC §202.23(b)(1)(A), department staff added language specifying that reports made to the department must be in the form and manner specified by the department. The adopted language clarifies current policies and procedures.

In 1 TAC §202.71(b)(4), department staff recommended amendments to language to clarify existing policies and best practices.

In 1 TAC §202.73(b)(1)(A), department staff added language specifying that reports made to the department must be in the form and manner specified by the department. The adopted language clarifies current policies and procedures.

The changes to the chapter apply to state agencies, local government and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(c), Texas Government Code.

Eddie Block, Chief Information Security Officer, has determined that during the first five-year period following the amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73, there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Mr. Block has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rules.

No comments were received in response to the notice of proposed rulemaking.

SUBCHAPTER A. DEFINITIONS

1 TAC §202.2

The amendments to existing rule are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

No other code, article or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600936

Martin H. Zelinsky

General Counsel

Department of Information Resources

Effective date: March 16, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 463-1634



SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §202.21, §202.23

The amendments to existing rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

No other code, article or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600937

Martin H. Zelinsky

General Counsel

Department of Information Resources

Effective date: March 16, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 463-1634



SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §202.71, §202.73

The amendments to existing rules are adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its

responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

No other code, article or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600938

Martin H. Zelinsky

General Counsel

Department of Information Resources

Effective date: March 16, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 463-1634



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 25) and will not be republished. The section adopts by reference the 2016 State of Texas Low Income Housing Plan and Annual Report ("SLIHP") as a rule. No changes have been made to the rule text or to the 2016 SLIHP in response to comment.

REASONED JUSTIFICATION. The Department finds that Texas Government Code §2306.0723 specifically authorizes the Department to consider the SLIHP as a rule. Accordingly, the amendment adopts by reference the 2016 SLIHP. The purpose of the rule and referenced 2016 SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2015 performance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was between January 1, 2016, and January 21, 2016, and a public hearing was held on January 14, 2016, in Austin, Texas. Written comments were accepted by mail, email, and facsimile.

Although no comments were received concerning the proposed rule amendment, the Department received seven comments on the 2016 SLIHP from one source: Texas Council for Developmental Disabilities.

Comment 1: TCDD commented on the unmet need for individuals with incomes below 30% Area Median Family Income ("AMFI"), stating that failure to provide housing affordable to people with disabilities or elderly who rely on Social Security, Social Security Disability Income or Supplement Security Income forces many individuals into unsafe conditions. Further, TCDD commented that only the Section 811 and Homeless Housing and Services Program ("HHSP") target individuals with income below 30% AMFI and urged TDHCA to go beyond simply recognizing the unmet need and provide more for this income group.

Department Response: The Department targets individuals and households with income at or below 30% AMFI through a number of programs. In addition to the Section 811 Program and HHSP, TDHCA administers the Community Services Block Grant ("CSBG") Program, with income eligibility at or below 125% of the Federal Poverty level, and the Emergency Solutions Grants ("ESG") Program, with income eligibility at or below 30% AMI. Through CSBG and ESG, TDHCA served more than 362,000 individuals in SFY 2015.

Also, in the 2016 Qualified Allocation Plan ("QAP"), which governs the awarding and allocation of 2016 9% Housing Tax Credit ("HTC") program funds, scoring priority may be awarded to applicants who elect to restrict an additional 10 percent of the proposed low income units for households at or below 30 percent of Area Median Gross Income ("AMGI"). These Units must be in addition to units required under any other provision of the 2016 QAP. While the pre-application period for the 2016 HTC has concluded, the Department is actively seeking stakeholder input on the development of the 2017 QAP. The 2017 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf>.

Finally, through the Department's newly created Multifamily Direct Loan Program, funding is provided to nonprofit and for-profit entities for the new construction or rehabilitation of affordable multifamily rental developments. Funding is typically provided in the form of low interest rate, repayable construction-to-permanent loans. Multifamily developments funded through the Department's Multifamily Direct Loan Program must comply with long-term rent and income restrictions and may be layered with additional funding sources (such as HTC). In the Multifamily Direct Loan Program NOFA, released in January 2016, funds under a Deferred Forgivable Loan Set-Aside are intended to increase the number of 30% rent-restricted units and occupy them with households with an annual income of 30% Area Median Income ("AMI") or less who are not currently receiving any type of rental assistance. The Department accepted applications under this NOFA beginning on January 4, 2016. Based on the availability of funds, applications may be accepted until 5:00 p.m. Austin Local Time on May 31, 2016. The NOFA can be found at <http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm>.

Through the administration of all programs, TDHCA will continue to solicit public and stakeholder comment to enhance program delivery to target populations. No changes have been made to the SLIHP in response to this comment.

Comment 2: TCDD referenced TDHCA's Strategic Plan Goal 1 and recommended that TDHCA should develop a target income category of between 0 and 110% of the level of SSI with the rationale that setting a threshold below "extremely low" will allow TDHCA to monitor, plan for, and allocate resources to a group that TCDD states is currently slipping through the cracks of the housing and human service programs.

Department Response: TDHCA's Strategic Plan Goals reflect program performance based upon measures developed with the State's Legislative Budget Board ("LBB") and the Governor's Office of Budget, Planning and Policy ("GOBPP"). The goals are also based upon Riders attached to the Department's appropriations bill. The Department believes that the goals and objectives for the various TDHCA programs, to the extent feasible, should be consistent with its mandated performance requirements. Revising income eligibility and setting a target income category of between 0 and 110% of the level of SSI for programs addressed by Goal 1 (Single-Family Mortgage Revenue Bond Program, Multifamily Mortgage Revenue Bond Program, HOME Investment Partnership Program, Housing Trust Fund, Section 8 Housing Choice Voucher Program, and the Housing Tax Credit Program) would be driven by changes to program rules. Opportunities for public comment on program rules are made available at <http://www.tdhca.state.tx.us/public-comment.htm>. Further, the Department has developed a plan for ongoing stakeholder involvement in development of the 2017 QAP, which governs the HTC program. The 2017 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf>. No changes have been made to the SLIHP in response to this comment.

Comment 3: Referring to Goal 3 of TDHCA's Strategic Plan goals, TCDD recommended that people with extremely low-income should be included in the opportunity to improve living conditions, citing that seniors and people with disabilities living on fixed incomes will not be able to keep up their homes and will be choosing between heat and food.

Department Response: In the utility assistance programs that Goal 3 and the TCDD comment refer to, program rules require the Department to establish priority criteria to serve persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Highest energy costs or needs in relation to income shall be the highest rated item in sliding scale priority determinations (10 TAC Chapter 5 Subchapter D, §5.407). No changes have been made to the SLIHP in response to this comment.

Comment 4: TCDD referenced Rider 5 (a) of the General Appropriations Act and recommended that TDHCA increase the \$30,000,000 targeted allocation of resources that provide mainstream community integrated housing for people with extremely low-income.

Department Response: As required by Rider 5 (a) of the General Appropriations Act, TDHCA adopts an annual goal to apply no less than \$30,000,000 of the funds available from the Housing Trust Fund, HOME Program, Section 8 Program, and Housing Tax-Credit Program's total housing funds toward housing assistance for individuals and families earning less than 30% AMFI. TDHCA regularly exceeds this goal, and as reported in this Plan, the actual funding for SFY 2015 was \$59,423,728, meeting the goal by 198.08%. No changes have been made to the SLIHP in response to this comment.

Comment 5: TCDD recommended that TDHCA include a goal to dedicate expected National Housing Trust Fund ("NHTF") funding to establish community-integrated accessible housing for individuals who must rely on Social Security or Supplemental Security Income or incomes no greater than 20% AMFI.

Department Response: Although TDHCA has been named as the State-Designated Entity that will administer NHTF funds in Texas, TDHCA must first develop a NHTF Allocation Plan and solicit input from the public, in accordance with the HUD-approved Citizen Participation Plan, before setting performance goals. At this time, HUD anticipates that grantees will receive their NHTF allocations by summer 2016. No changes have been made to the SLIHP in response to this comment.

Comment 6: TCDD recommended that TDHCA include a goal to encourage and provide incentives to employ people with disabilities in building, rehabilitating or managing TDHCA housing programs in support of the Texas Employment First policy for working age Texans adopted by the 83rd Texas Legislature.

Department Response: While the Employment-First policy, as required by Senate Bill 1226 83rd Texas Legislature, Regular Session, only applies to the Health and Human Services Commission, the Texas Education Agency, and the Texas Workforce Commission, the Department recognizes the importance of competitive employment opportunities that provide a living wage for individuals with disabilities. Similar to the Department response to Comment 2, adding incentives TDHCA programs to employ people with disabilities would be driven by changes to program rules. Opportunities for public comment on program rules are made available at <http://www.tdhca.state.tx.us/public-comment.htm>. Again, the Department has developed a plan for ongoing stakeholder involvement in development of the 2017 Qualified Allocation Plan ("QAP"), which governs the HTC program. The 2017 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf>. No changes have been made to the SLIHP in response to this comment.

Comment 7: TCDD recommended that TDHCA include a goal to promote innovative approaches that advance community integrated housing opportunities for individuals with disabilities that couple general revenue with federal funding.

Department Response: Similar to the Department response to Comment 2 and Comment 6, adding a goal to TDHCA programs to promote innovative approaches that advance community integrated housing opportunities for individuals with disabilities that couple general revenue with federal funding would be driven by changes to program rules. Opportunities for public comment on program rules are made available at <http://www.tdhca.state.tx.us/public-comment.htm>. Again, the Department has developed a plan for ongoing stakeholder involvement in development of the 2017 QAP, which governs the HTC program. The 2017 QAP Project Plan is available at <http://www.tdhca.state.tx.us/multifamily/docs/17-QAP-ProjectPlan.pdf>. No changes have been made to the SLIHP in response to this comment.

The TDHCA Governing Board approved the 2016 SLIHP and the final order adopting the amendments on February 25, 2016.

The full text of the 2016 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2016 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules and pursuant to §2306.0723 which specifically authorizes the Department to consider the SLIHP as a rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2016.

TRD-201600956

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 17, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 936-7803



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING ADULT AND COMMUNITY EDUCATION

19 TAC §89.1301

The Texas Education Agency (TEA) adopts the repeal of §89.1301, concerning adult and community education. The repeal is adopted without changes to the proposed text as published in the December 18, 2015 issue of the *Texas Register* (40 TexReg 9047) and will not be republished. Section 89.1301 establishes definitions and provisions relating to the use of funds, essential program components, allocation of funds beginning with school year 2013-2014, the application process, match requirements, and tuition and fees. The adopted repeal is necessary because the statutory authority for the rule was repealed and the authority for adult basic education was transferred from the TEA to the Texas Workforce Commission (TWC) effective September 1, 2013.

REASONED JUSTIFICATION. In accordance with the Texas Education Code (TEC), §29.2535, §89.1301, Service Provider Contracts for Adult Education Programs, establishes definitions and provisions relating to the use of funds, essential program components, allocation of funds beginning with school year 2013-2014, the application process, match requirements, and tuition and fees. The rule also addresses other provisions, including allowable and nonallowable expenditures, staff development, special projects, evaluation of programs, and revocation and recovery of funds.

Senate Bill (SB) 307, 83rd Texas Legislature, Regular Session, 2013, repealed TEC, §29.2535, and transferred the authority for adult basic education from TEA to TWC.

The adopted repeal of 19 TAC §89.1301 is necessary because the statutory authority for the rule has been repealed.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The public comment period on the proposal began December 18, 2015, and ended January 19, 2016. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code, §29.2535, which required the agency to adopt rules to provide for a competitive procurement process to award a contract to a service provider of an adult education program. The section was repealed by Senate Bill 307, 83rd Texas Legislature, Regular Session, 2013.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §29.2535, as repealed by Senate Bill 307, 83rd Texas Legislature, Regular Session, 2013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600918

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 15, 2016

Proposal publication date: December 18, 2015

For further information, please call: (512) 475-1497



CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S
RULES CONCERNING IMPLEMENTATION OF
THE ACADEMIC CONTENT AREAS TESTING
PROGRAM
DIVISION 3. SECURITY OF ASSESSMENTS,
REQUIRED TEST ADMINISTRATION
PROCEDURES AND TRAINING ACTIVITIES

19 TAC §101.3031

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031(b)(2) is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 11, 2016, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §101.3031, concerning student assessment. The amendment is adopted with changes to the proposed text as published in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9433). The section addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The amendment adopts the *2016 Test Security Supplement* as part of the Texas Administrative Code. The earlier versions of the security supplement will remain in effect with respect to the year for which they were developed.

REASONED JUSTIFICATION. Through the adoption of 19 TAC §101.3031, effective March 26, 2012, the commissioner exercised rulemaking authority relating to the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities,

and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials.

The adopted amendment to 19 TAC §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, updates the rule by adopting the *2016 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2). The *2016 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools are required to follow to ensure the security and validity of the Texas assessment system.

Adopted within the *2016 Test Security Supplement* are five substantive changes for the administration of the 2016 assessments.

The first change relates to the scoring of a student's answer document. To help clarify existing policy, the *2016 Test Security Supplement* specifies that students who are in Grades 3-8 or are taking an end-of-course assessment for the first time who are in attendance on the day of testing but choose not to participate or refuse to mark their answers on the answer document or in the online form will have their tests submitted for scoring as is. The answer document that is submitted at the conclusion of the student's test session is considered to be scorable. Districts are responsible for providing all eligible students who are in attendance during the administration of an assessment with an opportunity to participate in the test and for appropriately scoring each answer document. At adoption, the *2016 Test Security Supplement* has been amended to clarify the scoring requirement for students taking an end-of-course assessment for the first time.

The second policy change applies to Texas English Language Proficiency Assessment System (TELPAS) Rater Training Calibration Activities. The TEA has stipulated in the *2016 Test Security Supplement* that the calibration activities must be completed in a proctored environment. The *2016 Test Security Supplement* also directs districts to make the necessary facility arrangements to hold calibration activities. The supplement stipulates that receiving or providing unallowable assistance during TELPAS calibration activities constitutes a serious testing irregularity.

Third, in response to requests from district personnel for additional flexibility while still allowing for the preview of State of Texas Assessments of Academic Readiness (STAAR®) Alternate 2 secure test material to assist in the preparation of accommodations, trained test administrators will now be permitted to keep the test materials in their possession throughout the day as long as the secure materials are kept in locked storage when not in use. All materials must still be checked back in to the campus coordinator at the end of the day and district and campus personnel are required to verify compliance with these procedures.

The fourth change pertains to the calculator requirement for state assessments, which allowed districts to provide either a hand-held calculator or a calculator application available on a tablet. The *2016 Test Security Supplement* specifies that the internet capabilities of a provided calculator or device that has calculator application must be disabled. Devices must also be locked down (in kiosk mode) to prevent the use of other applications during testing.

Last, the TEA clarifies policies for the verification of the destruction of materials. Districts will be instructed to verify that procedures are in place for the collection and destruction of any

state-supplied reference materials, recordings, graph paper, or scratch paper that students have written on during a test.

In response to public comment, the TEA has revised language from the proposed *2016 Test Security Supplement* that required districts to release students from the testing area once they had completed and submitted their tests for scoring. At adoption, the *2016 Test Security Supplement* states that once a student has completed and submitted a test, the student may quietly read a book or be allowed to leave the testing area. Two other conforming revisions were also made to reflect that students may quietly read a book or leave the testing room after submitting an assessment.

The security supplements adopted prior to the 2016 year will remain in effect with respect to a given year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 25, 2015, and ended January 25, 2016. Following is a summary of the public comments received and corresponding agency response regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 3, Security of Assessments, Required Test Administration Procedures and Training Activities, §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

Comment: An educator from Dickinson Independent School District (ISD) commented that the proposed *2016 Test Security Supplement* contradicted later agency communication that stated that once a student has submitted the test, the student may quietly read a book or be allowed to leave the testing area. The educator requested that this change be reflected in the adopted *2016 Test Security Supplement*. An educator from Aransas County ISD commented in objection to the requirement in the proposed *2016 Test Security Supplement* to release a student from the testing environment once that student's test is submitted.

Agency Response: The agency agrees. The adopted *2016 Test Security Supplement* has been revised to allow a student to read a book quietly or leave the testing environment after that student's assessment has been submitted.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §26.010, which prohibits a student from being removed from a class or school by a parent in order to avoid a test and prohibits a student from being exempted from satisfying grade-level or graduation requirements in a manner acceptable to both the school district and the agency; §39.023, which requires school districts to administer the Grades 3-8 state-developed assessments to all eligible students; §39.025, as amended by House Bill 2349, 84th Texas Legislature, 2015, which requires a student to pass each end-of-course assessment listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment is administered in order to receive a Texas diploma; §39.030(a), which requires school districts to ensure the security of the state's assessment instruments and student answer documents in their preparation and administration; §39.0301(a)(1), which requires the commissioner to establish procedures for the administration of the state's assessment instruments, including procedures designed to ensure the security of those assessments. Per TEC, §39.0301(a-1), the procedures the commissioner is required to establish must, to the extent possible, min-

imize disruptions to school operations and classroom environment. Additionally, TEC, §39.0301(a-1), stipulates that school districts must also minimize disruptions to school operations and the classroom environment when implementing the required assessment administration procedures; and §39.0304, which authorizes the commissioner to adopt rules to require training for school district employees involved in the administration of the state's assessments. This training may include qualifying components to ensure the school district personnel involved in an administration of the state's assessments possess the necessary knowledge and skills required to securely and reliably administer those assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§26.010; 39.023; 39.025, as amended by House Bill 2349, 84th Texas Legislature, 2015; 39.030(a); 39.0301; and 39.0304.

§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

- (1) general testing program information;
- (2) requirements for ensuring test security and confidentiality described in the *2016 Test Security Supplement* provided in this paragraph;
Figure: 19 TAC §101.3031(b)(2)
- (3) procedures for test administration;
- (4) responsibilities of personnel involved in test administration; and
- (5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for a minimum of five years.

(e) Applicability. The test administration procedures and required training activities established in the annual test security supplements for prior years remain in effect for all purposes with respect to the prior year to which it applies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600893

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 15, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. CHIROPRACTIC FACILITIES

22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 73, §73.4, concerning Rules of Conduct for Facility Owners, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8089). The rule text will not be republished.

This section establishes requirements and procedures related to chiropractic facilities.

The rule is amended to require facility owners to maintain a current address with the Board.

No written comments were received regarding the adoption of the amendment. However, the Board did discuss the issue of the five (5) business days within which a facility should notify of a change in its address. Staff noted that the window was relatively short as compared to a physical mail address because electronic-mail is often used for matters where time is of the essence. Additionally, it should be noted that the postal service, unlike electronic-mail in general, has a forwarding service so that communication may flow unimpeded. Staff additionally indicated that the shortened timeframe was not intended to be a tool to create a compliance issue but to impress upon the facility owner the urgency of providing an update to maintain unimpeded communication flow.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600932

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: September 1, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 305-6715



CHAPTER 75. LICENSES AND RENEWALS

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 75, §75.1, concerning Licenses and Renewals, with changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8090). The rule text will be republished.

This section establishes requirements and procedures related to licenses and renewal.

The rule is amended to require licensees to maintain a current address with the Board, and it additionally makes physical address changes submitted to the Board through online portals effective.

No written comments were received regarding the adoption of the amendment. However Board staff did note that it had already begun to process physical address changes through online portals.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

§75.1. Notification and Change of Address.

(a) Licensees shall maintain a current physical home and business address with the Board. In addition, a different mailing address may be provided beyond that of the home and business address. Within 30 days of a change in any of these addresses, a licensee shall notify the Board of the change in writing via U.S. mail, electronic-mail, facsimile, or other written communication. The notification of address change shall clearly and legibly identify the licensee, the address to be changed, the license number(s) associated with the address, and shall be signed by the licensee(s).

(b) The notification shall be signed by the licensee and must include the license number.

(c) A licensee shall maintain a current electronic mail address with the board. A licensee shall notify the board, by electronic mail, of any change in the electronic mailing address within five (5) business days of the change. The notification must include the license number.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 25, 2016.

TRD-201600933

Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Effective date: September 1, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 305-6715

◆ ◆ ◆
**PART 6. TEXAS BOARD OF
PROFESSIONAL ENGINEERS**

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.3, concerning Engineer-in-Training Application and Certification, §133.61, concerning Engineering Examinations Required for a License to Practice as a Professional Engineer, §133.65, concerning Examination on the Fundamentals of Engineering, §133.67, concerning Examination on the Principles and Practice of Engineering and §133.71, concerning Examination for Record Purposes, without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9060). The rules will not be republished.

The adopted rule changes to §§133.3, 133.61, 133.65, 133.67 and 133.71 implement process changes related to decoupling the PE exam from the review of engineering experience. This change will allow an approved person to take the Principles and Practice of Engineering (PE) exam prior to gaining the required engineering experience for licensure. Decoupling of the PE exam from the experience increases the flexibility of the process for potential applicants, but does not decrease the expected qualifications for licensure. The standards for competence and requirements for licensure will be the same as under the previous rules. Other adopted changes modified the exam approval process to allow three exam attempts as scheduled by the examinee instead of four consecutive exam administrations.

The Board received comments for and against the proposed rules from 185 individuals. There were 79 commenters in opposition to the change. Some opposition comments expressed the desire to keep the experience prior to taking the PE exam to help the potential licensee retain more knowledge and to perform better on the exam itself. Other opposition commenters recognized the opportunity for learning and the inherent value of studying for the PE exam after engineering experience was obtained and thought it should remain unchanged. Another group of commenters stated that increasing the flexibility of the process lowers the rigor and would make the licensing process easier. One commenter opposed the rule change allowing 3 exam attempts in a four year window instead of 4 consecutive exam administrations for an approval.

The remaining comments received were in support of the proposal. Comments in support of the changes from current licensed Professional Engineers and certified Engineers In Training generally stated that the increased flexibility of decoupling would enhance the licensure process and encourage licensure of additional qualified people who would have otherwise been more restricted by the schedule of the application and exam process. The Board also received 3 comments from independent Texas engineering organizations in support of the proposal.

All comments were responded to by staff. The Board reviewed and considered all comments received. The Board felt that the increased flexibility of the process will have a positive effect on the engineering community and the public and will not result in a lowering of the standards for licensure or licensing of less qualified engineers. No changes were made to the rules as proposed.

SUBCHAPTER A. ENGINEER-IN-TRAINING

22 TAC §133.3

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600959
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: May 1, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 440-7723

◆ ◆ ◆
SUBCHAPTER G. EXAMINATIONS

22 TAC §§133.61, 133.65, 133.67, 133.71

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600960
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: May 1, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 440-7723

◆ ◆ ◆
**SUBCHAPTER H. REVIEW PROCESS OF
APPLICATIONS AND LICENSE ISSUANCE**

22 TAC §133.87

The Texas Board of Professional Engineers (Board) adopts amendments to §133.87, concerning Final Action on Applica-

tions, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9438). The rule will not be republished.

The adopted rule changes to §133.87 implement process changes related to decoupling the PE exam from the review of engineering experience. This change will allow an approved person to take the Principles and Practice of Engineering (PE) exam prior to gaining the required engineering experience for licensure. Decoupling of the PE exam from the experience increases the flexibility of the process for potential applicants, but does not decrease the expected qualifications for licensure. The standards for competence and requirements for licensure will be the same as under the previous rules. Other adopted changes modified the exam approval process to allow three exam attempts as scheduled by the examinee instead of four consecutive exam administrations.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts amendments to §§133.3, 133.61, 133.65, 133.67 and 133.71.

The Board received comments for and against the proposed rules from 185 individuals. There were 79 commenters in opposition to the change. Some opposition comments expressed the desire to keep the experience prior to taking the PE exam to help the potential licensee retain more knowledge and to perform better on the exam itself. Other opposition commenters recognized the opportunity for learning and the inherent value of studying for the PE exam after engineering experience was obtained and thought it should remain unchanged. Another group of commenters stated that increasing the flexibility of the process lowers the rigor and would make the licensing process easier. One commenter opposed the rule change allowing 3 exam attempts in a four year window instead of 4 consecutive exam administrations for an approval.

The remaining comments received were in support of the proposal. Comments in support of the changes from current licensed Professional Engineers and certified Engineers In Training generally stated that the increased flexibility of decoupling would enhance the licensure process and encourage licensure of additional qualified people who would have otherwise been more restricted by the schedule of the application and exam process. The Board also received 3 comments from independent Texas engineering organizations in support of the proposal.

All comments were responded to by staff. The Board reviewed and considered all comments received. The Board felt that the increased flexibility of the process will have a positive effect on the engineering community and the public and will not result in a lowering of the standards for licensure or licensing of less qualified engineers. No changes were made to the rules as proposed.

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600961

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: May 1, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 440-7723

◆ ◆ ◆
PART 9. TEXAS MEDICAL BOARD

CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.1, §195.2

The Texas Medical Board (Board) adopts amendments to §195.1, concerning Definitions, and §195.2, concerning Certification of Pain Management Clinics, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7373). The rules will not be republished.

The amendments are adopted in accordance with SB 1235, enacted by the 84th Texas Legislature. SB 1235 amended the Occupations Code so that individuals who are medical directors or physicians who are affiliated or associated with the pain management clinic in any capacity, including those that are engaged in supervision or delegation activities, are subject to the pain management clinic regulations.

The amendment to §195.1 adds new paragraph (4), inserting the definition of "Operator" from SB 1235. This addition was to insure consistency between the rule and statute.

The amendment to §195.2(a)(5) adds new subparagraph (C), stating violations of §§195 et al. and Chapter 168 of the Texas Occupations Code are subject to criminal prosecution, to be consistent with similar provision in SB 1235.

The amendment further adds language to §195.2(f) so that the practice of medicine includes but is not limited to all supervision and delegation activities related to the pain management clinic. The amendments to §195.2 are added to achieve consistency with SB 1235.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also adopted under the authority of Texas Occupations Code Annotated, Chapter 168; and SB 1235, 84th Legislature, R.S. (2015).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600915

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: March 15, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 305-7016



CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

22 TAC §§198.1, 198.3, 198.4

The Texas Medical Board (Board) adopts amendments to §198.1, concerning Purpose; and §198.3, concerning Practice Guidelines for the Use of Investigational Agents; and new §198.4, concerning Use of Investigational Agents for Patients with Terminal Illnesses, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7378). The rules will not be republished.

The amendments and new rule are adopted in accordance with House Bills 177 and 21, enacted by the 84th Texas Legislature. House Bill 177 amends the Education Code and the Health and Safety Code. Among other provisions, the bill establishes general requirements for adult stem cell use in health care. House Bill 21 amends the Health and Safety Code to establish the eligibility of a patient who has a terminal illness to access and use an investigational drug, biological product, or device, including requirements for a physician's recommendations and a patient's informed consent.

The amendment to §198.1 adds language stating that specific requirements set forth under new §198.4 are applicable only to terminal patients being treated with investigational agents.

The amendment to §198.3 replaces the term "protocol" with the term "clinical trial." This was to insure consistency between the language in HB 177 and the rule.

The language in new §198.4 reflects the requirements of HB 21 and makes clear that new §198.4 is limited to use of investigational agents by terminal patients.

No comments were received regarding adoption of the rules.

The amendments and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments and new rule are also adopted under the authority of Texas Occupations Code, Chapter 164, and HB 177 and HB 21, 84th Legislature R.S. (2015).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600916

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: March 15, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 305-7016



CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

22 TAC §200.3

The Texas Medical Board (Board) adopts amendments to §200.3, concerning Practice Guidelines for the Provision of Complementary and Alternative Medicine, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7380). The rule will not be republished.

The amendments to §200.3(7) revise the language under subparagraphs (A) - (C) so that the outlined ethical standards relating to physicians using conventional medical practices or complementary and alternative medicine treatment while engaged in the clinical investigation of new drugs and procedures are mandatory rather than discretionary. The changes are adopted to make consistent with other language in the introductory paragraph of the section making such ethical standards mandatory.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600917
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: March 15, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 305-7016



PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts amendments to §§741.1, 741.41, 741.44, 741.61 - 741.65, 741.81 - 741.85, 741.91, 741.104, 741.112, and 741.161, concerning speech-language pathologists and audiologists. The amended rules are adopted without changes to the proposed text as published in the September 25, 2015, issue of the *Texas Register* (40 TexReg 6554) and therefore the sections will not be republished.

BACKGROUND AND PURPOSE

The adopted amendments update the board's rules to add definitions, reflect current operations in processing and approving license applications, lower the educational requirement for Audiology Assistants, and clarify requirements in existing rules.

The amendments also revise for grammar and technical form.

SECTION-BY-SECTION SUMMARY

The amendments to §741.1 add the definitions for "caseload" and "supervisor," revise the definition of "assistant in audiology" to reflect the use of this term as it currently appears in other parts of the rules, and renumber the paragraphs.

The amendments to §741.41 require a licensee to report criminal history and other legal actions to the board.

The amendments to §741.44 clarify language and eliminate an exception that currently allows a supervisor to supervise more than four interns and assistants.

The amendments to §§741.61 - 741.65 clarify language, require an applicant to submit particular materials to the board, and eliminate inconsistencies. The amendments specify that an applicant must submit fingerprints to the Department of Public Safety, as is currently required in §741.142.

The amendments to §§741.81 - 741.83 and 741.85 clarify language, require an applicant to submit particular materials to the board, and eliminate inconsistencies. The amendments specify that an applicant must submit fingerprints to the Department of Public Safety, as is currently required in §741.142.

The amendments to §741.84 clarify language, require an applicant to submit particular materials to the board, and eliminate inconsistencies. The amendments specify that an applicant must submit fingerprints to the Department of Public Safety, as is currently required in §741.142. The amendments also lower the educational requirement for audiology assistants from a bachelor's degree to a high school diploma or equivalent.

The amendment to §741.91 corrects citations.

The amendment to §741.104 clarifies language.

The amendment to §741.112 eliminates redundant language.

The amendment to §741.161 clarifies language.

PUBLIC COMMENTS

The board received one written comment during the comment period from the Texas Academy of Audiology. The comment was in support of the rule changes. The board has reviewed the comment and prepared a response.

Comment: The Texas Academy of Audiology expressed support for requiring a high school diploma or equivalent rather than a bachelor's degree for audiology assistants, and commented that requiring a high school diploma is consistent with position statements from other industry groups.

Response: The board makes no change to the rules in response to this comment.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601012

Vickie B. Dionne

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 20, 2016

Proposal publication date: September 25, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF SUPERVISORS

22 TAC §741.41, §741.44

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601013

Vickie B. Dionne

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 20, 2016

Proposal publication date: September 25, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61 - 741.65

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601014

Vickie B. Dionne

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 20, 2016

Proposal publication date: September 25, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §§741.81 - 741.85

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601015

Vickie B. Dionne

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 20, 2016

Proposal publication date: September 25, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

22 TAC §741.91

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601016

Vickie B. Dionne

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 20, 2016

Proposal publication date: September 25, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.104

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601017

Vickie B. Dionne

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 20, 2016

Proposal publication date: September 25, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.112

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601018

Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and
Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972



SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION

22 TAC §741.161

STATUTORY AUTHORITY

The amendments are authorized under Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce Occupations Code, Chapter 401.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601019
Vickie B. Dionne
Presiding Officer
State Board of Examiners for Speech-Language Pathology and
Audiology
Effective date: March 20, 2016
Proposal publication date: September 25, 2015
For further information, please call: (512) 776-6972



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS SUBCHAPTER B. ORGANIZATION AND RESPONSIBILITIES

22 TAC §850.62

The Texas Board of Professional Geoscientists (TBPG, Board, or Appointed Board) adopts an amendment to 22 TAC §850.62 concerning the licensure and regulation of Professional Geoscientists. This amendment is adopted without changes from the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8438).

The Appointed Board adopts the amendment to more consistently use the defined terms of "professional geoscience" and "professional geoscience services" throughout the rules instead of "public geoscience services" and other similar phrases for consistency and clarity.

The adopted amendment to 22 TAC §850.62 removes the phrase "public geoscience services" in subsection (c) and replaces it with "professional geoscience services."

No comments were received regarding the proposed amendment.

The adopted amendment is authorized by Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); and by Occupations Code §1002.154 which provides that the Board shall enforce the Act.

The adopted amendment implements the Texas Occupations Code §§1002.151 and 1002.154.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600892
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Effective date: March 15, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 936-4405



CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG, Board, or Appointed Board) adopts new §851.26 and amendments to §§851.10, 851.20, 851.30, 851.32, 851.101, 851.102, 851.105, 851.107, 851.108, 851.112, 851.152, and 851.156 with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8439). The TBPG adopts amendments to §§851.23, 851.104, 851.106, 851.153, and 851.157 without changes to the proposal.

The TBPG adopts new rule §851.26 to implement the provisions of Texas Occupations Code (TOC) Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. TOC Chapter 55 requires that agencies adopt rules necessary to implement certain provisions regarding that Chapter. These laws provide licensing procedures and certain benefits to Military Service Members, Military Veterans, and Military Spouses who apply for an occupational license in the State of Texas.

The Appointed Board adopts amendments to §§851.10, 851.20, 851.23, 851.30, 851.101, 851.102, 851.104 - 851.108, 851.112, 851.152, 851.153, 851.156, and 851.157 to better define the terms "professional geoscience" and "professional geoscience services" in §851.10, and to make corresponding changes to the rules to utilize these defined terms of "professional geoscience" or "professional geoscience services" more consistently throughout the rules for clarification.

Adopted amendments to §851.20 to additionally correct citations in subsection (b) to refer to the correct form number; correct a reference in subsection (k) to correctly refer to subsection (p) instead of subsection (o); clean up punctuation in subsection (q); and clarify wording in subsection (r) to refer applicants who are military service members, military veterans or military spouses to new rule §851.26 for additional licensing provisions.

Adopted amendments to §851.32 add language in subsection (n) to allow licensees who are impacted by a long-term physical disability or illness (of the licensee or a family member or other person) to request exemption of the continuing education requirements of licensure for a specific renewal period or periods. Language is also added that supporting documentation must be furnished to the TBPG; that the executive director shall review circumstances and documentation in order to make a decision regarding the exemption; and that a licensee may appeal a decision of the executive director to an appropriate Committee or to the full Board, as appropriate.

Adopted amendments to §851.156 also add language to clarify that a Professional Geoscientist (P.G.) specifically seals geoscience "documents" as opposed to geoscience "work." Amendments also clarify that a P.G. shall sign, seal and date either the original title sheet or a signature page of geoscience documents. Adopted amendments also remove as unnecessary the phrase "reports, or the signature page when a title sheet is not used" and further clarify that all unbound geoscience documents, including, but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software, shall bear the Professional Geoscientist's printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code.

Adopted new §851.26(a) adds language that defines "active duty," "armed forces of the United States," "military service member," "military spouse," and "military veteran." Subsection (b) clarifies that the applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Subsection (c) specifies that upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction, as well as proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state. Subsection (d) provides that an individual who holds a P.G. license or Geoscientist-in-Training (GIT) certification issued by the TBPG is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner, if the individual establishes to the satisfaction of TBPG that the individual failed to renew the license in a timely manner because the individual was serving as a military service member. Subsection (e) specifies that a military service member who holds a P.G. license or a GIT certification is entitled to two years of additional time to complete any continuing education requirement and any other requirement related to the renewal of the military service member's P.G. license or GIT certification. Subsection (f) provides that a license may be issued to an applicant who is a military service member, military veteran, or a military spouse and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a P.G. license or a GIT certification in Texas, or who within the five years preceding the application date held the P.G. license or GIT certification in Texas. Subsection (g) authorizes the Executive Director to waive any prerequisite to obtaining a license for an applicant described in subsection (f) after reviewing the applicant's credentials. Subsection (h) allows a military service member, military veteran, or a military spouse who does not meet criteria in subsection (f) to provide an alternate demonstration of competency to meet the requirements for obtaining a P.G. license or a GIT certification. Subsection (i) provides an alternate method by which an applicant who is a military service member, military veteran, or a military spouse may

demonstrate competency, including certain service, experience, training, or education obtained in the military that is verified and that is relevant to the practice of professional geoscience. Subsection (j) specifies that as soon as practicable after a military service member, military veteran or military spouse files an application for a license, Board staff shall process the application and issue a license to an applicant who qualifies for the license under this section. A license issued under this section may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section. Subsection (k) provides that rules adopted under this section may not apply to an applicant who holds a restricted license issued by another jurisdiction, whose license or certification has been subject to disciplinary action in another jurisdiction, or who has an unacceptable criminal history. Subsection (l) states that upon issuance of a license under subsection (g) of this section, Board staff shall notify the new licensee of the requirements for the license holder to renew the license. A license issued under paragraph (g) of this section shall be valid for a term of 12 months from the end of the month the license is issued. Subsection (m) provides that TBPG shall waive the license application and examination fees paid to the state for an applicant who is a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or for an applicant who is a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state. Subsection (n) addresses the applicability of the rule to an application for a license, depending on the date the application for license is filed with TBPG.

Adopted amendments to §851.10 change language in paragraph (9) to remove "public" geoscience services and replace it with "professional" geoscience services to be consistent with the defined terms; insert the word "professional" before the term "geoscience services" in paragraph (14); remove the definition of "professional geoscience" in paragraph (30); revise the definition of "geoscience services," which also includes the terms "professional geoscience services" and "professional geoscience" in paragraph (31) and add a sentence at the end stating that "these services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks," to reflect the statutory definition of geoscience found in the Act; move previous paragraph (31) to be new paragraph (25) and renumber the remaining definitions accordingly; replace the phrase "geoscientific work" in new paragraphs (33) and (37) with the phrases "professional geoscience services" or "geoscience services" for consistency.

Adopted amendments to §851.20 replace the phrase "geoscientific work" in subsection (a)(2) with the phrase "geoscience services"; change a reference from Form "V" to Form "VI" in subsection (b); change an incorrect reference in subsection (k) from (o) to (p); add the word "and" at the end of subsection (q)(1) and remove the word "and" from the end of (q)(2) along with the semicolon and adding a period at the end of the sentence; and remove language in subsection (r) that states that "the TBPG shall adhere to the provisions of TOC Chapter 55 'License While on Military Duty and for Military Spouse' when considering applications for licensure and examination requests submitted by individuals for which those provisions apply" and replace it with a statement that says "An applicant who is a military service mem-

ber, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions" to more accurately specify where the licensing provisions can be found in TBPG rules.

Adopted amendments to §851.23 and §851.30 replace the phrase "geoscience work" with "geoscience services" throughout; remove the term "public" before geoscientific services and replace with "professional" geoscience services in subsection (d)(2); add the word "professional" in subsection (g) before the term geoscience; and add "professional geoscience" services to subsection (i) removing the term "geoscientific" services.

Adopted amendment to §851.32 changes language in subsection (n) to clarify that a licensee may be exempt from the professional development educational requirements "for a specific renewal period or periods." It also changes wording in subsection (n)(4) to read that "A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt. It moves a sentence from subsection (n)(4) to new subsection (n)(5) which states that "supporting documentation must be furnished to TBPG." Further language is added in subsection (n)(5) to state that "the Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate."

Adopted amendments to §851.101 add the word "professional" before the term geoscience in subsection (a); replace the phrase "professional practice of geoscience" with "practice of professional geoscience" in subsection (b); add the term "geoscience" before the term services in two places; remove the word "geoscientific" in subsection (g); and add the words "professional geoscience" before the word "services," and remove the word "geoscientific" in subsection (h).

Adopted amendments to §851.102 add the word "geoscience" before the term "services" in subsection (c).

Adopted amendments to §851.104 add the term "services" and remove the word "work" in subsection (c); and replace the word "geoscientific" with "geoscience" in subsections (d) and (e).

Adopted amendment to §851.105 adds the word "geoscience" to the phrase "professional service" to clarify the type of service.

Adopted amendments to §851.106 add the word "professional" to the phrase "practice of geoscience" in subsection (b)(2)(A) - (B); replace the word "geoscientific" with "geoscience" in subsection (f); and add the word "geoscience" in subsection (f)(3).

Adopted amendment to §851.107 adds the words "professional geoscience" to replace the word "geosciences" in subsection (b).

Adopted amendment to §851.108 changes the phrase "professional practice of geoscience" to "practice of professional geoscience" in subsection (b).

Adopted amendments to §851.112 replace "professional practice" with the phrase "professional geoscience services" in subsection (a)(7); add the word "professional" to the phrase "practice of geoscience" in subsection (a)(8); and replace the term "geoscientific services" with "professional geoscience services" in subsection (d)(4).

Adopted amendment to §851.152 adds the word "professional" to the phrase "public practice of geoscience" in subsection (b).

Adopted amendment to §851.153 replaces the word "work" with the word "services" after the term "geoscience."

Adopted amendments to §851.156 replace the phrase "geoscience work" with "professional geoscience services" in subsection (a); replace the term "work" with the phrase "geoscience services" in subsection (a); add language to subsection (c) to indicate that a P.G. shall only seal "documents that contain geoscience services" as opposed to sealing "work"; clarify that upon sealing, the P.G. takes full professional responsibility for "geoscience services" that "are provided through the sealed document" removing the previous term "work" from subsection (c); remove the phrase "or work" from subsections (d) and (e); replace "geoscience work" with the word "document" in subsection (f); replace the word "work" with the word "document" or "documents" throughout subsections (g) and (k); change the first phrase in subsection (l) to state that "The Professional Geoscientist shall sign, seal and date the original title sheet" adding the phrase "or a signature page" of geoscience "documents" and remove the term "reports, or the signature page when a title sheet is not used." Also in subsection (l), the term "work" is replaced by "services"; the word "other" is replaced by the word "unbound" referring to geoscience "documents" which need to be sealed; the phrase "documents produced for litigation" is deleted; and the word "work" is replaced by "geoscience service." In subsection (m), "work" is again replaced by "geoscience services" in two instances. In subsection (n), "work" is replaced by "documents" and in another instance is replaced by "services." In subsection (q), "work product" is replaced by "document." In subsection (s), the word "work" is replaced throughout by the terms "document" or "original document."

Adopted amendment to §851.157 replaces the word "geoscientific" with the word "geoscience" in subsection (a).

No comments were received regarding the proposed amendments and new rule.

SUBCHAPTER A. DEFINITIONS

22 TAC §851.10

The adopted amendments are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act; and by Texas Occupations Code Chapter 55 which provides for licensing of military service members, military veterans, and military spouses.

The adopted amendments implement the Texas Occupations Code §§1002.151, 1002.154, and §§55.001 - 55.009, as amended through the 2015 Texas Legislative Session.

§851.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Act--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(2) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Appointed Board.

(3) Address of record--In the case of an individual or firm licensed, certified, or registered by the Texas Board of Professional

Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.

(4) Advertising or Advertisement--Any non-commercial or commercial message, including, but not limited, to verbal statements, bids, web pages, signage, provider listings, and paid advertisement which promotes the services of a licensee.

(5) Applicant--An individual making application for a geoscience license or Geoscientist-in-Training (GIT) certification; a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm registration.

(6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a firm, or a certification as a Geoscientist-in-Training (GIT).

(7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.

(8) ASBOG®--National Association of State Boards of Geology. ASBOG® serves as a connective link among the individual state geologic registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.

(9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for the process of submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration with the TBPG; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; and communicating with the TBPG regarding any matter.

(10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).

(11) Certificant--An individual holding a certificate as a Geoscientist-in-Training.

(12) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(13) Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.

(14) Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (P.G.) or registration by an individual, firm, or other legal entity.

(15) Council of Soil Scientist Examiners (CSSE)--The purpose of the Council of Soil Science Examiners is to create, score and maintain examinations for State Soil Scientists licensing programs.

CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.

(16) Default--The failure of the Respondent to respond in writing to a notice or appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, e-mail, fax or other electronic media in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.

(17) Direct supervision--Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised individual(s).

(18) Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(19) Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(20) Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(21) Geology--The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the Earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gasses, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to, the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphy, engineering geology, and environmental geology.

(22) Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(23) Geoscience--The science of the Earth and its origin and history, the investigation of the Earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth as applied with professional judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of the public.

(24) Geoscience Firm--Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas. This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization.

(25) Geoscience services (also professional geoscience services, and professional geoscience)--Services which must be performed by or under the direct supervision of a Professional Geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(26) License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

(27) License certificate--Any certificate issued by the TBPG showing that a license, registration, or certificate has been granted by the TBPG. A certificate is not valid unless it is accompanied by a card issued by the TBPG which shows the expiration date of the license, registration or certification.

(28) License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(29) Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or firm registration.

(30) Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(31) Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(32) Practice for the public--

(A) Providing professional geoscience services:

(i) For a governmental entity in Texas;

(ii) To comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or

(iii) For the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and

(B) Does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(33) The Public--Any individual(s), client(s), business or public entities, or any member of the general population whose normal

course of life might reasonably include an interaction of any sort with or be impacted by professional geoscience services.

(34) Registered firm--A firm that is currently registered with the TBPG.

(35) Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.

(36) Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.

(37) Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.

(38) Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.

(39) Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation of physical, chemical, morphological, and biological characteristics of the soil including, among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.

(40) Sole-proprietorship--A single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner.

(41) TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600894

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Effective date: March 15, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 936-4405



SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20, 851.23, 851.26, 851.30, 851.32

The adopted amendments and new section are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act; by Texas Occupations Code §1002.302 which authorizes the Board to require license holders to participate in continuing professional education on a periodic basis; by Texas Occupations Code §1002.351 which authorizes the Board to adopt rules relating to the public practice of geoscience by a firm or

corporation; and by Texas Occupations Code Chapter 55 which provides for licensing of military service members, military veterans, and military spouses.

The adopted amendments and new section implement the Texas Occupations Code §§1002.151, 1002.154, 1002.251, 1002.256, 1002.302, 1002.351, and §§55.001 - 55.009, as amended through the 2015 Texas Legislative Session.

§851.20. *Professional Geoscientist Licensing Requirements and Application Procedure.*

(a) Requirements for licensure:

(1) Passing score on an examination or examinations required by the Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services documented and verified through professional references as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256;

(A) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years;

(B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;

(3) Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Appointed Board;

(4) Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

(5) Supporting documentation of any license requirement, as determined by Board staff or the Appointed Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Appointed Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and §1002.402.

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the TBPG:

(1) A completed, signed, notarized application for licensure as a Professional Geoscientist;

(2) Documentation of having passed an examination as specified in §851.21 of this chapter;

(3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(4) A minimum of five (5) reference statements as specified in §851.24 of this chapter;

(5) Official transcript(s), as specified in §851.25 of this chapter;

(6) The application/first year licensing fee as specified in §851.80(b) of this chapter;

(7) Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction; and

(8) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(i) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(k) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, initial license expiration card, and an initial wallet license expiration card as provided in subsection (p) of this section.

(l) An original license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(m) A license number is not transferable.

(n) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(o) Altering a license wall certificate, certificate expiration card, or wallet expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license wall certificate, the first license certificate expiration card, and the first wallet license card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired.

(3) The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed.

(4) The wallet license card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.

(r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

§851.26. Licensing of Military Service Members, Military Veterans, and Military Spouses

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Active Duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(2) "Armed Forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military

spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the provisions of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) An individual who holds a P.G. license or a GIT Certification issued by TBPG is exempt from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of TBPG that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(e) A Military Service Member who holds a P.G. license or a GIT certification is entitled to two years of additional time to complete any continuing education requirement and any other requirement related to the renewal of the military service member's P.G. license or GIT certification.

(f) The TBPG may issue a license to an applicant who is a military service member, military veteran, or a military spouse and who:

(1) Holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a P.G. license or a GIT certification in Texas; or

(2) Within the five years preceding the application date held the P.G. license or GIT certification in Texas.

(g) The executive director may waive any prerequisite to obtaining a license for an applicant described by subsection (f) after reviewing the applicant's credentials.

(h) An applicant who is a military service member, military veteran, or a military spouse and who does not meet criteria in subsection (f) may provide an alternate demonstration of competency to meet the requirements for obtaining a P.G. license or a GIT certification.

(i) TBPG may accept as an alternate method of demonstrating competence certain service, experience, training, or education obtained in the military that is verified and that is relevant to the practice of professional geoscience.

(j) As soon as practicable after a military service member, military veteran or military spouse files an application for a license, Board staff shall:

(1) Process the application; and

(2) Issue a license to an applicant who qualifies for the license under this section. A license issued under this subsection may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

(k) This section may not apply to an applicant who:

(1) Holds a restricted license issued by another jurisdiction;

(2) Has held a license that was subject to disciplinary action in another jurisdiction; or

(3) Has an unacceptable criminal history under the Texas Geoscience Practice Act, rules of the Board, or under Texas Occupations Code Chapter 53, related to Consequences of Criminal Conviction.

(l) Upon the issuance of a license under subsection (g) of this section, Board staff shall notify the new licensee of the requirements for the license holder to renew the license. A license issued under subsection (g) shall be valid for a term of 12 months from the end of the month the license is issued.

(m) TBPG shall waive the license application and examination fees paid to the state for an applicant who is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(n) This section applies to an application for license filed with the TBPG on or after January 1, 2016, except for subsection (m), which applies to an application filed on or after September 1, 2015.

§851.30. Firm Registration.

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscience services are performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) The business of the firm includes the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state. As provided in §851.10(24) of this chapter, the term firm includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization. For the purposes of this section, the term public includes, but is not limited to, political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) Unless registered by the TBPG or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm may not represent to the public that the individual or firm is a Professional Geoscientist or is able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registration requirements under this section and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this section may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) Registration requirements. In order to be eligible to register as a Geoscience Firm, the firm must:

(1) Affirm and demonstrate that the firm is an unincorporated sole-proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;

(2) Identify an Authorized Official of a Firm who shall be responsible for submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration; ensuring that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; and communicating with the TBPG regarding any other necessary matter;

(3) Operate under a business model such that:

(A) The geoscience services are performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(B) The principal business of the firm is the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state;

(4) Identify the business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in paragraph (3) of this subsection;

(5) Unless the firm is an unincorporated sole-proprietorship, a firm seeking registration with the TBPG must register the firm with the Office of the Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the SOS, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the TBPG upon initial application. If the firm is a sole-proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk;

(6) Submit an Initial Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) of this section;

(7) Upon initial application, affirm that the licensed Professional Geoscientist performing or supervising the geoscience services for a Geoscience Firm is an employee. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) Firm Registration Application Process.

(1) The Authorized Official of a Firm shall complete and submit, along with the required application fee, the form furnished by the TBPG which includes, but is not limited to, the following information listed in subparagraphs (A) - (E) of this paragraph:

(A) The name, address, and phone number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscience services for the public in Texas on behalf of the firm;

(D) The name, location, and phone numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any; and

(E) A signed statement attesting to the correctness and completeness of the application.

(2) Upon receipt of all required materials and fees and having satisfied requirements in this section, the firm shall be registered and a unique Geoscience Firm registration number shall be assigned to the firm registration. The new firm registration shall expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year including the date that it is filed with the TBPG. After one year an application expires.

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application.

(6) Applicants should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(f) The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice professional geoscience upon meeting the requirements as set out in the Act and TBPG Rules. When a firm registration is issued, a firm registration wall certificate, the first firm registration certificate expiration card, and the first portable firm registration card is provided to the new Geoscience Firm. The firm registration wall certificate shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration wall certificate is not valid proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration card shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the registration will expire, unless it is renewed.

(h) At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each registered firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D), along with an affirmation signed by the Authorized Official of a Firm indicating whether professional geoscience services were offered, pending, or performed for the public in Texas when the firm's registration was expired, and payment of a \$50

late renewal penalty. If a firm under application for late firm registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the firm's registration was expired, unless certain allegations of misconduct are present, the firm's registration shall be renewed. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff. A firm registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

§851.32. Continuing Education Program.

(a) Each licensee shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per §851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review on-line of the Texas Geoscientist Practice Act and TBPG rules.

(e) If a licensee exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

- (A) Serving as an elected or appointed official;
- (B) Serving on a committee of the organization; or
- (C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed course work.

(10) Software programs published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit (CEU)--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board staff for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The licensee must submit CEP certification on the log and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

Figure: 22 TAC §851.32(k) (No change.)

(l) CEP records for each licensee must be maintained for a period of three years by the licensee.

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience, the Board staff may require the licensee to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A licensee employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPG. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, including 2 hours of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 units (including 2 hours of ethics) shall be the maximum number required.

(p) Noncompliance:

(1) If a licensee does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the licensee to disciplinary action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600895

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Effective date: March 15, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 936-4405



SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §§851.101, 851.102, 851.104 - 851.108, 851.112

The adopted amendments are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.153 which authorizes the Board to adopt a code of professional conduct that is binding on all license holders; and by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act

The adopted amendments implement the Texas Occupations Code §§1002.151, 1002.153, 1002.154, 1002.251, 1002.256, and §§55.001 - 55.009, as amended through the 2015 Texas Legislative Session.

§851.101. *General.*

(a) This subchapter is promulgated pursuant to the Act, Texas Occupations Code (TOC), §1002.153, which directs the Appointed Board to adopt a code of professional conduct that is binding on all license holders under the Act and provides that the Appointed Board may enforce the code by imposing sanctions, as provided by the Act or

this chapter. Except as otherwise noted, this subchapter applies only to situations which are related to the practice of professional geoscience.

(b) Any person who holds a Professional Geoscientist license, is the Authorized Official of a Firm (AOF), is a Geoscience Firm, or who holds a certificate as a Geoscientist-in-Training (GIT) is responsible for understanding and complying with the Act, rules adopted by the Appointed Board, and any other law or rule pertaining to the practice of professional geoscience. Any person under application for, currently holding, or eligible to renew a license, registration, or certification issued by the Texas Board of Professional Geoscientists (TBPG) is bound by the provisions of the Act and this chapter. The TBPG maintains jurisdiction over a license, registration, or certification it issues as long as the license, registration, or certification is current or renewable.

(c) A Professional Geoscientist, an AOF, or a person who holds a certificate as a Geoscientist-in-Training having knowledge of any alleged violation of the Act and/or TBPG rules shall cooperate with the TBPG in furnishing such information as may be required.

(d) A Professional Geoscientist, an AOF, or a person who holds a certificate as a Geoscientist-in-Training shall answer all inquiries concerning matters under the jurisdiction of the TBPG and shall fully comply with final decisions and orders of the Appointed Board. Failure to comply with these matters shall constitute a separate offense of misconduct subject to the penalties provided under the Act or this Chapter.

(e) The Appointed Board may take disciplinary actions as provided in §1002.403 of the Act for reasons stated in §1002.402 of the Act.

(f) This subchapter is not intended to suggest or define standards of care in civil actions against Professional Geoscientists, Geoscientists-in-Training, or Geoscience Firms involving their professional conduct.

(g) A Professional Geoscientist, a Geoscientist-in-Training, or a Geoscience Firm may donate professional geoscience services to charitable causes but must adhere to all provisions of the Act and the rules of the TBPG in the provision of all geoscience services rendered, regardless of whether the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm is paid for the geoscience services.

(h) A Professional Geoscientist or a Geoscientist-in-Training who is presenting geoscientific testimony, including geoscientific interpretation, analysis, or conclusions, or recommending geoscientific work before any public body or court of law, whether under sworn oath or not, must adhere to all provisions of the Act and the rules of the TBPG in the provision of all professional geoscience services rendered, regardless of whether the Professional Geoscientist is paid for the service or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost.

§851.102. *Competence/Negligence.*

(a) A Professional Geoscientist or a Geoscience Firm shall undertake to perform a professional service only when the Professional Geoscientist or Geoscience Firm, together with those whom the Professional Geoscientist or Geoscience Firm shall engage as consultants, are qualified by education and/or experience in the specific technical areas involved. During delivery of a professional service, a Professional Geoscientist or Geoscience Firm shall act with reasonable care and competence and shall apply the technical knowledge and skill, which is ordinarily applied by reasonably prudent Professional Geoscientists practicing under similar circumstances and conditions.

(b) A Professional Geoscientist shall not affix his/her signature or seal to any document dealing with subject matter in which he/she

is not qualified by education and/or experience to form a reasonable judgment.

(c) A Professional Geoscientist or a Geoscience Firm shall not engage in conduct or perform professional geoscience services characterized by Gross Incompetence. Conduct or professional geoscience services characterized by Gross Incompetence includes work that evidenced an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm, or evidenced by an extreme lack of knowledge of, or an inability or unwillingness to apply the principles or skills generally expected of, a reasonably prudent Professional Geoscientist or Geoscience Firm.

(d) A Professional Geoscientist who has been adjudicated mentally incompetent by a court may not renew a license or engage in activities requiring a license under the Act.

§851.105. Conflicts of Interest.

(a) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm has any business association or financial interest which might reasonably appear to influence the judgment of the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm in connection with the performance of a professional geoscience service, and thereby jeopardize an interest of a client or employer of the Professional Geoscientist, the Geoscientist-in-Training, or Geoscience Firm, the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall either terminate the business association or financial interest or forego the project or employment.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm is performing or has contracted to perform geoscience services.

§851.107. Prevention of Unauthorized Practice.

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not practice or offer to practice geoscience in any governmental jurisdiction in which to do so would be in violation of a law regulating the practice of geoscience in that jurisdiction.

(b) A Professional Geoscientist who fails to renew his/her license prior to its annual expiration date shall not use the title, "Professional Geoscientist" or the initials, "P.G." and shall not offer to or engage in the public practice of professional geoscience or otherwise engage in activities that require a license until after the Professional Geoscientist's license has been properly renewed.

(c) A Geoscience Firm that fails to renew its Geoscience Firm registration prior to its annual expiration date shall not use the title, "Geoscience Firm" and shall not offer to or engage in the public practice

of geoscience as defined by the Texas Occupations Code §1002.002 until after the Geoscience Firm's registration has been properly renewed.

(d) A Geoscientist-in-Training who fails to renew his/her certification prior to its annual expiration date shall not use the title, "Geoscientist-in-Training" until after the Geoscientist-in-Training's certification has been properly renewed.

§851.108. Criminal Convictions.

(a) The Texas Board of Professional Geologists (TBPG) will adhere to the provisions of Texas Occupation Code (TOC) Chapter 53 regarding the review of criminal convictions and certain deferred adjudications in regard to actions taken against an Applicant for a license or a license holder as a consequence of criminal conviction or certain deferred adjudications, as specified in TOC Chapter 53.

(b) Crimes directly related to the duties and responsibilities of a Professional Geoscientist include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the practice of professional geoscience, such as the following:

- (1) Criminal negligence;
- (2) Soliciting, offering, giving, or receiving any form of bribe;
- (3) The unauthorized use of property, funds, or proprietary information belonging to a client or employer;
- (4) Acts relating to the malicious acquisition, use, or dissemination of confidential information related to geoscience; and
- (5) Any intentional violation as an individual or as a consenting person of any provision of the Act.

(c) Any license holder whose license has been revoked under the provisions of TOC 53 due to incarceration may apply for a new license upon release from incarceration.

§851.112. Required Reports to the TBPG.

(a) A Professional Geoscientist, Geoscientist-in-Training, or a Geoscience Firm shall make written reports to the TBPG office within thirty (30) days of the following, as applicable:

(1) Any changes in a firm's name, the Authorized Official of the Firm (AOF), the firm's owners, officers, or directors, Professional Geoscientist(s) employed by the firm, Professional Geoscientist(s) who serve as the P.G. in Responsible Charge for the firm or any branch offices, communication phone number(s) of the Authorized Official of the Firm or P.G.s, and any other changes as identified in §851.152 of this chapter;

(2) Any changes in an individual P.G.'s or Geologist in Training's (GIT's) mailing address or other contact information and any changes in employment status with a firm (e.g. leaving or starting employment with a current firm, any new additional place(s) of employment, etc.);

(3) The initiation of practice as any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity), or other business entity that requires registration by the TBPG to engage in the public practice of geoscience;

(4) The notification in paragraphs (1) - (3) of this subsection shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business

office, effective date of this change, and reason for this notification (changed employment or retired, firm went out of business or changed its name or location, etc.) and information regarding areas of practice within each employment or independent sole practitioner practice setting;

(5) A change of business phone number, an additional business phone number, or a change in the home phone number;

(6) A criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee or Geoscientist-in-Training;

(7) The settlement of or judgment rendered in a civil lawsuit filed against the licensee or Geoscience Firm relating to the Professional Geoscientist's or Geoscience Firm's professional geoscience services; or

(8) Final disciplinary or enforcement actions against the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm taken by a licensing or certification body related to the practice of professional geoscience when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the TBPG to determine whether a possible violation may have occurred.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the Appointed Board.

(d) A Geoscience Firm shall notify the TBPG in writing no later than thirty (30) days after a change in the business entity's:

(1) Physical or mailing address, electronic mail address, telephone or facsimile number, or other contact information;

(2) Officers or directors if they are the only Professional Geoscientists of the firm;

(3) Employment status of the Professional Geoscientists of the firm;

(4) Operation including dissolution of the firm or that the firm no longer offers to provide or is not providing professional geoscience services to the public in Texas; or

(5) Operation including addition or dissolution of branch and/or subsidiary offices.

(e) Notice as provided in subsection (d) of this section shall include, as applicable, the:

(1) Full legal trade or business name entity;

(2) The firm registration number;

(3) Telephone number of the business office;

(4) Name and license number of the license holder employed by or leaving the entity;

(5) Description of the change; and

(6) Effective date of this change.

(f) A Geoscience Firm that obtains a new certificate of authority from the Office of the Secretary of State or files a new Assumed Name Certificate with the County Clerk or the Office of the Secretary of State must provide the new instrument number to the TBPG within thirty (30) days of the action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600896

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Effective date: March 15, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 936-4405

◆ ◆ ◆
SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §§851.152, 851.153, 851.156, 851.157

The adopted amendments are authorized by Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Texas Occupations Code §1002.153 which authorizes the Board to adopt a code of professional conduct that is binding on all license holders; by Texas Occupations Code §1002.154 which provides that the Board shall enforce the Act; and by Texas Occupations Code §1002.351 which authorizes the Board to adopt rules relating to the public practice of geoscience by a firm or corporation.

The adopted amendments implement the Texas Occupations Code §§1002.151, 1002.153, 1002.154, and 1002.351.

§851.152. Firm Compliance.

(a) Unless registered with the TBPG or exempt from firm registration requirements under TOC §1002.351, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the seal of a Professional Geoscientist.

(b) A business entity or sole proprietor that offers or is engaged in the non-exempt public practice of professional geoscience in Texas must register with the TBPG pursuant to the requirements of §851.30 of this chapter.

(c) The Appointed Board may revoke a certificate of registration that was obtained in violation of the Act and/or TBPG rules including, but not limited to, fraudulent or misleading information submitted in the application.

(d) A business entity or sole proprietor that is not registered with the TBPG may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the non-exempt public practice of geoscience by using the terms:

(1) "Professional Geoscientist;"

(2) "licensed geoscientist;"

(3) "registered geoscientist;"

(4) "licensed Professional Geoscientist;"

(5) "registered Professional Geoscientist;" or

(6) any abbreviation or variation of those terms listed in paragraphs (1) - (5) of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.

(e) The Appointed Board may revoke or suspend a Geoscience Firm's registration, place on probation a firm whose registration has been suspended, reprimand a Geoscience Firm, or assess an administrative penalty against a Geoscience Firm for a violation of any provision of TBPB rules or the Act by the firm or any employee of the firm. The Appointed Board also may take action against an Applicant pursuant to §851.110 of this chapter.

§851.156. Professional Geoscientist Seals and Geoscience Firm Identification.

(a) The purpose of the Professional Geoscientist's seal is to show that professional geoscience services were performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the geoscience services.

(b) The Professional Geoscientist shall utilize titles set forth in the Texas Geoscience Practice Act (Act), §1002.251. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) to be of the design shown in this subsection. Computer-applied seals may be of a reduced size provided that the Professional Geoscientist's name and number are clearly legible.

Figure: 22 TAC §851.156(b) (No change.)

(c) A Professional Geoscientist shall only seal documents that contain geoscience services performed by or under his/her direct supervision. Upon sealing, the Professional Geoscientist takes full professional responsibility for geoscience services that are provided through the sealed document.

(d) It shall be misconduct to knowingly sign or seal any geoscience document if its use or implementation may endanger the health, safety, or welfare of the public.

(e) It shall be unlawful for a license holder whose license has been revoked, suspended, or has expired to sign or affix a seal on any document.

(f) All seals utilized by a license holder shall be capable of leaving a permanent ink or impression on the document.

(g) Electronically conveyed geoscience documents requiring a seal must contain an electronic seal and electronic signature. Such seals should conform to the design requirements set forth in this section.

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the document that bears his/her seal, original signature, and date and transmit this document in a secure electronic format.

(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific documents by making a secure electronic graphic of his/her original seal and signature.

(2) The use of an electronically-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized electronically-generated signature using the Lucida Handwriting FONT. Figure: 22 TAC §851.156(g)(2)(A) (No change.)

(B) Shown below is a sample of a digital image of a geoscientist's seal and original signature saved as a digital image (JPEG Format, for example).

Figure: 22 TAC §851.156(g)(2)(B) (No change.)

(h) Preprinting of blank forms with a Professional Geoscientist's seal is prohibited.

(i) Signature reproductions, including but not limited to, rubber stamps, decals or other replicas, and electronically-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature or a true digital graphic copy of the actual signature.

(j) A Professional Geoscientist shall take reasonable steps to insure the security of his/her physical or electronically-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.

(k) Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience document as outlined in subsection (l) of this section before such document is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional Geoscientist license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(l) The Professional Geoscientist shall sign, seal, and date the original title sheet or a signature page of geoscience documents, specifications, details, calculations, or estimates, and each sheet of maps, drawings, cross sections, or other figures representing geoscientific services carried out under the supervision of the geoscientist, regardless of size or binding. All unbound geoscience documents, including but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(m) Geoscience services performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist or Professional Geoscientists. When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the geoscience services done under each Professional Geoscientist's responsible charge.

(n) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience documents; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of documents containing geoscience services submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(o) When a Professional Geoscientist elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

- (1) Individually sealed by the Professional Geoscientist; or
- (2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.

(p) Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.

(q) A license holder is not required to use a seal for a document for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.

(r) All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency or firm shall be required.

(s) TBPG also considers a document to meet the sealing requirement if a reader or user of the document can determine that the original document is complete and unaltered from that which was placed under seal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600897
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Effective date: March 15, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 936-4405



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.7, §132.13

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to 28 TAC §132.7, concerning duration of death benefits for eligible spouse, and §132.13, concerning burial benefits. An informal working draft of the rule text was published on the division's website on August 12, 2015, and the division received six comments. The proposal was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8729) and the division received no comments. Amended §132.7 and §132.13 are adopted without changes to the proposed text. There was not a request for public hearing submitted to the division.

In accordance with Government Code §2001.033, the division's reasoned justification for the sections is set out in this order, which includes the preamble. The following paragraphs include a detailed section-by-section description and reasoned justification for all amendments to §132.7 and §132.13.

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to §132.7, concerning duration of death benefits for eligible spouse, and §132.13, concerning burial benefits. The purpose of amended §132.7 is to align existing §132.7 with House Bill (HB) 1094, 84th Legislature, Regular Session (2015). HB 1094 amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits, if the first responder suffered death in the course and scope of employment or while providing services as a volunteer. The purpose of amended §132.13 is to align existing §132.13 with Senate Bill (SB) 653, 84th Legislature, Regular Session (2015). SB 653 amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000 for a compensable injury that occurs on or after September 1, 2015.

The division also adopts non-substantive changes to amended §132.7 and §132.13 including adding the word "insurance" before the word "carrier" in §132.7(a) and (c) - (e), replacing "commission" with "division" in §132.7(c) and (e) and §132.13(d), replacing "rule" with "section" in §132.7(a) and (e), and replacing "common law" with "informal" in §132.7(b).

Section 132.7 addresses Duration of Death Benefits for Eligible Spouse. Amended §132.7(a) adds the word "insurance" before the word "carrier" and replaces "rule" with "section" to conform to current agency style. Amended §132.7(a) also exempts subsection (f) from the requirements in §132.7(a). The purpose of amended §132.7(a) is to align existing §132.7 with HB 1094, which amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits.

Amended §132.7(b) replaces "common law" with "informal" to align with Family Code §2.401. The division clarifies that the alignment with Family Code §2.401 will not change any requirements in existing §132.7. HB 53, 61st Legislature, Regular Session (1969) codified common law marriage into statute as informal marriage. The purpose of the non-substantive amendment is solely to conform §132.7(b) with current statutory language.

Amended §132.7(c) replaces "commission" with "division" and adds the word "insurance" before the word "carrier" to conform to current agency style.

Amended §132.7(d) adds the word "insurance" before the word "carrier" to conform to current agency style.

Amended §132.7(e) replaces "commission" with "division," adds the word "insurance" before the word "carrier," and replaces "rule" with "section" to conform to current agency style. Amended §132.7(e) deletes the reference to Texas Workers' Compensation Act §10.04 because HB 752, 73rd Legislature, Regular Session (1993) repealed Vernon's Texas Civil Statutes Article 8308 §10.04, and readopted the statutes as the Labor Code.

New §132.7(f) states that an eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, who suffered death in the course and scope of employment or while providing ser-

vices as a volunteer. Amended §132.7(b) - (e) do not apply to an eligible spouse under new §132.7(f). New §132.7(f) applies to claims based on a compensable injury that occurs on or after September 1, 2015. The purpose of amended §132.7(f) is to align existing §132.7 with HB 1094. HB 1094 amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits for life, if the first responder suffered death in the course and scope of employment or while providing services as a volunteer. HB 1094 applies to claims based on a compensable injury that occurs on or after September 1, 2015.

The division clarifies that new §132.7(f) does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children. The division also clarifies that although new §132.7(f) does not affect the redistribution of death benefits under §132.12, an eligible spouse under new §132.7(f) will remain eligible for death benefits after remarriage and the spouse's share of benefits will not be redistributed.

Section 132.13 addresses Burial Benefits. Amended §132.13(b)(3) modifies the effective date for the \$6,000 maximum reimbursement for burial benefits paid based on a compensable injury that occurs "on or after September 1, 1999" to "on or after September 1, 1999 and before September 1, 2015." The purpose of amended §132.13(b)(3) is to align existing §132.13 with SB 653. SB 653 amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000 for a compensable injury that occurs on or after September 1, 2015.

New §132.13(b)(4) increases the amount of maximum reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000 if the burial benefits are paid based on a compensable injury that occurs on or after September 1, 2015. The purpose of amended §132.13(b)(4) is to align existing §132.13 with SB 653, which amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000 for a compensable injury that occurs on or after September 1, 2015.

Amended §132.13(d) replaces "commission" with "division" to conform to current agency style.

The division did not receive any comments on the proposed amendments to §132.7 and §132.13.

The amendments are adopted under Labor Code §§408.183, 408.186, 408.181, 408.182, 408.184, 401.011(13), 401.011(29), 402.021(a)(1), 402.021(b)(5), 415.002(a)(11), 415.002(a)(12), 415.002(a)(13), 402.00111, and 402.061.

Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries. Labor Code §408.186 outlines the requirements for burial benefits in the workers' compensation system. Labor Code §408.181 requires an insurance carrier to pay death benefits to a legal beneficiary if a compensable injury to the employee results in death. Labor Code §408.182 outlines the requirements for distribution of death benefits. Labor Code §408.184 outlines the requirements for redistribution of death benefits. Labor Code §401.011(13) defines death benefits. Labor Code §401.011(29) defines legal beneficiary.

Labor Code §402.021(a)(1) states that one of the basic goals of the workers' compensation system is that each employee be treated with dignity and respect when injured on the job. Labor Code §402.021(b)(5) states that one of the goals of the workers' compensation system is to minimize the likelihood of disputes and resolve them promptly and fairly when identified. Labor Code §415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner. Labor Code §415.002(a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600986

Marisa Lopez Wagley

Acting General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: March 20, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 804-4703



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 61. TERMS AND PHRASES

34 TAC §61.1

The Employees Retirement System of Texas (ERS) adopts an amendment to 34 Texas Administrative Code (TAC) Chapter 61, concerning Terms and Phrases, by amending §61.1 concerning Definitions, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 432). The amendment was approved by the ERS Board of Trustees at its February 23, 2016 meeting. This section will not be republished.

Section 61.1 (Definitions) is amended to include a definition for an "interested person." The amendment clarifies who an interested person may be with regard to ERS rules.

No comments were received on the proposed rule amendment.

The amendment is adopted under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of other business of the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600874

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Effective date: March 14, 2016

Proposal publication date: January 8, 2016

For further information, please call: (877) 275-4377



CHAPTER 63. BOARD OF TRUSTEES

34 TAC §§63.1, 63.3, 63.4

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §§63.1, 63.3 and 63.4, concerning Duties of the Board of Trustees, Election of Trustees (Nomination Process) and Election of Trustees (Ballot), without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 433). The amendments were approved by the ERS Board of Trustees at its February 23, 2016 meeting. These sections will not be republished.

Section 63.1 (Duties of the Board of Trustees) is amended to clarify that the Board's appellate jurisdiction of appeals is provided in Chapter 67, Hearings on Disputed Claims.

Section 63.3 (Election of Trustees (Nomination Process)) is amended to clarify the maximum number of signatures ERS will accept on a petition. Candidates are still required to demonstrate sufficient support from state employees, but the amendment eliminates the cost of an extensive petition drive. The amendment also provides that a petition submitted on behalf of a candidate must include original signatures; petitions with reproduced, photocopied, scanned or faxed signatures will be disqualified. These changes also streamline the way in which ERS validates nominations, thereby reducing costs.

Section 63.4 (Election of Trustees (Ballot)) is amended to clarify that ERS will set the time and location for the drawing for the order of names to appear on the ballot, and the amendments also give examples of the types of information that ERS may request on the ballot. Section 63.4(j) is also ministerially amended to remove reference to a run-off election, since conducting a run-off election significantly increases the cost of the process, and is not a prudent use of trust resources given the fiduciary duties of the Board of Trustees.

No comments were received on the proposed rule amendments.

The amendments are adopted under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600875

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Effective date: March 14, 2016

Proposal publication date: January 8, 2016

For further information, please call: (877) 275-4377



CHAPTER 65. EXECUTIVE DIRECTOR

34 TAC §§65.3, 65.11, 65.13

The Employees Retirement System of Texas (ERS) adopts amendments and the addition of new rules to 34 Texas Administrative Code (TAC) Chapter 65, concerning Executive Director, by amending §65.3, concerning Records of the System, and adding new rule §65.11, concerning Reimbursement for Training or Education, and new rule §65.13, concerning Enhanced Contract Monitoring, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 434). The amendments and new rules were approved by the ERS Board of Trustees at its February 23, 2016, meeting. These sections will not be republished.

Section 65.3 (Records of the System) is amended to remove subsection (c). Since ERS is required to follow the Office of the Attorney General's (OAG) rules regarding costs associated with producing information for PIA requests pursuant to §552.262, Texas Government Code, this section is no longer necessary.

ERS added §65.11 to comply with new §656.047(b), Texas Government Code, Acts of the 84th Legislature, Regular Session, 2015. The new law requires agencies to adopt rules requiring the agency's executive head to authorize tuition reimbursement payments for employees.

ERS added new rule §65.13 to comply with new §2261.253, Texas Government Code, Acts of the 84th Legislature, Regular Session, 2015. The new law requires state agencies to establish procedures to identify each contract that requires enhanced contract or performance monitoring, and to submit information on the contract to the Board.

No comments on the proposed amendments and new rules were received.

The amendments and new rules are adopted under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of funds of the retirement system.

No other statutes are affected by the amendments and new rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600876

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: March 14, 2016
Proposal publication date: January 8, 2016
For further information, please call: (877) 275-4377



CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.4, 85.7, 85.9, 85.13

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 85 concerning Flexible Benefits, §§85.1, 85.4, 85.7, 85.9 and 85.13, concerning Introduction and Definitions, Separate Plans, Enrollment, Payment of Claims from Reimbursement Accounts, and Funding, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 435). The amendments were approved by the ERS Board of Trustees at its February 23, 2016 meeting. These sections will not be republished.

ERS adopts amendments to §§85.1, 85.4, 85.7, 85.9, and 85.13 in order simplify plan administration and benefit TexFlex program participants in a manner permitted by the Internal Revenue Code. The amendments also implement the qualified transportation benefit as contemplated by statute, and provide for a plan document for such qualified transportation benefit.

Section 85.1 (Introduction and Definitions) is amended to clarify that the grace period still applies to an employee participating in a dependent care reimbursement account.

Section 85.1 (Introduction and Definitions) and §85.4 (Separate Plans) are amended to update the rules to offer TexFlex participants a qualified transportation benefit plan as permitted by §132 of the Internal Revenue Code. The Internal Revenue Code permits such a benefit, but not as part of a §125 cafeteria plan. These amendments permit the offering of a separate TexFlex qualified transportation benefit plan governed by a plan document executed by the executive director of ERS as authorized by the Board of Trustees.

Section 85.7 (Enrollment) is amended to provide that carryover amounts less than \$25.00 shall be forfeited to pay the administrative costs of the plan. In order to maximize administrative and plan efficiency, only balances that are \$25 or greater will be carried over.

Section 85.9 (Payment of Claims from Reimbursement Accounts) is amended to clarify that a health care reimbursement account participant who has insufficient funds to pay for the monthly election amount during the plan year will be liable to make after-tax contributions to pay the monthly election.

Section 85.13 (Funding) is amended to clarify that after a Qualifying Life Event (QLE), claims will be accounted for using a non-blended approach. The non-blended approach provides that when a participant has such a QLE, such as adding a dependent by birth, adoption or marriage, the participant may increase contributions, and only the amounts contributed after the QLE and contribution increase will be available for new claims during the remainder of the plan year. Any claims accrued before the QLE and contribution increase are reimbursed using funds provided by the participant's original election.

No comments on the proposed rule amendments.

The amendments are adopted under the Texas Insurance Code, §1551.052 and §1551.206, which provide authorization for the ERS Board of Trustees to develop, implement, and administer a cafeteria plan, and to adopt necessary rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600877
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: March 14, 2016
Proposal publication date: January 8, 2016
For further information, please call: (877) 275-4377



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER B. SCHOOL BUS DRIVER QUALIFICATIONS

37 TAC §14.12, §14.14

The Texas Department of Public Safety (the department) adopts amendments to §14.12 and §14.14, concerning School Bus Driver Qualifications. These sections are adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 441) and will not be republished.

The amendments update the rules to reflect the revised Medical Examination Report Form for Commercial Driver Medical Certification and School Bus Drivers' Driving Record Evaluation as the current publications. Additional nonsubstantive changes have been made to update the rules.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.022, which authorizes the department to adopt rules to administer and enforce the school bus driver qualifications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600906

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848



SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

The Texas Department of Public Safety (the department) adopts amendments to §14.52, concerning Texas School Bus Specifications. This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 443) and will not be republished.

The amendments update the rule to reflect the 2016 Texas School Bus Specifications as the current publication.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600907
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848



CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.7

The Texas Department of Public Safety (the department) adopts amendments to §15.7, concerning Occupational License (Essential Need). This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 444) and will not be republished.

These amendments are intended to clarify that an occupational order from the court is now valid for a period of 45 days pursuant to Texas Transportation Code, §521.249. Further amendments are made to clarify which courts are allowed to issue an occupational court order and also change the language that indicates a customer submits an "application" to a customer submits a "request for an occupational extension" to extend the expiration of the occupational license. These changes also comply with Chapter 521, Subchapter L.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.249, which changed the expiration of an occupational court order from 30 days to 45 days.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600908
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848



SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.42

The Texas Department of Public Safety (the department) adopts amendments to §15.42, concerning Social Security Number. This section is adopted with non-substantive changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 446). The text of the rule will be republished.

These amendments are intended to clarify that a Social Security number is now required for an identification certificate pursuant to Texas Transportation Code, §521.142.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code, and Texas Transportation Code, §521.142, which requires the applicant's Social Security number for an identification certificate.

§15.42. Social Security Number.

(a) The Social Security number (SSN) shall be obtained from all applicants who have been issued a number by the United States Social Security Administration. This number will be utilized by the department for the purpose of additional identification and may be disclosed only to those entities that have statutory authority to receive the SSN.

(b) When an SSN is originally obtained, it is mandatory that documentation be provided to verify the number. All documents presented for proof of SSN must be verifiable through the issuing entity and include a pre-printed SSN. Documentation may include:

- (1) Federal issued Social Security card,
- (2) Military identification (Applies to active, reserve and dependent status),
- (3) Certificate of Release or Discharge of Active Duty (DD-214),
- (4) Certified college/university transcript designating number as SSN,
- (5) IRS form W-2 Wage and Tax Statement,
- (6) IRS form 1099-MISC,
- (7) Pay stub containing applicant's name and SSN, or
- (8) Documents such as health insurance cards, Veteran's Administration cards, and pilot's licenses with identifiable SSN may be accepted.

(c) On all duplicate and renewal Texas driver license or identification certificate applications, the documented SSN shall be obtained where it is not currently a part of the applicant's record. After the SSN becomes a part of the applicant's record, all future duplicate and renewal transactions occurring in a driver license office will be verified verbally for the correct SSN. Should the SSN on record not match the number provided, the applicant will be required to provide acceptable documentation as listed in subsection (b) of this section.

(d) The department may verify the authenticity of the SSN on record through the Social Security Administration. In the event that the SSN on record cannot be authenticated, the department may deny issuance of the renewal, duplicate or original transaction until such time as authentication is made through the Social Security Administration. If the license or identification certificate was previously issued, the department may mail to the address on record a notice requiring the license or identification certificate holder to provide additional documentation. Failure to comply with this request within 30 days may result in the cancellation of the driver license or identification certificate.

(e) Applicants who state they have not applied for, have not been issued or do not have an SSN assigned by the Social Security Administration will be given the department's "Social Security" affidavit for completion. This sworn affidavit will contain:

- (1) The applicant's full name, date of birth, and driver license or identification certificate number;
- (2) A statement that the applicant has not applied for, been issued or assigned an SSN by the United States Social Security Administration;
- (3) A statement of release for verification and investigative purposes;
- (4) A notice that failure to provide required information to the department may result in the cancellation of the applicant's driver

license or identification certificate per Texas Transportation Code, §521.314; and

(5) A notice that the applicant can be subject to other criminal penalties including Texas Transportation Code, §521.451 and §521.454.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600909
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848

◆ ◆ ◆
**SUBCHAPTER C. EXAMINATION
REQUIREMENTS**

37 TAC §15.55

The Texas Department of Public Safety (the department) adopts amendments to §15.55, concerning Waiver of Knowledge and/or Skills Exam. This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 448) and will not be republished.

The amendments are intended to clarify conditions under which exam requirements will not be waived when a driver education certificate is presented that is dated more than two years prior to the date of application. In addition, the language has been revised and reorganized for clarity.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600910
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848

37 TAC §15.63

The Texas Department of Public Safety (the department) adopts new §15.63, concerning Out of State Examinations and Applications. This section is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 449) and will not be republished.

This rule is intended to eliminate redundancies and clearly outline requirements concerning out of state examinations and applications. The creation of new §15.63 is filed simultaneously with the repeal of §15.93.

No comments were received regarding the adoption of this new rule.

The new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600911
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848



SUBCHAPTER E. RECIPROCITY IN DRIVER LICENSING

37 TAC §§15.91 - 15.93

The Texas Department of Public Safety (the department) adopts the repeal of §§15.91 - 15.93, concerning Reciprocity in Driver Licensing. This repeal is adopted without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 450) and will not be republished.

The repeal of §15.91 and §15.92 is intended to eliminate redundant language found in Texas Transportation Code, §§521.001, 521.028, and 521.030 and delete outdated information. The repeal of §15.93 is filed simultaneously with the adoption of new §15.63. These adoptions move information regarding out of state examinations to 37 TAC Chapter 15, Subchapter C, eliminating redundancies and clearly outlining requirements concerning out of state examinations applications.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.001, 521.028, and 521.030.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 24, 2016.

TRD-201600912
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 15, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 1. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER A. ADVISORY COMMITTEES

40 TAC §§1.1 - 1.4, 1.8, 1.20, 1.21

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter A, Advisory Committees, consisting of §§1.1, 1.2, 1.3, 1.4, 1.8, 1.20, and 1.21, in Chapter 1, State Authority Responsibilities, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8875).

The purpose of the repeal is, along with new Chapter 89, to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012. The repeal deletes rules about an advisory committee that has been abolished.

DADS received no comments regarding adoption of the repeal.

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600962

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 438-2430



CHAPTER 2. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER L. SERVICE COORDINATION FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

40 TAC §§2.553 - 2.556, 2.560

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§2.553 - 2.556 and 2.560, in Subchapter L, Service Coordination for Individuals with an Intellectual Disability, in Chapter 2, Local Authority Responsibilities. Amendments to §§2.553 - 2.555 are adopted with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8457). Amendments to §2.556 and §2.560 are adopted without changes to the proposed text.

The adopted rules in Chapter 2, Subchapter L, address the implementation of Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available through managed care organizations (MCOs) contracting with HHSC. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services approved a state plan amendment to implement CFC effective June 1, 2015.

In accordance with Texas Government Code §534.152, the adopted rules expand the eligibility criteria for service coordination to include an individual enrolling in CFC services provided through an MCO and certain individuals receiving CFC services through an MCO. In addition, the adopted rules require person-centered service planning training in accordance with the CFC state plan amendment. The adopted rules also update terminology and clarify existing processes.

Changes were made in §2.553 to add a definition for the term "institution" because this term is added as part of the changes made in §2.554(a)(1)(A).

Changes were made in §2.554(a) to clarify that an individual, to be eligible for service coordination, must fit into one of two cat-

egories. The first category is individuals who are members of the LIDDA priority population and meet at least one of the criteria in §2.554(a)(1)(A) - (F). The second category, added as a new §2.554(a)(2), is nursing facility residents who are eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)). Changes were also made in §2.554(a)(1)(A) to delete the requirement that the assessment by the designated LIDDA must be conducted within 30 calendar days before making the determination of eligibility for service coordination, and to add that the individual who has two or more documented needs that require services and supports other than service coordination as evidenced by the assessment may not reside in an institution. The agency made the changes in §2.554(a)(1)(A) to more accurately describe the current eligibility criteria for service coordination. Changes were made in §2.554(b) and (c) to reflect the formatting changes made in subsection (a). Minor editorial changes were also made in §2.554.

Changes were made in §2.555(b)(1)(A) and (B) to reflect the formatting changes made in §2.554(a).

DADS received written comments from Disability Rights Texas on the proposed rules. A summary of the comments and the responses follows.

Comment: The changes in §2.553(33) to the definition of "related condition" replaces "as defined in the Code of Federal Regulation" with "consistent with Code of Federal Regulations." The commenter recommends that the agency not make this change to prevent eligible individuals from being determined ineligible and to prevent misinterpretation of the definition in the federal regulation or implying that the definition is flexible.

Response: The phrase "as defined in the Code of Federal Regulation" is changed to "consistent with Code of Federal Regulations" because the agency is using the phrase "similar to that of persons with an intellectual disability" in the definition instead of "similar to that of mentally retarded persons," the phrase used in the federal regulation. The agency did not make a change in response to the comment.

Comment: The commenter asked if service coordination funded by general revenue, as described in §2.555(a)(3), includes service coordination related to the Preadmission Screening and Resident Review (PASRR) program, which is funded by a combination of state and federal funds. If not, the commenter stated that PASRR funding may need to be added in §2.555(a).

Response: There is no separate funding source to pay for service coordination related to the federally mandated PASRR program. A resident of a nursing facility who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)) is eligible for service coordination related to the PASRR program. If the service coordination related to the PASRR program is provided during the last 180 days before the resident transitions to community-based services, the service coordination is funded by Medicaid targeted case management. Before the effective date of this rule, if service coordination related to the PASRR program was provided to the resident before the 180-day period, it was also funded by Medicaid targeted case management. When these rules become effective, service coordination related to the PASRR program provided before the 180-day period will likely be funded by state general revenue. The agency did not make a change in response to this comment.

Comment: The commenter stated that in §2.555(b)(1)(B), PASRR-related service coordination is not limited to "the last 180 days before the individual's discharge from the ICF/IID or nursing facility" and asked that the rule be changed accordingly.

Response: Section 2.555(b) describes the service coordination that is funded by Medicaid targeted case management. Service coordination related to the PASRR program that is provided during the last 180 days before the resident transitions to community-based services from the nursing facility is funded by Medicaid targeted case management. When these rules become effective, service coordination related to the PASRR program provided before the 180-day period will likely be funded by state general revenue. The agency did not make a change in response to this comment.

Comment: The commenter stated that §2.555(b)(1)(B), which stated "who resides in a nursing facility licensed in accordance with THSC Chapter 242 and who has been determined through a PASRR assessment to require specialized services," should not be deleted.

Response: This portion of the rule was deleted and replaced by the requirements in §2.555(b)(1)(B), which accurately describes the service coordination that is funded by Medicaid targeted case management. However, as stated in response to a previous comment, a resident of a nursing facility who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)) is eligible for service coordination related to the PASRR program. If the service coordination related to the PASRR program is provided during the last 180 days before the resident transitions to community-based services from the nursing facility, the service coordination is funded by Medicaid targeted case management. When these rules become effective, service coordination related to the PASRR program provided before the 180-day period will likely be funded by state general revenue. The agency did not make a change in response to this comment.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program; and Texas Health and Safety Code, §533A.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

§2.553. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) **Actively involved person**--For an individual who lacks the ability to provide legally adequate consent and who does not have a legally authorized representative (LAR), a person whose significant and ongoing involvement with the individual is determined by the individual's designated MRA to be supportive of the individual based on the person's:

- (A) observed interactions with the individual;
- (B) knowledge of and sensitivity to the individual's preferences, values, and beliefs;
- (C) availability to the individual for assistance or support; and
- (D) advocacy for the individual's preferences, values, and beliefs.

(2) **CARE--DADS Client Assignment and Registration System.**

(3) **CFC services--Community First Choice services.** State plan services described in 1 Texas Administrative Code (TAC) Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(4) **DADS--The Department of Aging and Disability Services.**

(5) **Department--The Department of Aging and Disability Services.**

(6) **Designated LIDDA--As identified in DADS data system, the LIDDA responsible for assisting an individual and LAR or actively involved person to access services and supports.**

(7) **Designated MRA--Designated LIDDA.**

(8) **Duration--The specified period of time during which service coordination is provided to an individual.**

(9) **Frequency--The minimum number of times during a specified period that an individual is to be contacted by a service coordinator based on the individual's need for contacts as determined by person-directed planning.**

(10) **General revenue--Funds appropriated by the Texas Legislature for use by DADS.**

(11) **HCS Program--The Home and Community-based Services Program.** A program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(12) **ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions.** An ICF/IID is a facility in which ICF/IID Program services are provided.

(13) **ICF/IID level-of-care--A level-of-care described in §9.238 of this title (relating to ICF/MR Level of Care I Criteria) or §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria).**

(14) **ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program.** A program operated by DADS that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions, as described in §1905(d) of the Social Security Act.

(15) **ICF/MR--ICF/IID.**

(16) **ICF/MR Program--ICF/IID Program.**

(17) **Individual--A person who is or is believed to be a member of the LIDDA priority population.**

(18) Institution--One of the following:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by the Department of Family and Protective Services unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services; or

(G) a prison.

(19) Institution for mental diseases (IMD)--As defined in 25 TAC §419.373, a hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of individuals with mental diseases, including medical care, nursing care, and related services.

(20) Intellectual disability--Consistent with Texas Health and Safety Code (THSC), §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(21) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a child, or the guardian of an adult.

(22) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission in accordance with THSC, §533A.035.

(23) LIDDA priority population--A population as defined in §5.153 of this title (relating to Definitions).

(24) Local service area--A geographic area composed of one or more Texas counties.

(25) MCO--Managed care organization. This term has the meaning set forth in Texas Government Code, §536.001.

(26) Mental retardation--Intellectual disability.

(27) Mental retardation priority population or MR priority population--LIDDA priority population.

(28) MRA (mental retardation authority)--LIDDA.

(29) Parent Case Management Program--A program that utilizes experienced, trained parents of individuals with disabilities to provide case management for other families.

(30) Partners in Policy Making--A leadership training program administered by the Texas Planning Council for Developmental Disabilities for self-advocates and parents.

(31) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(32) Person-directed planning--A philosophy and planning process that empowers an individual and, on the individual's behalf, an

LAR or actively involved person, to direct the development of a plan of services and supports.

(33) Plan of services and supports--A written plan that:

(A) describes the desired outcomes identified by the individual, or LAR or actively involved person on behalf of the individual;

(B) describes the services and supports to be provided to the individual, including service coordination; and

(C) identifies the frequency, in accordance with §2.556(d)(1) of this subchapter (relating to LIDDA's Responsibilities), and duration of service coordination to be provided to the individual.

(34) Related condition--Consistent with Code of Federal Regulations, Title 42, §435.1010, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability, and requires treatment or services similar to those required for those persons with an intellectual disability;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(35) Relative--A person related to the individual within the fourth degree of consanguinity or within the second degree of affinity.

(36) Service coordination--Assistance in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the individual (and LAR on the individual's behalf) as follows:

(A) crisis prevention and management--linking and assisting the individual and LAR or actively involved person to secure services and supports that will enable them to prevent or manage a crisis;

(B) monitoring--ensuring that the individual receives needed services, evaluating the effectiveness and adequacy of services, and determining if identified outcomes are meeting the individual's needs and desires as indicated by the individual and LAR or actively involved person;

(C) assessment--identifying the individual's needs and the services and supports that address those needs as they relate to the nature of the individual's presenting problem and disability; and

(D) service planning and coordination--identifying, arranging, advocating, collaborating with other agencies, and linking for

the delivery of outcome-focused services and supports that address the individual's needs and desires as indicated by the individual and LAR or actively involved person.

(37) State MH facility (state mental health facility)--A state hospital or state center with an inpatient psychiatric component operated by the Department of State Health Services.

(38) State supported living center--A state-supported and structured residential facility that is an ICF/IID operated by DADS to provide persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(39) Subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(40) THSC--Texas Health and Safety Code.

(41) TxHmL Program--The Texas Home Living Program. A program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

§2.554. *Eligibility.*

(a) To be eligible for service coordination, an individual must:

(1) be a member of the LIDDA priority population and must meet at least one of the following criteria:

(A) have two or more documented needs that require services and supports other than service coordination as evidenced by an assessment conducted by the designated LIDDA and not reside in an institution;

(B) be:

(i) in the process of enrolling in the ICF/IID Program; or

(ii) in the process of enrolling in the HCS or TxHmL Program or be currently enrolled in the HCS or TxHmL Program; or

(iii) in the process of enrolling in CFC services provided through an MCO;

(C) be 21 years of age or older with an ICF/IID level-of-care and receiving CFC services through an MCO;

(D) be seeking admission to a state supported living center;

(E) be transitioning from an ICF/IID or from a nursing facility to community-based services; or

(F) be transitioning from a state MH facility to community-based services; or

(2) be a nursing facility resident who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7)).

(b) Community-based services as referenced in subsection (a)(1)(E) and (F) of this section does not include services provided in an ICF/IID or nursing facility or services provided in another institutional setting.

(c) The assessment required by subsection (a)(1)(A) of this section must be conducted using DADS form "Service Coordination

Assessment--Intellectual Disability Services" which is available at www.dads.state.tx.us.

§2.555. *Funding Service Coordination.*

(a) Service coordination may be funded by:

(1) personal funds or third-party insurance other than Medicaid;

(2) Medicaid targeted case management; or

(3) general revenue.

(b) Service coordination funded by Medicaid targeted case management:

(1) may be provided only to an individual who is a Medicaid recipient and only if:

(A) the individual meets at least one of the criteria described in §2.554(a)(1)(A) - (D) of this subchapter (relating to Eligibility); or

(B) the individual meets the criteria described in §2.554(a)(1)(E) or (a)(2) of this subchapter and the service coordination is provided during the last 180 days before the individual transitions to community-based services from the ICF/IID or nursing facility; and

(2) may not be provided to an individual:

(A) who resides in an institution for mental diseases; or

(B) who is enrolled in a Medicaid waiver program other than the HCS or TxHmL Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600968

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-3532



CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§9.151, 9.153 - 9.155, 9.158 - 9.162, 9.166, 9.168 - 9.171, 9.173, 9.174, 9.177, 9.178, 9.185, 9.188, 9.190, and 9.192, in Subchapter D, Home and Community-Based Services (HCS) Program; §9.551, 9.553 - 9.556, 9.558, 9.567, 9.568, 9.570, 9.571, 9.573, 9.576 - 9.580, and 9.583, in Subchapter N, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services-Medicaid State Operating Agency Responsibilities. Amendments to §§9.153, 9.155, 9.158, 9.159, 9.166, 9.168, 9.170, 9.174, 9.177, 9.188, 9.190, 9.553, 9.555, 9.556, 9.558, 9.567, 9.568, 9.578, 9.579, and 9.583 are adopted with changes to the proposed

text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8462). Amendments to §§9.151, 9.154, 9.160 - 9.162, 9.169, 9.171, 9.173, 9.178, 9.185, 9.192, 9.551, 9.554, 9.570, 9.571, 9.573, 9.576, 9.577, and 9.580 are adopted without changes to the proposed text.

The adopted rules in Chapter 9, Subchapters D and N, implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-Based Services (HCS) Program, Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the HCS and TxHmL Programs consist of: (1) CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of HCS supported home living and TxHmL community support, except transportation; (2) CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and (3) CFC support management. The adopted rules give an individual the option to receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option.

The adopted rules also require an HCS and TxHmL Program provider to develop a transportation plan if transportation as a supported home living or as a community support activity is included on the individual plan of care (IPC). The transportation plan is used to document how transportation will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the person-directed plan (PDP). The plan helps ensure that the transportation hours requested are the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

The adopted rules, for consistency with the HCS and TxHmL waiver applications, add to the eligibility criteria for HCS and TxHmL Programs that an applicant or individual must require the provision of: (1) at least one program service per month, or at least one monitoring visit by a service coordinator per month; and (2) at least one program service per IPC year.

The adopted rules increase the dental treatment service limit from \$1,000 to \$2,000 during an IPC year to comply with the 2016-17 General Appropriations Act (Article II, Department of Aging and Disability Services, House Bill 1, 84th Legislature, Regular Session, 2015), which provided additional funds to increase the HCS Program dental treatment service limit.

The adopted rules also make editorial changes for clarity.

Changes were made in §9.153(11) and §9.553(9) in the definition of "CFC ERS provider" to delete the references to §9.174(j)(1) and §9.578(x)(1) because licensure as a personal emergency response system is no longer a requirement and §9.174(j)(1) and §9.578(x)(1) were deleted.

Changes were made in §9.153(44) and §9.553(34) in the definition of "implementation plan" to clarify that an implementation plan is not required for transportation provided as a supported home living activity or as a community support activity because they require a transportation plan.

Changes were made in §9.153(37) and §9.553(27) in the definition of "health-related tasks" for clarification that some health maintenance tasks do not require delegation.

Changes were made in §9.155(c) to clarify that an individual is not eligible for a CFC service if the individual is receiving host home/companion care, supervised living, or residential support.

Changes were made in §9.155(d) to reference the CFC eligibility criteria in §9.155(c), including the requirement that the individual is not receiving host home/companion care, supervised living, or residential support, instead of restating the criteria in §9.155(d).

Changes were made to §9.158(j)(4), §9.166(a)(1)(B) and (b)(3) to require an applicant's or individual's service planning team, if CFC PAS/HAB is included on the PDP or if the IPC needs to be revised for CFC PAS/HAB, to complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant or individual needs. The agency is requiring completion of the form to help ensure a consistent method for determining the number of CFC PAS/HAB hours an applicant or individual needs.

An editorial change was made in §9.158(k)(15)(A)(i) to delete the title of §9.155 because the title is included earlier in the section.

Changes were made in §9.158(o) and §9.567(s) to require the local intellectual and developmental disability authority (LIDDA), if CFC PAS/HAB is included on the PDP, to provide a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the selected program provider and financial management services agency (FMSA). Changes were also made to §9.166(a)(2) to require the service coordinator to send, if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the program provider and FMSA within 10 calendar days after the PDP is updated. The agency also added a requirement in §9.166(b)(3)(A)(ii) for the service coordinator to send a copy of the CFC PAS/HAB Assessment form to the program provider for review within 14 calendar days after notification that an IPC must be reviewed. The agency made the changes so the program provider and FMSA will have necessary information to carry out their responsibilities in providing services to an applicant or individual.

Changes were made in §9.158(q)(1)(A) and §9.166(a)(4)(A)(i) and (b)(3)(D)(i)(I) to clarify that the HCS program provider is not required to develop an implementation plan for transportation as a supported home living activity.

Changes were made in reformatted §9.158(q)(1) and §9.166(b)(5)(A)(ii) and (d)(4)(A) to delete "authorized" to describe an IPC. The agency made the changes because the definition of "IPC" in §9.153(48) includes that it is authorized by DADS.

Changes were made in §9.158(q)(1) and §9.166(a)(4)(A) and (b)(3)(D)(i) to state that an implementation plan for CFC

PAS/HAB is based on the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form (in addition to the PDP and IPC). The agency made the changes because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

Changes were made in §9.158(q)(2), §9.166(a)(4)(B) and (a)(7)(B), §9.168(f), §9.578(c)(2)(B), and §9.583(s)(5) to correctly use "PDP" instead of "IPC" or "proposed IPC."

Changes were made in §9.159(a) and §9.174(g)(1)(A) and (h)(1)(B) to update rule cross-references.

Changes were made in §9.159(c)(11)(A), §9.170(1)(D) and (4)(N), and §9.174(g)(1)(A) to correct the title of the Transition Assistance Services (TAS) Assessment and Authorization form.

Changes were made in §9.159(c)(12)(B) and (c)(13) and §9.170(1)(E) and (4)(O) to correct the title of the Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form.

Changes were made to add §9.159(c)(14) to state that the type and amount of CFC PAS/HAB must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the changes because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

Changes were made in §9.166(a)(3) to add that if CFC PAS/HAB is included on the PDP, the program provider and the service planning team must review the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form (in addition to reviewing the PDP). The agency made the changes to ensure that the CFC PAS/HAB Assessment form is reviewed during the process to develop the proposed renewal IPC because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

A change was made in §9.166(a)(7)(A)(iii) to require a program provider to provide CFC PAS/HAB in accordance with an implementation plan that is based on the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the change because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

Changes were made in §9.166(b)(3)(D) and (d)(2)(C)(ii) to clarify that the program provider must develop or revise a transportation plan if transportation as a supported home living activity is added to or modified on the PDP.

Changes were made in §9.170(1)(D) to add that DADS pays, if requested, a TAS service fee to an HCS program provider in accordance with the *HCS Program Billing Guidelines*. The agency made the changes to include in rule DADS current practice of paying a program provider a TAS service fee.

A change was made in §9.170(4) to move the text in (4)(B)(vii) to a new paragraph (4)(Q). The agency made the change for clarification.

A change was made in §9.174(a)(12) to clarify that the IPC for each individual is renewed or revised in accordance with §9.166 and is authorized by DADS in accordance with §9.160.

A change was made in §9.174(a)(53)(B) to add the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the documentation a program provider must maintain in an individual's record. A change was also made in §9.190(e)(5)(B) to add the

completed CFC PAS/HAB Assessment form to the documentation the service coordinator maintains for an individual. The agency made the changes to ensure a program provider and service coordinator maintain a copy of the CFC PAS/HAB Assessment form in an individual's record because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

A change was made in §9.177(b)(1)(B) to clarify that if an HCS program provider employs or contracts with a person or entity to provide CFC ERS, the person or entity must provide CFC ERS at the reimbursement rate (as opposed to the direct services portion of the HCS Program rate) unless the program provider agrees to pay a higher amount.

A change was made in §9.188(b)(4) to correct the reference to §9.153(32)(D).

A change was made in §9.190(b)(2)(A) to correct the title of §9.154.

A change was made in §9.190(e)(8)(A)(iii) to correct the title of §2.556.

Changes were made to reformat §9.555(a)(1) so the term "transportation" clearly corresponds with the reference in §9.554(e). The agency made the changes to clarify that a program provider can only provide and bill for community support if the activity provided is "transportation" and because "assistance in obtaining transportation" is provided and billed for as CFC PAS/HAB.

A change was made in §9.556(c) to reference the CFC eligibility criteria in §9.556(b) instead of restating the criteria in §9.556(c).

A change was made in §9.558(b)(2) to state that the services on an IPC must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the change for clarification because completion of this assessment form is a new requirement.

A change was made in §9.567(k) - (q) to reorganize and reformat the text so that the section contains a more accurate chronological description of steps necessary to accomplish enrollment of an applicant into the TxHmL Program.

A change was made in reformatted §9.567(k)(3)(B) to require an applicant's service planning team, if CFC PAS/HAB is included on the PDP, to complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs. The agency is requiring completion of the form to help ensure a consistent method for determining the number of CFC PAS/HAB hours an applicant needs.

A change was made to §9.567(o) to clarify that if transportation as a community support activity is included on the PDP, a transportation plan must be developed: (1) by the program provider if the individual chooses a program provider to provide transportation as a community support activity; or (2) by the service planning team if the individual chooses to receive transportation as a community support activity through the CDS option.

Changes were made to add new §9.567(s) to require the LIDDA to provide the selected program provider and FMSA, if applicable, copies of all enrollment documentation, including a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form if CFC PAS/HAB is included on the PDP. The agency made the changes so the program provider and FMSA will have the information necessary to carry out their responsibilities in providing services to an individual.

A change was made in §9.568(a)(1) to clarify that the service planning team must initiate revisions to the PDP (in addition to the IPC) in response to changes to the individual's needs and outcomes.

A change was made to §9.568(a) to require the service planning team, if CFC PAS/HAB is included on the PDP during renewal of an IPC or if a revised IPC adds or changes the amount of CFC PAS/HAB, to complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs. The agency is requiring completion of the form to help ensure a consistent method for determining the number of CFC PAS/HAB hours an individual needs.

A change was made to add new §9.568(a)(4) to require the service coordinator to send the program provider and FMSA a copy of the revised PDP, the current IPC, and if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form. The agency made the change so the program provider and FMSA will have the necessary information to carry out their responsibilities in providing services to an individual.

A change was made in §9.578(b)(1) to add the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the documentation a program provider must maintain in an individual's record. A change was also made in §9.583(e)(2) to add the completed CFC PAS/HAB Assessment form to the documentation the service coordinator maintains for an individual. The agency made the changes to ensure a program provider and service coordinator maintain a copy of the CFC PAS/HAB Assessment form in an individual's record because the CFC PAS/HAB Assessment form includes the number of CFC PAS/HAB hours an applicant or individual needs.

A change was made in §9.578(c)(2)(A) to clarify that an implementation plan is not required for CFC support management or transportation provided as a community support activity.

A change was made in §9.579(c)(2) to clarify that if a TxHmL program provider employs or contracts with a person or entity to provide CFC ERS the person or entity must provide CFC ERS at the reimbursement rate (as opposed to the direct services portion of the TxHmL Program rate) unless the program provider agrees to pay a higher amount. Other editorial changes were made to the subsection for clarification.

A change was made in §9.583(a) to state that a LIDDA must offer TxHmL Program services to an applicant instead of notifying an applicant of a TxHmL Program vacancy. A change was made in §9.583(b) to replace "requests for enrollment" with "processes enrollments." The agency made the changes to make the terminology consistent with that in §9.567. The agency also made an editorial change in §9.583(b) to delete the title of §9.567 because the title is included earlier in the section.

A change was made in §9.583(g)(2)(A)(ii) to correct the title of §9.554.

Changes were made in §9.583(h) to delete the requirement in paragraph (7) for a service coordinator to keep records pertaining to the implementation of an individual's PDP. The agency made the changes because a program provider is responsible for development and compliance with an implementation plan.

A change was made in §9.583(l)(2) to require the service coordinator, if CFC PAS/HAB is included on the PDP, to submit a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form to the program provider. The agency made the

change so the program provider will have the information necessary to carry out its responsibilities in providing CFC PAS/HAB.

A change was made in §9.583(l)(2) to delete information regarding provider requirements that is included elsewhere in the subchapter.

DADS received written comments from the Private Providers Association of Texas, the Providers Alliance for Community Services of Texas, and five individuals. A summary of the comments and the responses follows.

Comment: Two commenters asked the agency to consider making transportation a billable CFC service instead of keeping transportation as a supported home living activity or a community support activity. The commenters stated that allowing a service provider of CFC PAS/HAB to provide transportation would make the transition from supported home living and community support to CFC PAS/HAB less complicated because (1) a CFC PAS/HAB service provider who lives in the same home as the individual could provide transportation; and (2) the provider could include unanticipated trips to the store or for medical appointments and errands as part of CFC PAS/HAB as was done before in supported home living and community support.

Response: Transportation is not included as an activity for CFC PAS/HAB in §9.153(13) or §9.553(11) because it is not included in the CFC state plan amendment approved by CMS. Effective June 1, 2016, a service provider of CFC PAS/HAB may not live in the same residence as the individual. This change will be incorporated into the CFC Billing and Payment Guidelines. When this change is effective, a service provider of CFC PAS/HAB will also be able to provide transportation as a supported home living or community support activity. A program provider may include on a transportation plan hours for transportation as a supported home living or community support activity for unanticipated circumstances. If the number of hours for transportation as a supported home living or community support activity needs to be revised on the IPC and the transportation plan, the program provider must comply with the requirements in §9.166 or §9.568. The agency did not make a change in response to the comment.

Comment: A commenter stated that the description of escort services in the definition of "CFC PAS/HAB" in §9.153(13)(A)(i)(III) could lead to confusion about the difference between CFC PAS/HAB and supported home living transportation.

Response: The agency, to clarify the distinction between CFC PAS/HAB and transportation as a supported home living or community support activity, made changes to the definition of "CFC PAS/HAB" in §9.153(13) and in §9.553(11) to state that it does not include transporting the individual, which means driving the individual from one location to another.

Comment: A commenter recommended that the agency replace "traveling around and participating in the community" in the definition of "IADLs" in §9.153(39) with "community integration, including how to get around in the community" to reduce confusion about CFC PAS/HAB and supported home living transportation and to make §9.153(39) consistent with §9.153(13)(B)(vi) in the definition of "CFC PAS/HAB."

Response: The agency did not make a change in §9.153(39) or in §9.553(30) in the definition of "IADLs" because the definition of this term is consistent with the CFC state plan amendment approved by CMS.

Comment: A commenter, citing §9.153(32), stated that the definition of "good cause" is unclear and very open to subjective interpretation.

Response: In §9.153(33), the definition of "good cause" is worded broadly to allow DADS to take into consideration the variety of circumstances that may prevent a CFC ERS provider from being able to comply with the requirements in §9.174(j). The agency did not make a change in response to the comment.

Comment: A commenter expressed confusion about where an individual must live to receive transportation as a supported home living activity and to receive CFC PAS/HAB. The commenter also stated that the rules do not clearly distinguish between supported home living/transportation and CFC PAS/HAB, and do not clearly state that receipt of supported home living/transportation is limited to individuals receiving CFC services. Further, the commenter stated that referring to supported home living as an activity gives the impression that transportation is only one of many supported home living activities available to an individual without describing elsewhere what other supported home living activities are available. The commenter stated that other rules refer to supported home living as if it is the same billable service that existed prior to June 1, 2015. The commenter also stated that the definition of "transportation plan" in §9.153(101) does not state that the plan is applicable only to a person receiving CFC services or transportation as a supported home living activity. The commenter stated that because the term "transportation plan" is used throughout the rule and tied only to a supported home living activity, determining to whom the plan is available is not clear.

Response: In accordance with §9.174(a)(32) and (46), neither CFC PAS/HAB nor transportation as a supported home living activity is available to an individual who is receiving host home/companion care, supervised living, or residential support. Further, §9.170(4)(P) states that DADS does not pay for a CFC service if the service is provided to an individual receiving host home/companion care, supervised living, or residential support. Therefore, CFC PAS/HAB and transportation as a supported home living activity are not available to an individual who is receiving host home/companion care, supervised living, or residential support. To clarify the eligibility requirements for CFC services, the agency also made changes in §9.155(c) to add that an applicant or individual is eligible for a CFC service if the applicant or individual is not receiving host home/companion care, supervised living, or residential support. The rules continue to include supported home living and the list of activities that fall within its description because that information is included in the HCS waiver application. However, in accordance with §9.154(d), a program provider may only provide and bill for supported home living if the activity provided is transportation as described in §9.174(a)(33)(C). Other activities that are part of supported home living must be provided and billed as CFC PAS/HAB. In accordance with §9.158(q) and §9.166, a program provider must develop a transportation plan if transportation as a supported home living activity is included on the PDP. The agency made changes in the definition of "transportation plan" in §9.153(101) and §9.553(79), respectively, to clarify that transportation is a supported home living or community support activity.

Comment: The commenter stated that §9.153 includes definitions for almost every term in the HCS Program except for host home/companion care, supported home living/transportation,

supervised living, and residential support and suggested that the agency add in §9.153 descriptions/definitions for these terms to make it easier for a person to look for these in §9.153 and then locate the provisions where these terms are used.

Response: Although the agency added definitions in §9.153 for "cognitive rehabilitation therapy," "pre-enrollment minor home modifications," "pre-enrollment minor home modifications assessment," and "TAS--Transition Assistance Services," the agency declines to add a description of host home/companion care, supervised living, or residential support in §9.153 because §9.154(c) states that HCS Program services are defined in Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and because a description of host home/companion care, supervised living, and residential support is provided in §9.174(a). The agency will consider adding a definition in §9.153 of the HCS Program services, including supported home living/transportation, in a future rule proposal. The agency did not make a change in response to the comment.

Comment: A commenter stated it is not clear from the rules that CFC services are provided only in a person's own home or family home.

Response: Section 9.170(4)(P) states that DADS does not pay for a CFC service if the service is provided to an individual receiving host home/companion care, supervised living, or residential support. The requirement that CFC PAS/HAB and CFC ERS are available only to an individual who is not receiving host home/companion care, supervised living, or residential support is included in §9.174(a)(46) and (j)(2)(A), respectively. In response to this comment, the agency clarified this requirement in §9.174(a)(32) and made changes in §9.155(c) to add that an applicant or individual is eligible for a CFC service if the applicant or individual is not receiving host home/companion care, supervised living, or residential support.

Comment: A commenter recommended defining transportation in §9.153 or §9.154(d) as the "act of driving an individual from one place to another" because §9.154(d) specifies that a program provider may only provide and bill for supported home living if the activity is transportation. The commenter also noted that the reference in §9.154(d) to "transportation" in §9.174(a)(33)(C) also includes "securing transportation," which would likely be billable as CFC PAS/HAB. Further, the commenter requested clarification regarding the ability to bill for transportation and CFC PAS/HAB at the same time if the services are provided by different service providers.

Response: A provider may bill for CFC PAS/HAB and the supported home living activity of transportation at the same time if the services are provided by different service providers as described in the CFC Billing Guidelines, the HCS Program Billing Guidelines, and TxHmL Program Billing Guidelines. In accordance with the CFC Billing Guidelines, securing transportation is a billable activity of CFC PAS/HAB. For clarification, the agency amended the definition of CFC PAS/HAB in §9.153 to state that it does not include transporting the individual, which means driving the individual from one location to another. The agency also reformatted §9.174(a)(33) so only the term "transportation" corresponds with the reference in §9.154(d).

Comment: A commenter asked if the CFC eligibility requirement in §9.155(d)(3) for an applicant or individual receiving MAO Medicaid to receive an HCS Program service at least monthly will require unnecessary services to be added to an IPC. The

commenter expressed concerns about the monitoring and enforcement of the requirement. The commenter also stated that §9.155(d) is referenced in §9.158(j)(15)(B) but it is actually referenced in §9.155(k)(15)(B).

Response: The requirement in §9.155(d)(3) should not result in adding unnecessary services to an IPC. Each service on the IPC must meet the criteria in §9.159(c), which effectively prohibits unnecessary services from being included on the IPC. DADS will disseminate information about monitoring and enforcement processes for the requirements in §9.155(c) and (d) as those processes are developed. The agency is unclear of the commenter's concerns about the reference to §9.155(d). Section 9.155(d) is correctly referenced in §9.158(k)(14)(B)(ii) and (15)(B)(i). The agency did not make a change in response to the comment.

Comment: A commenter expressed concern regarding the difficulty of capturing in a transportation plan an adequate number of transportation hours, particularly considering the frequency of unforeseen transportation activities that may occur through a person's daily life, including social activities that do not occur on a regular basis, non-routine doctors' appointments, inconsistent work schedules, and day-to-day traffic issues such as accidents or construction that may add to transportation time.

Response: A program provider may include on a transportation plan hours for transportation as a supported home living activity for unanticipated circumstances. If the number of hours for transportation as a supported home living activity need to be revised on the IPC and the transportation plan, the program provider must comply with the requirements in §9.166. The agency did not make a change in response to the comment.

Comment: A commenter expressed concern that §9.166(a)(4)(A) states that no implementation plan is necessary for CFC support management, but in §9.166(f) CFC support management is included on the IPC.

Response: The commenter is correct that whether an individual will receive CFC support management is noted on the IPC, as described in §9.153(48), but the program provider is not required to develop an implementation plan for CFC support management. The agency clarified in the definition of "implementation plan" in §9.153(44) and §9.553(34) that an implementation plan is not required for CFC support management.

Comment: A commenter stated that references to "supported home living" not associated with supported home living transportation services should be deleted from the rules to avoid confusion. The commenter suggested that for clarity and consistency "supported home living transportation" should replace "supported home living," including in §§9.168(c), 9.170(1)(A), 9.170(2)(B), and 9.177(h) and (p). The commenter also suggested that the supported home living activities specified in §9.174(a)(33) should only be included as CFC PAS/HAB activities.

Response: Except for receiving transportation as a supported home living activity, individuals in the HCS Program must receive CFC PAS/HAB instead of supported home living because of the requirement to use non-waiver resources before using waiver resources. However, supported home living and the list of various activities that fall within its description are included in the HCS waiver application and, therefore, are still included in the rules. The agency did not make a change in response to the comment.

Comment: A commenter stated that in §9.174(j) "ERS provider" and "program provider" are used interchangeably throughout and that many of the requirements are also found in Title 40, Chapter 52 (relating to Contracting to Provide Emergency Response Services). The commenter also stated that an emergency response system was previously available to individuals in the HCS Program as an adaptive aid without the majority of the potentially administratively burdensome requirements listed in §9.174(j) for which a program provider is not being reimbursed. The commenter also recommended including language in §9.174(j) that requires the program provider to ensure that a contracted service provider of ERS complies with §9.174(j).

Response: The terms "CFC ERS provider" and "program provider" are each defined in §9.153 and are not used interchangeably in §9.174(j). The use of each term is based on the requirement being addressed. The CFC ERS requirements in §9.174(j) were derived from 40 TAC Chapter 52 and are necessary to help ensure the protection of an individual's health and welfare. The requirement for a program provider to ensure that a contractor of the program provider complies with the HCS Program rules is addressed in §49.308 of this title (relating to Subcontracts). The agency did not make a change in response to the comment.

Comment: A commenter, citing §9.174(j)(1), stated that providers of emergency response services will no longer require a license and this rule specifies that only a licensed provider may deliver CFC ERS.

Response: The agency agrees that, due to recent legislation, a personal emergency response system provider will no longer require a license in accordance with the Department of State Health Services rules in 25 TAC Chapter 140, Subchapter B, Personal Emergency Response System Providers. The agency deleted this requirement in §9.174(j)(1) and §9.578(x)(1).

Comment: A commenter stated that the training required in §9.177(d)(2) and §9.579(d)(2) appears to apply to a staff member who completes the implementation plan for HCS and TxHmL Program services as well as for CFC services. The commenter stated that while this is not a concern, if the requirement applies only to staff members who complete the implementation plan for CFC services, then this should be stated in §9.177(d)(2) and §9.579(d)(2). The commenter also stated that providers need information on where this training may be received.

Response: In response to the comment, DADS made changes in §9.177(d)(2) and §9.579(d)(2) to specify that a staff member who participates in developing an implementation plan for CFC PAS/HAB must complete person-centered service planning training approved by HHSC. These changes are consistent with the CFC state plan amendment approved by CMS. Specifics about the HHSC-approved training will be posted on the HHSC website in the future.

Comment: Three commenters expressed concern that §9.177(j)(1) and §9.579(o)(1) allow professionals, such as a licensed professional counselor, psychologist, and licensed clinical social worker who may not have adequate training and experience to provide behavioral support. The commenters also suggested allowing certain persons supervised by a board certified behavior analyst to be service providers of behavioral support instead of allowing other professionals listed in the rule who may not be as qualified to provide behavioral support.

Response: The agency's position is that a licensed professional counselor, a psychologist, and a licensed clinical social worker

are qualified to provide behavioral support. Further, the addition in §9.177(j)(1) and §9.579(o)(1), effective September 1, 2014, of a licensed professional counselor and a licensed clinical social worker as qualified service providers of behavioral support benefits individuals by helping to ensure a sufficient pool of service providers. Adding new professionals to the list of qualified providers of behavioral support is outside the scope of these rules and will require additional research. The agency did not make a change in response to the comment.

Comment: A commenter stated it is clear in both the CFC Billing Guidelines and DADS Information Letter 2015-28 that a CFC PAS/HAB service provider may live in the same residence as the individual, but the rules do not state this. The commenter suggested that the rules state that a service provider of CFC PAS/HAB may live in the same residence as the individual and state the settings in which CFC PAS/HAB may be provided. The commenter is concerned that a CFC PAS/HAB service provider who lives in the same residence as an individual is prohibited from providing supported home living transportation. The commenter also stated it is clear in both the CFC Billing Guidelines and DADS Information Letter 2015-28 that if the individual is a minor the parent or legal guardian may not be the CFC PAS/HAB provider, but the rules do not make this clear. The commenter also stated the rules do not make it clear that if an individual is an adult, the parent or legal guardian may be the individual's CFC PAS/HAB service provider.

Response: Effective June 1, 2016, a service provider of CFC PAS/HAB may not live in the same residence as the individual. This change will be incorporated into the CFC Billing and Payment Guidelines. When this change is effective a service provider of CFC PAS/HAB will also be able to provide transportation as a supported home living activity. The agency made changes in §9.177(u)(1) and §9.579(u)(1) to require a program provider to ensure that a service provider of CFC PAS/HAB is not the spouse of the individual or a parent of the individual if the individual is a minor, which is consistent with the CFC state plan amendment approved by CMS.

Comment: A commenter requested that the qualifications for a CFC PAS/HAB service provider in §9.177(u)(1)(C) and (u)(2)(B) be subjected to certain financial limitations to ensure program providers are not unduly pressured to send direct care staff to extensive training that is not reimbursable or necessary. The commenter also recommended clarification regarding whether §9.177(u)(1)(C) and (u)(2)(B) apply to backup staff of a person receiving CFC PAS/HAB.

Response: The qualifications for a CFC PAS/HAB service provider described in §9.177(u)(1)(C) and (u)(2)(B) are required by federal regulations governing CFC and the CFC state plan amendment approved by CMS. As described in §9.174(a)(58)(B)(i), a person identified in the service backup plan, if paid to provide the service, must meet the qualifications described in the HCS Program rules, including §9.177(u). The agency did not make a change in response to the comment.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §§9.151, 9.153 - 9.155, 9.158 - 9.162, 9.166, 9.168 - 9.171, 9.173, 9.174, 9.177, 9.178, 9.185, 9.188, 9.190, 9.192

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§9.153. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:
 - (A) interactions with the applicant or individual;
 - (B) availability to the applicant or individual for assistance or support when needed; and
 - (C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.
- (2) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
- (3) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.
- (4) Applicant--A Texas resident seeking services in the HCS Program.
- (5) Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:
 - (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;
 - (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
 - (C) is not addressed in a written behavior support plan; and
 - (D) does not occur during a medical or dental procedure.
- (6) Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (7) Calendar day--Any day, including weekends and holidays.

(8) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(9) CFC--Community First Choice.

(10) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(11) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(12) CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(13) CFC PAS/HAB--CFC personal assistance services/habilitation. A service that:

(A) consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(14) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(15) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS Handbook.

(16) CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(17) Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(18) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(19) Condition of a serious nature--Except as provided in paragraph (34) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(20) Contract--A provisional contract or a standard contract.

(21) CRCG--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at www.hhsc.state.tx.us.

(22) Critical incident--An event listed in the HCS Provider User Guide found at www.dads.state.tx.us

(23) DADS--The Department of Aging and Disability Services.

(24) DARS--The Department of Assistive and Rehabilitative Services.

(25) DFPS--The Department of Family and Protective Services.

(26) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(27) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(28) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(29) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(30) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(31) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(32) Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(33) Good cause--As used in §9.174(j) of this subchapter, a reason outside the control of the CFC ERS provider, as determined by DADS.

(34) GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(35) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(36) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(37) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(38) HHSC--Health and Human Services Commission.

(39) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(40) ICAP--Inventory for Client and Agency Planning.

(41) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(42) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(43) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS for LOC determination and LON assignment.

(44) Implementation Plan--A written document developed by the program provider that, for each HCS Program service, except for transportation provided as a supported home living activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented;

and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(45) Individual--A person enrolled in the HCS Program.

(46) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(47) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(48) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by DADS.

(49) IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(50) IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(51) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(52) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC, §533A.035.

(53) LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(54) LON--Level of need. An assignment given by DADS to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(55) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(56) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(57) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive SSI benefits.

(58) Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services or CFC services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(59) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(60) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(61) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(62) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(63) PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(64) Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(65) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(66) Permanency Planning Review Screen--A screen in the DADS data system, completed by a LIDDA, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(67) Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(68) Post-move monitoring visit--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(69) Pre-enrollment minor home modifications--Minor home modifications, as described in the *HCS Program Billing Guidelines*, completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(70) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the *HCS Program Billing Guidelines* to determine the need for pre-enrollment minor home modifications.

(71) Pre-move site review--As described in §17.503 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(72) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide HCS Program services, excluding an FMSA.

(73) Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(74) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(75) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(76) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *HCS Program Billing Guidelines*.

(77) Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(78) Responder--A person designated to respond to an alarm call activated by an individual.

(79) Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(80) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(81) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(82) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(83) Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(84) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(85) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(86) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(87) Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(88) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(89) SSI--Supplemental Security Income.

(90) Staff member--An employee or contractor of an HCS Program provider.

(91) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(92) State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(93) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(94) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(95) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(96) TANF--Temporary Assistance for Needy Families.

(97) TAS--Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(98) Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(99) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(100) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(101) Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation as a supported home living activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(102) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

§9.155. *Eligibility Criteria and Suspension of HCS Program Services and of CFC Services.*

(a) An applicant or individual is eligible for HCS Program services if he or she:

(1) meets the financial eligibility criteria as described in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(2) meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter (relating to LOC Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria);

(B) as determined by DADS in accordance with §9.161 of this subchapter, qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter or ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria), and has been determined by DADS:

(i) to have an intellectual disability or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)); or

(C) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter;

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the HCS Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered HCS Program services designated for a member of the reserved capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) has an IPC cost that does not exceed:

(A) \$167,468 for an applicant or individual with an LON 1, LON 5, or LON 8;

(B) \$168,615 for an applicant or individual with an LON 6; or

(C) \$305,877 for an applicant or individual with an LON 9;

(4) is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the HCS Program as identified in the Mutually Exclusive Services table in Appendix II of the HCS Handbook available at www.dads.state.tx.us;

(5) does not reside in:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a facility operated by DARS;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings; and

(6) requires the provision of:

(A) at least one HCS Program service per month or a monthly monitoring visit by a service coordinator as described in §9.190(e)(41) of this subchapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program); and

(B) at least one HCS Program service per IPC year.

(b) For applicants or individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.

(c) Except as provided in subsection (d), an applicant or individual is eligible for a CFC service under this subchapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving host home/companion care, supervised living, or residential support.

(d) To be eligible for a CFC service under this subchapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (c) of this section, receive an HCS Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring

visit by a service coordinator as described in §9.190(e)(41) of this subchapter.

(e) If an individual is temporarily admitted to one of the following settings, the individual's HCS Program services and CFC services are suspended during that admission:

- (1) a hospital;
- (2) an ICF/IID;
- (3) a nursing facility;
- (4) a residential child-care operation licensed or subject to being licensed by DFPS;
- (5) a facility licensed or subject to being licensed by the DSHS;
- (6) a facility operated by DARS;
- (7) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or
- (8) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247.

§9.158. *Process for Enrollment of Applicants.*

(a) DADS notifies a LIDDA, in writing, of the availability of HCS Program services in the LIDDA's local service area and directs the LIDDA to offer HCS Program services to an applicant:

(1) whose interest list request date, assigned in accordance with §9.157(c)(2) and (d) of this subchapter (relating to HCS Interest List), is earliest on the statewide interest list for the HCS Program as maintained by DADS; or

(2) who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA must make the offer of HCS Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The LIDDA must make the offer of HCS Program services to an applicant described in subsection (a)(2) of this section in accordance with DADS procedures.

(d) The LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of HCS Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of HCS Program services, the LIDDA terminates those services that are similar to services provided under the HCS Program; and

(2) information regarding the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of HCS Program services, the LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which

the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The LIDDA must use the Explanation of Services and Supports document, which is found at www.dads.state.tx.us;

(2) using a DADS form, provide the applicant and LAR both an oral and a written explanation of all HCS Program services and CFC services; and

(3) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at www.dads.state.tx.us, to document the applicant's choice regarding the HCS Program and ICF/IID Program.

(f) The LIDDA must withdraw an offer of HCS Program services made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of HCS Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the LIDDA in accordance with subsection (e)(3) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID Program using the Verification of Freedom of Choice, Waiver Program form;

(3) within 30 calendar days after the applicant or LAR receives the contact information for all program providers in the LIDDA's local service area in accordance with subsection (j)(3) of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form; or

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer.

(g) If the LIDDA withdraws an offer of HCS Program services made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of HCS Program services, the LIDDA must terminate those services that are similar to services provided under the HCS Program.

(i) If the LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) If the applicant or LAR accepts the offer of HCS Program services, the LIDDA must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIDDA must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA must complete an ID/RC Assessment in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The LIDDA must:

(i) perform or endorse a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS Review of LON).

(C) The LIDDA must electronically transmit the completed ID/RC Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.

(3) The LIDDA must provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area.

(4) The LIDDA must assign a service coordinator who, together with other members of the applicant's service planning team, must:

(A) develop a PDP;

(B) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs; and

(C) develop a proposed initial IPC in accordance with §9.159(c) of this subchapter (relating to IPC).

(5) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).

(k) The service coordinator must:

(1) arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(2) review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(3) ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(4) negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;

(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO; and

(B) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, DADS Transition Assistance Services (TAS) Assessment and Authorization form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each TAS identified, which must be within the service limit described in §9.192(a)(5) of this subchapter (relating to Service Limits);

(B) submit the completed form to DADS to determine if TAS is authorized;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC;

(7) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not met the maximum service limit for minor home modifications as described in §9.192(a)(3)(A) of this subchapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, DADS Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;

(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider as required by §9.174(h)(1)(A) of this subchapter (relating to Certification Principles: Service Delivery);

(iii) based on documentation provided by the program provider as required by the *HCS Program Billing Guidelines*, stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to DADS to determine if pre-enrollment minor home modification and pre-enrollment minor home modifications assessments are authorized;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by DADS on the applicant's proposed initial IPC;

(9) if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB, ensure that the initial proposed IPC includes a sufficient number of RN nursing

units for a program provider nurse to perform an initial nursing assessment unless, as described in §9.174(c) of this subchapter:

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that an unlicensed service provider will not perform a nursing task as documented on DADS form "Nursing Task Screening Tool"; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(10) if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (9) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB from the program provider, will result in the individual not receiving that service unless, as described in §9.174(d)(2) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record;

(11) ensure that the applicant or LAR signs and dates the proposed initial IPC;

(12) ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the services will be provided to the applicant;

(13) sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met;

(14) using a DADS form, provide an oral and written explanation to the applicant or LAR of:

(A) the eligibility requirements for HCS Program services as described in §9.155(a) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.155(c) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §9.155(d) of this subchapter to applicants who receive MAO Medicaid; and

(15) inform the applicant or LAR, orally and in writing:

(A) that HCS Program services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §9.155(a) of this subchapter;

(ii) the individual or LAR requests termination of HCS Program services; and

(B) if the applicant's PDP includes CFC services, that CFC services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §9.155(c) or (d) of this subchapter; or

(ii) the individual or LAR requests termination of CFC services.

(l) A LIDDA must conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning).

(m) After the proposed initial IPC is finalized and signed in accordance with subsection (k) of this section, the LIDDA must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information identical to that on the original proposed initial IPC; and

(2) submit other required enrollment information to DADS.

(n) DADS notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the DADS data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) Prior to the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed initial IPC, and the applicant's PDP, and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(p) Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, as required by §9.174(g) and (h) of this subchapter, the selected program provider must not initiate services until notified of DADS approval of the applicant's enrollment.

(q) The selected program provider must develop:

(1) an implementation plan for:

(A) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(r) The LIDDA must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of HCS Program services.

(s) Copies of the following forms referenced in this section are available at www.dads.state.tx.us:

(1) Verification of Freedom of Choice, Waiver Program form;

(2) Documentation of Provider Choice form;

(3) Deadline Notification form;

(4) Transition Assistance Services (TAS) Assessment and Authorization form; and

(5) Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form.

§9.159. IPC.

(a) A service coordinator must initiate development of a proposed initial IPC for an applicant as required by §9.158(j)(4)(C) of this subchapter (relating to Process for Enrollment of Applicants).

(b) A program provider must initiate development of a proposed renewal and proposed revised IPC for an individual as required by §9.166 of this subchapter (relating to Renewal and Revision of an IPC).

(c) An IPC must be based on the PDP and specify the type and amount of each HCS Program service and CFC service to be provided to an individual, except for CFC support management, as well as non-HCS Program and non-CFC services and supports to be provided during the IPC year. The type and amount of each HCS Program service and CFC service in the IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on DADS approved list in the *HCS Program Billing Guidelines*; and

(B) be within the service limit described in §9.192 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing \$500 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines*;

(8) if a minor home modification costing \$1,000 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines*;

(9) if dental treatment, must be within the service limit described in §9.192 of this subchapter;

(10) if respite, must be within the service limit described in §9.192 of this subchapter;

(11) if TAS, must be:

(A) supported by a Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; and

(B) within the service limit described in §9.192(a)(5)(A) or (B) of this subchapter;

(12) if pre-enrollment minor home modifications, must be:

(A) supported by a written assessment from a licensed professional if required by the *HCS Program Billing Guidelines*;

(B) supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS;

(C) within the service limit described in §9.192(a)(3)(A) of this subchapter;

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS; and

(14) if CFC PAS/HAB, must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(d) If an applicant's or individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, the service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the applicant or individual will receive support consultation, CFC support consultation instead of support consultation.

§9.166. Renewal and Revision of an IPC.

(a) Renewal of the IPC. At least annually and before the expiration of an individual's IPC, the individual's IPC must be renewed in accordance with this subsection and with DADS instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must:

(A) notify the service planning team that the individual's PDP must be reviewed and updated; and

(B) convene the service planning team to:

(i) review and update the individual's PDP; and

(ii) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs.

(2) The service coordinator, within 10 calendar days after the PDP is updated, must send the program provider and FMSA, if applicable, a copy of:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(3) The program provider must ensure that a meeting between the service planning team and the program provider occurs at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to:

(A) review the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) develop the proposed renewal IPC in accordance with §9.159(c) of this subchapter (relating to IPC), including completion of the CDS option portion of the proposed renewal IPC, if applicable, and the non-HCS Program services and non-CFC services.

(4) The program provider must develop, before the effective date of the proposed renewal IPC:

(A) an implementation plan for:

(i) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and proposed renewal IPC; and

(ii) CFC services, except for CFC support management, that is based on the individual's PDP, and proposed renewal IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(5) Within seven calendar days after development of the proposed renewal IPC as required by paragraph (3) of this subsection, the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(6) Within seven calendar days after the program provider electronically transmits the proposed renewal IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(7) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

(i) the individual's PDP;

(ii) the renewal IPC; and

(iii) if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(b) Revisions to the IPC. Except as provided in subsection (f) of this section, the service coordinator or the program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or CFC service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB:

(i) the service planning team must complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs; and

(ii) the service coordinator must send a copy of the completed form to the program provider for review;

(B) the service planning team and the program provider must develop a proposed revised IPC;

(C) the service planning team must revise the PDP, if appropriate, and if the PDP is not revised, the service coordinator must document the reasons for the proposed IPC revision;

(D) the program provider must revise:

(i) the implementation plan for:

(I) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and proposed revised IPC; and

(II) CFC services, except for CFC support management, that is based on the individual's PDP, proposed revised IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(ii) the transportation plan, if transportation as a supported home living activity is modified on the PDP or IPC; and

(E) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(4) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(5) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

(i) the individual's PDP;

(ii) the revised IPC; and

(iii) if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) the revised transportation plan, if revised in accordance with paragraph (3)(C)(ii) of this subsection.

(c) Revision of IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or CFC service or change the amount of an existing service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of the IPC.

(1) If an emergency necessitates the provision of an HCS Program service or CFC service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

(i) the circumstances that necessitated providing the new HCS Program service or CFC service or the increase in the amount of the existing HCS Program service or CFC service; and

(ii) the type and amount of the service provided;

(B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

(C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate;

(C) the program provider must:

(i) revise the implementation plan that is based on the individual's PDP and proposed revised IPC; and

(ii) develop or revise a transportation plan, if transportation as a supported home living activity is added to or modified on the PDP or IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(3) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(4) The program provider must provide HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on the individual's PDP and the revised IPC; and

(B) the transportation plan developed or revised in accordance with paragraph (2)(C)(ii) of this subsection.

(e) Submitting a proposed renewal and revised IPC to DADS. A proposed renewal or revised IPC must be submitted to DADS for authorization in accordance with this subsection.

(1) The program provider must:

(A) sign and date the proposed renewal or revised IPC demonstrating agreement that the services will be provided to the individual; and

(B) ensure that a proposed renewal or revised IPC is signed and dated by the individual or LAR.

(2) The program provider must:

(A) electronically transmit a proposed renewal or revised IPC to DADS;

(B) keep the original proposed renewal or revised IPC in the individual's record and, within three calendar days after electronic transmission, ensure the service coordinator receives a copy of the signed proposed renewal or revised IPC; and

(C) ensure the electronically transmitted proposed renewal or revised IPC contains information identical to that on the original proposed renewal or revised IPC.

(3) The service coordinator must review the electronically transmitted proposed renewal or revised IPC and:

(A) enter the service coordinator's name and date in the DADS data system;

(B) enter in the DADS data system whether the service coordinator agrees or disagrees that the requirements described in §9.159(c) of this subchapter have been met; and

(C) if the service coordinator disagrees that the requirements described in §9.159(c) of this subchapter have been met, notify the individual or LAR, the program provider, and DADS of the service coordinator's disagreement in accordance with DADS instructions.

(f) Revision of IPC to include CFC support management. If an individual or LAR requests CFC support management during an IPC year, the service coordinator or the program provider must revise the IPC as described in the HCS Handbook available at www.dads.state.tx.us.

(g) Renewal and revision of IPC when all services are through the CDS option. For an individual who is receiving all services through the CDS option and, therefore, does not have a program provider, the service coordinator must perform the functions of the program provider described in this section.

§9.168. CDS Option.

(a) If supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB is included in an applicant's PDP, and the applicant's PDP does not include residential support, supervised living, or host home/companion care, the service coordinator must:

(1) inform the applicant or LAR of the applicant's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);

(2) inform the applicant or LAR that the applicant or LAR may choose to have supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB provided through the CDS option;

(3) provide the applicant or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including a description of FMS and support consultation;

(4) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

(5) provide the applicant or LAR the opportunity to choose to participate in the CDS option and document the applicant's or LAR's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(b) If an applicant or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the applicant's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title (relating to Consumer Directed Services Option).

(c) For an individual who is receiving supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB, and is not receiving residential support, supervised living, or host home/companion care, the service coordinator must, at least annually:

(1) inform the individual or LAR of the individual's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title;

(2) provide the individual or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including FMS and support consultation;

(3) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities and Employee Qualification Requirements forms to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in the CDS option and document the individual's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(d) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title; and

(5) notify the program provider of the individual's or LAR's decision to participate in the CDS option.

(e) The service coordinator must document in the individual's PDP that the information described in subsections (c) and (d)(1) of this section was provided to the individual or LAR.

(f) If an individual's PDP includes transportation as a supported home living activity to be delivered through the CDS option, the service planning team must develop a transportation plan.

(g) For an individual participating in the CDS option, the service coordinator must recommend that DADS terminate the individual's participation in the CDS option (that is, terminate FMS and support consultation) if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health or safety; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(h) If the service coordinator makes a recommendation in accordance with subsection (g) of this section, the service coordinator must:

(1) document:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;

(C) a description of the attempts to resolve the issues before recommending termination;

(2) obtain other supporting documentation, as appropriate; and

(3) notify the program provider that the IPC needs to be revised.

(i) Within seven calendar days after notification in accordance with subsection (h)(3) of this section:

(1) the service coordinator and the program provider must comply with the requirements described in §9.166(d)(2)(A) - (D) of this subchapter (relating to Renewal and Revision of an IPC); and

(2) the service coordinator must send the documentation described in subsection (h)(1) of this section to DADS.

§9.170. Reimbursement.

Program provider reimbursement.

(1) A program provider is paid for services as described in this paragraph.

(A) DADS pays for supported home living, professional therapies, nursing, respite, employment assistance, supported employment, and CFC PAS/HAB in accordance with the reimbursement rate for the specific service.

(B) DADS pays for host home/companion care, residential support, supervised living, and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) DADS pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the *HCS Program Billing Guidelines*, which are available at www.dads.state.tx.us.

(D) DADS pays:

(i) for TAS based on a Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS and the actual cost of the TAS as evidenced by purchase receipts required by the *HCS Program Billing Guidelines*; and

(ii) if requested, a TAS service fee in accordance with the *HCS Program Billing Guidelines*.

(E) DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment as evidenced by documentation required by the *HCS Program Billing Guidelines*.

(F) Subject to the requirements in the *HCS Program Billing Guidelines*, DADS pays for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(G) DADS pays for CFC ERS based on the actual cost of the service, not to exceed the reimbursement rate ceiling for CFC ERS.

(2) If an individual's HCS Program services or CFC services are suspended or terminated the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

- (A) day habilitation;
- (B) supported home living;
- (C) respite;
- (D) employment assistance;
- (E) supported employment;
- (F) professional therapies;
- (G) nursing; and
- (H) CFC PAS/HAB.

(3) If the program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines* and other documentation as required by the *HCS Program Billing Guidelines*.

(4) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service is, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment:

(i) the service is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(ii) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(iii) the service is provided during a period of time for which the individual did not have an LOC determination;

(iv) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) of this subchapter (relating to IPC);

(v) the service is not provided in accordance with the individual's PDP or implementation plan;

(vi) the service is provided before the individual's enrollment date into the HCS Program; or

(vii) the service is not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);

(C) the service is not provided in accordance with the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(D) the program provider provides the supervised living or residential support service in a residence in which four individuals or other person receiving similar services live without DADS approval

as required in §9.188 of this subchapter (relating to DADS Approval of Residences);

(E) the service is not documented in accordance with the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(F) the claim for the service does not meet the requirements in §49.311 of this title (relating to Claims Payment) or the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(G) the program provider does not have the documentation described in paragraph (3) of this section;

(H) DADS determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

(I) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(J) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(K) the service is provided by a service provider who does not meet the qualifications to provide the service as described in the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(L) the service of host home/companion care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;

(M) the service was paid at an incorrect LON because the ID/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC Assessment;

(N) for TAS, the service is not provided in accordance with a Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS;

(O) for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, the service is not provided in accordance with a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS;

(P) for a CFC service, the service is provided to an individual receiving host home/companion care, supervised living, or residential support; or

(Q) for transportation as a supported home living activity, the service is not provided in accordance with a transportation plan.

(5) The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(6) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter, the *HCS Program Billing Guidelines*, and the *CFC Billing Guidelines for HCS*

and TxHmL Program Providers. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the HCS Program Billing Guidelines and the CFC Billing Guidelines for HCS and TxHmL Program Providers. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(7) A corrective action plan required by DADS in accordance with paragraph (6)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(8) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(9) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (6)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(10) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (7) of this section, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(11) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (10) of this section, DADS may terminate the contract.

§9.174. *Certification Principles: Service Delivery.*

(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system;

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services and CFC services;

(4) ensure that each applicant or individual, or LAR, chooses where the individual or applicant will reside from available options consistent with the applicant's or individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) of this subchapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program) and §9.189 of this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a LIDDA in conducting permanency planning:

(i) cooperate with the LIDDA responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's LIDDA, activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual:

(A) is renewed or, revised in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(B) is authorized by DADS in accordance with §9.160 of this subchapter (relating to DADS Review of a Proposed IPC);

(13) ensure that HCS Program services and CFC services identified in the individual's implementation plan and transportation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and

that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

(B) the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) there is a sufficient supply of hot water at sinks and in bathing facilities to meet the needs of individuals;

(D) the temperature of the hot water at sinks and bathing facilities does not exceed 120 degrees Fahrenheit unless the program provider, in accordance with subsection (i) of this section, conducts a competency-based skills assessment evidencing that all individuals in the residence can independently regulate the temperature of the hot water from the sinks and bathing facilities;

(E) unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(F) the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(G) unless contraindications are documented with justification by the service planning team, the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR; and

(H) the door lock installed in accordance with subparagraph (G) of this paragraph:

(i) is a single-action lock;

(ii) can be unlocked with a key from the outside of the door by the program provider; and

(iii) is not purchased and installed at the individual's or LAR's expense;

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program services and non-CFC services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that:

(A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us:

(i) audiology services;

(ii) speech/language pathology services;

(iii) occupational therapy services;

(iv) physical therapy services;

(v) dietary services;

(vi) social work services;

(vii) behavioral support; and

(viii) cognitive rehabilitation therapy; and

(B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

(i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and

(ii) has a qualified professional as described in §9.177(q) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements) provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph;

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appen-

dix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any professional therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, limited to the following categories:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities;

(D) specialized accessibility and safety adaptations or additions; and

(E) repair and maintenance of minor home modifications not covered by a warranty;

(31) ensure that nursing is provided in accordance with the individual's PDP, IPC, implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and consists of performing health care activities and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

(-a-) an oral medication;

(-b-) a topical medication; or

(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition;

(32) ensure that supported home living:

(A) is available only to an individual who is not receiving:

(i) host home/companion care;

(ii) supervised living; or

(ii) residential support; and

(B) is available to an individual who is receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, transportation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) providing transportation;

(D) securing transportation;

(E) assistance with housekeeping;

(F) assistance with ambulation and mobility;

(G) reinforcement of professional therapy activities;

(H) assistance with medications and the performance of tasks delegated by an RN;

(I) supervision of individuals' safety and security;

(J) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(K) habilitation, exclusive of day habilitation;

(34) ensure that HCS host home/companion care is provided:

(A) by a host home/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

- (C) securing and providing transportation;
- (D) assistance with housekeeping;
- (E) assistance with ambulation and mobility;
- (F) reinforcement of professional therapy activities;
- (G) assistance with medications and the performance of tasks delegated by an RN;
- (H) supervision of individuals' safety and security;
- (I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) or a three-person residence;

(B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

(C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;

(B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

(C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

(D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

(A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and:

(A) includes:

(i) training in self-help and independent living skills;

(ii) providing room and board when respite is provided in a setting other than the individual's normal residence;

(iii) assisting with:

(I) ongoing provision of needed waiver services;

and

(II) securing and providing transportation; and

(B) is only provided:

(i) to individuals who are not receiving residential support, supervised living, or host home/companion care; and

(ii) when the unpaid caregiver is temporarily unavailable to provide supports;

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care, supervised living, or residential support is provided or in a respite facility or camp, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services or CFC services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which host home/companion care is provided;

(ii) no more than three individuals receiving HCS Program services or CFC services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services or CFC services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.

(D) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(E) The program provider must not provide respite in an institution such as an ICF/IID, nursing facility, or hospital;

(44) ensure that employment assistance:

(A) is assistance provided to an individual to help the individual locate competitive employment in the community;

(B) consists of a service provider performing the following activities:

(i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(iv) transporting an individual to help the individual locate competitive employment in the community; and

(v) participating in service planning team meetings;

(C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, supported employment, or CFC PAS/HAB is provided; and

(E) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying an individual:

(I) as an incentive to participate in employment assistance activities; or

(II) for expenses associated with the start-up costs or operating expenses of the individual's business;

(45) ensure that supported employment:

(A) is assistance provided to an individual:

(i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

(ii) in order for the individual to sustain competitive employment; and

(iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(B) consists of a service provider performing the following activities:

(i) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(iii) participating in service planning team meetings;

(C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, supported employment, or CFC PAS/HAB is provided; and

(D) does not include:

(i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(ii) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(I) paying an employer:

(-a-) to encourage the employer to hire an individual; or

(-b-) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(II) paying an individual:

(-a-) as an incentive to participate in supported employment activities; or

(-b-) for expenses associated with the start-up costs or operating expenses of the individual's business;

(46) ensure that CFC PAS/HAB is available only to an individual who is not receiving host home/companion care, supervised living, or residential support;

(47) ensure that CFC PAS/HAB is provided in accordance with the individual's PDP, IPC, and implementation plan;

(48) ensure that CFC support management is provided to an individual or LAR if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management;

(49) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(50) maintain a system of delivering HCS Program services and CFC services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(51) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(52) maintain current information in the DADS data system about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(53) maintain a single record related to HCS Program services and CFC services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) a transportation plan, if one is required;

(F) documentation that describes the individual's progress or lack of progress on the implementation plan;

(G) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(H) the ID/RC Assessment;

(I) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(J) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

(K) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(L) documentation related to the suspension of an individual's HCS Program services or CFC services;

(M) for an individual under 22 years of age, a copy of the permanency plan; and

(N) documentation required by subsections (g)(2)(A) and (h)(2)(A) of this section;

(54) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (53) of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(55) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(56) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or CFC services or an individual or LAR has requested termination of all HCS Program services or all CFC services;

(57) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual;

(58) for an HCS Program service or CFC service identified on the PDP as critical to meeting the individual's health and safety:

(A) develop a service backup plan that:

(i) contains the name of the critical service;

(ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

(iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describes the actions the program provider will take to ensure the individual's health and safety;

(B) ensure that:

(i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

(C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

(i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(ii) document whether or not the plan was effective; and

(iii) revise the plan if the program provider determines the plan was ineffective;

(59) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(60) for 365 calendar days after an individual 21 years of age or older has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

(D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

(b) A program provider may suspend HCS Program services or CFC services because an individual is temporarily admitted to a setting described in §9.155(e) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(1) If a program provider suspends HCS Program services or CFC services, the program provider must:

(A) notify DADS of the suspension by entering data in the DADS data system in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services or CFC services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

(c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act

under Texas Occupations Code, Chapter 157, as documented by the physician.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (d) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

(g) The program provider must provide TAS in accordance with this subsection.

(1) The program provider must:

(A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS, as described in §9.158(k)(6)(C) of this subchapter (relating to Process for Enrollment of Applicants);

(B) purchase TAS for the applicant within the monetary amount identified on the form;

(C) deliver to the applicant the specific TAS identified on the form;

(D) ensure TAS is provided in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(E) complete the delivery of TAS at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not deliver TAS in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending TAS;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will deliver the pending TAS or specific reasons why the program provider cannot anticipate a delivery date; and

(iv) a description of the program provider's ongoing efforts to deliver the TAS; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

- (i) the applicant or LAR; and
- (ii) the service coordinator.

(3) Within one business day after the TAS has been delivered, the program provider must notify the service coordinator and the applicant or LAR that the TAS has been delivered.

(h) The program provider must provide pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment in accordance with this subsection.

(1) The program provider must:

(A) complete a pre-enrollment minor home modifications assessment in accordance with the *HCS Program Billing Guidelines*;

(B) provide pre-enrollment minor home modifications to an applicant for whom the program provider receives from the service coordinator a completed Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS, as described in §9.158(k)(8)(C) of this subchapter;

(C) provide to the applicant the specific pre-enrollment minor home modifications identified on the form;

(D) provide the pre-enrollment minor home modifications for the applicant within the monetary amount identified on the form;

(E) ensure pre-enrollment minor home modifications and pre-enrollment minor home modifications assessments are provided in accordance with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(F) complete the pre-enrollment minor home modifications at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not complete pre-enrollment minor home modifications in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending modifications;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will complete the pending modifications or specific reasons why the program provider cannot anticipate a completion date; and

(iv) a description of the program provider's ongoing efforts to complete the modifications; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

- (i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after completion of the pre-enrollment minor home modifications, the program provider must notify the service coordinator and the applicant or LAR that the modifications have been completed.

(i) If the program provider conducts the competency-based skills assessment described in subsection (a)(23)(D) of this section:

(1) the assessment must:

(A) be conducted by a staff member who is not a service provider of residential support, supervised living, or host home/companion care who works or lives in the residence;

(B) be conducted for each individual;

(C) evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance from each sink and bathing facility in the residence; and

(D) be based on a face-to-face demonstration by the individual; and

(2) the program provider must:

(A) complete the assessment at least annually;

(B) document the results of the assessment; and

(C) keep a copy of the results in the residence.

(j) CFC ERS must be provided in accordance with this subsection.

(1) A program provider must ensure that CFC ERS is provided only to an individual who:

(A) is not receiving host home/companion care, supervised living, or residential support;

(B) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(C) would otherwise require extensive routine supervision.

(2) A program provider must ensure that CFC ERS is provided in accordance with the individual's PDP, IPC, and implementation plan.

(3) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(4) At the time CFC ERS equipment is installed, a program provider must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and
(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and
(ii) contact the CFC ERS provider if:
(I) the individual's telephone number or address changes; or
(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(5) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (3) and (4) of this subsection are documented in the individual's record.

(6) A program provider must ensure that, on or before the date CFC ERS equipment is installed:

(A) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(B) public emergency personnel:

(i) is designated as a second responder if the individual provides the name of only one responder; or

(ii) is designated as the sole responder if the individual does not provide the names of any responders; and

(C) the name and telephone number of each responder is documented in the individual's record.

(7) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(8) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(9) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the service coordinator to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(10) If a system check is not conducted in accordance with paragraph (7) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) the good cause is documented in the individual's record.

(11) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(12) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(13) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the service coordinator receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraph (A) and (B) of this paragraph are maintained in the individual's record.

(14) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by paragraph (7) of this subsection:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(15) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (14) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(16) A program provider must ensure that, if the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(17) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (16) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(18) A program provider must ensure that the following information is documented in an individual's record:

(A) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(B) the equipment or subscriber number;

(C) a description of the problem;

(D) the date the equipment or battery was repaired or replaced; and

(E) the good cause for failure to comply as described in paragraphs (15)(A) and (17)(A) of this subsection.

§9.177. Certification Principles: Staff Member and Service Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service or CFC service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) unless the program provider agrees to pay a higher amount, provides the service at or below:

(i) for any service except CFC ERS, the direct services portion of the applicable HCS Program rate; and

(ii) for CFC ERS, the reimbursement rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) If a program provider contracts with a person or entity to provide TAS, the person or entity must have a contract to provide TAS in accordance with Chapter 49 of this title (relating to Contracting for Community Services).

(c) A program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) A program provider must:

(1) conduct initial and periodic training that ensures:

(A) staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(B) staff members, service providers, and volunteers are knowledgeable about the information described in §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to or prevention of an individual's access to the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who oversees the provision of HCS Program services and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing HCS Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to HCS Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

- (ii) the bylaws of the non-profit corporation; and
- (iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) meets one of the following:

(A) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(B) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(C) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(D) is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider);

(E) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(F) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(G) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.; and

(2) completes the web-based DADS HCS and TxHmL Behavioral Support Services Provider Policy Training available at www.dads.state.tx.us:

(A) before providing behavioral support services;

(B) within 90 calendar days after the date DADS issues notice to program providers that DADS revised the web-based training; and

(C) within three years after the most recent date of completion.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(n) The program provider must comply with §49.304 of this title (relating to Background Checks).

(o) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(p) If the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (o) of this section as if the contractor were the program provider.

(q) The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(t) A program provider must ensure that a service provider of TAS:

(1) is at least 18 years of age;

- (2) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;
- (3) is not a relative of the applicant;
- (4) is not the LAR of the applicant;
- (5) does not live with the applicant; and
- (6) is capable of providing TAS and complying with the documentation requirements described in §9.174(g)(2)(A) of this subchapter (relating to Certification Principles: Service Delivery).

(u) A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to:

(i) train a CFC PAS/HAB service provider in the specific assistance needed by the individual; and

(ii) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

§9.188. *DADS Approval of Residences.*

(a) A program provider must obtain DADS written approval in accordance with subsection (b) of this section before providing residential support in a four-person residence.

(b) To obtain approval of a four-person residence, the program provider must submit the following written documentation to DADS:

(1) the address and county of the residence;

(2) certification from the program provider that the program provider intends to provide residential support to one or more individuals who will live in the residence;

(3) one of the certifications required by §9.178(e)(1)(A) of this subchapter (relating to Certification Principles: Quality Assurance); and

(4) written certification from the program provider that the residence to be approved is not the residence of any person except a person permitted to live in the residence as described in §9.153(32)(D) of this subchapter (relating to Definitions).

(c) DADS notifies the program provider in writing of its approval or disapproval of the four-person residence within 14 calendar days after DADS receives the documentation specified in subsection (b) of this section.

§9.190. *LIDDA Requirements for Providing Service Coordination in the HCS Program.*

(a) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA must, in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title (relating to Consumer Directed Services Option).

(b) A LIDDA must employ service coordinators who:

(1) meet the minimum qualifications and LIDDA staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about:

(A) the HCS Program and CFC, including the requirements of this subchapter and the HCS Program services and CFC services described in §9.154 of this subchapter (relating to Description of the HCS Program and CFC); and

(B) Chapter 41 of this title.

(c) A LIDDA must have a process for receiving and resolving complaints from a program provider related to the LIDDA's provision of service coordination or the LIDDA's process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the LIDDA must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The LIDDA may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

(1) assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) provide an applicant or individual, LAR, or family member with a written copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at www.dads.state.tx.us.) and an oral explanation of such rights:

(A) upon enrollment in the HCS Program;

(B) upon revision of the booklet;

(C) upon request; and

(D) upon change in an individual's legal status (that is when the individual turns 18 years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

(A) the individual or LAR; and

- (B) the service coordinator;
- (4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the processes for filing complaints as follows:
 - (A) the telephone number of the LIDDA to file a complaint;
 - (B) the toll-free telephone number of DADS to file a complaint; and
 - (C) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;
- (5) maintain for an individual for an IPC year:
 - (A) a copy of the IPC;
 - (B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;
 - (C) a copy of the ID/RC Assessment;
 - (D) documentation of the activities performed by the service coordinator in providing service coordination; and
 - (E) any other pertinent information related to the individual;
- (6) initiate, coordinate, and facilitate person-directed planning, including scheduling service planning team meetings;
- (7) to meet the needs of an individual as those needs are identified, develop for the individual a full range of services and resources using:
 - (A) providers for services other than HCS Program services and CFC services; and
 - (B) advocates or other actively involved persons;
- (8) ensure that the PDP for an applicant or individual:
 - (A) is developed, reviewed, and updated in accordance with:
 - (i) §9.158(j)(4)(A) of this subchapter (relating to Process for Enrollment of Applicants);
 - (ii) §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and
 - (iii) §2.556 of this title (relating to LIDDA's Responsibilities);
 - (B) states, for each HCS Program service, other than supervised living and residential support, and for each CFC service, whether the service is critical to the individual's health and safety as determined by the service planning team;
- (9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 and §9.166 of this subchapter;
- (10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;
- (11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and

- (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);
 - (12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:
 - (A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and
 - (B) revise the PDP as necessary;
 - (13) provide an individual's program provider a copy of the individual's current PDP;
 - (14) monitor the delivery of HCS Program services, CFC services, and non-HCS Program and non-CFC services to an individual;
 - (15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;
 - (16) together with the program provider, ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program and non-CFC services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as described in §9.174(a)(27)(B) of this subchapter (relating to Certification Principles: Service Delivery);
 - (17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;
 - (18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;
 - (19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service or a CFC service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;
 - (20) if informed by the program provider that an individual's HCS Program services or CFC services have been suspended:
 - (A) request the program provider enter necessary information in the DADS data system to inform DADS of the suspension;
 - (B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and
 - (C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;
 - (21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):
 - (A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:
 - (i) nursing services; or
 - (ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB, if the individual needs one of those services and the program provider has

determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(e) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services);

(23) if the service coordinator determines that HCS Program services or CFC services provided to an individual should be terminated, including for a reason described in §9.158(k)(15)(A) or (B) of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written recommendation to terminate the individual's HCS Program services or CFC services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written recommendation and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services or all CFC services, the service coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services and CFC services; and

(iii) possible service resources upon termination, including CFC services through a managed care organization; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) in accordance with DADS instructions, manage the process to transfer an individual's HCS Program services and CFC services from one program provider to another or transfer from one FMSA to another, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:

(i) to receive HCS Program services and CFC services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing the individual or LAR with a list of and contact information for HCS Program providers and FMSAs in the geographic location preferred by the individual or LAR;

(26) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(27) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(34) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the LIDDA notifies the service coordinator that the LIDDA is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) request from and encourage the parent or LAR of an individual under 22 years of age requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see www.hhsc.state.tx.us for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program

for the county in which the residence is located, if the individual is less than three years of age (see <http://www.dars.state.tx.us/ecis/searchprogram.asp> to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's gender;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information;

(39) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-21 years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record;

(40) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility;

(41) have a face-to-face contact with an individual to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service unless:

(A) the individual's HCS Program services have been suspended; or

(B) the service coordinator had a face-to-face contact with the individual that month to comply with §2.556(d) of this title (relating to MRA's Responsibilities); and

(42) at least annually:

(A) using a DADS form, provide an oral and written explanation to the individual or LAR of:

(i) the eligibility requirements for HCS Program services as described in §9.155(a) of this subchapter; and

(ii) if the individual's PDP includes CFC services:

(I) the eligibility requirements for CFC services as described in §9.155(c) of this subchapter; and

(II) the eligibility requirements for CFC services as described in §9.155(d) of this subchapter to individuals who receive MAO Medicaid; and

(B) using a DADS form, provide an oral and written explanation to the individual or LAR of all HCS Program services and CFC services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600969

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

**40 TAC §§9.551, 9.553 - 9.556, 9.558, 9.567, 9.568, 9.570,
9.571, 9.573, 9.576 - 9.580, 9.583**

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§9.553. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) **ADLs--Activities of daily living.** Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(2) **Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.**

(3) **Applicant--A Texas resident seeking services in the TxHmL Program.**

(4) **Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).**

(5) **Calendar day--Any day, including weekends and holidays.**

(6) **CDS option--Consumer directed services option.** A service delivery option as defined in §41.103 of this title (relating to Definitions).

(7) **CFC--Community First Choice.**

(8) **CFC ERS--CFC emergency response services.** Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(9) **CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.**

(10) **CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.**

(11) **CFC PAS/HAB--CFC personal assistance services/habilitation.** A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(12) CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(13) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the HCS Handbook.

(14) CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(15) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(16) Condition of a serious nature--Except as provided in paragraph (24) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(17) Contract--A provisional contract or a standard contract.

(18) Critical incident--An event listed in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/txhtmlGuide.html>.

(19) DADS--The Department of Aging and Disability Services.

(20) DFPS--The Department of Family and Protective Services.

(21) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(22) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(23) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(24) Good cause--As used in §9.578 of this subchapter, a reason outside the control of the CFC ERS provider, as determined by DADS.

(25) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(26) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(27) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(28) HHSC--Health and Human Services Commission.

(29) ICAP--Inventory for Client and Agency Planning.

(30) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(31) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(32) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(33) ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(34) Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service, except for transportation provided as a community support activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(35) Individual--A person enrolled in the TxHmL Program.

(36) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(37) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by DADS.

(38) IPC cost--Estimated annual cost of program services included on an IPC.

(39) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(40) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(41) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(42) LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(43) LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(44) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(45) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(46) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(47) Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services or CFC services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(48) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(49) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(50) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(51) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(52) Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding

supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(53) PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety.

(54) Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(55) Post-move monitoring visit--As described in §17.503 of this title, a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(56) Pre-move site review--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(57) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMMSA.

(58) Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(59) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(60) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(61) Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(62) Responder--A person designated to respond to an alarm call activated by an individual.

(63) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(64) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(65) Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(66) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(67) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(68) Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

- (iv) providers of specialized services;
- (v) a nursing facility staff person who is familiar with the applicant's needs;
- (vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and
- (vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

- (i) the individual and LAR;
- (ii) service coordinator;
- (iii) a staff member of the program provider;
- (iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and
- (v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(69) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(70) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(71) Staff member--An employee or contractor of a TxHmL Program provider.

(72) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(73) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(74) System check--A test of the CFC ERS equipment to determine if:

- (A) the individual can successfully activate an alarm call; and
- (B) the equipment is working properly.

(75) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(76) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(77) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(78) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and

supports the applicant needs to transition from a nursing facility to a community setting.

(79) Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation as a community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(80) TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(81) Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

§9.555. *Description of TxHmL Program Services.*

(a) Community support provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community support provides:

(A) habilitative or support activities that:

(i) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(ii) assist an individual to develop competencies in maintaining the individual's home life;

(iii) foster improvement of or facilitate an individual's ability and opportunity to:

(I) participate in typical community activities including activities that lead to successful employment;

(II) access and use of services and resources available to all citizens in the individual's community;

(III) interact with members of the community;

(IV) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(V) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network;

(B) transportation; and or

(C) assistance in obtaining transportation.

(2) Community support, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community support does not include payment for room or board.

(4) Community support may not be provided to the individual at the same time that any of the following services are provided:

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present;
or

(D) supported employment with the individual present.

(b) Day habilitation assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life.

(1) Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver services, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day habilitation may not be provided at the same time that any of the following services are provided:

(A) respite;

(B) community support;

(C) employment assistance with the individual present;

(D) supported employment with the individual present;

or

(E) CFC PAS/HAB.

(c) Nursing provides treatment and monitoring of health care procedures ordered or prescribed by a practitioner and as required by standards of professional practice or state law to be performed by an RN or LVN. Nursing includes:

(1) administering medication;

(2) monitoring an individual's use of medications;

(3) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(4) assisting an individual or LAR to secure emergency medical services for the individual;

(5) making referrals for appropriate medical services;

(6) performing health care procedures as ordered or prescribed by a practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(7) delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(8) teaching an unlicensed service provider about the specific health needs of an individual;

(9) performing an assessment of an individual's health condition;

(10) an RN doing the following:

(A) performing a nursing assessment for each individual:

(i) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) as determined necessary by an RN, including if the individual's health needs change;

(B) documenting information from performance of a nursing assessment;

(C) if an individual is receiving a service through CDS, providing a copy of the documentation described in described in subparagraph (B) of this paragraph to the individual's service coordinator;

(D) developing the nursing service portion of an individual's implementation plan required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) in accordance with Texas Human Resources Code, Chapter 161:

(A) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) the medication is:

(I) an oral medication;

(II) a topical medication; or

(III) a metered dose inhaler;

(iii) the medication is administered to the individual for a predictable or stable condition; and

(iv) the unlicensed service provider has been:

(I) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate competitive employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment, or CFC PAS/HAB is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual;

or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain competitive employment;

(2) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, employment assistance, or CFC PAS/HAB is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(f) Behavioral support provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. Behavioral support includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive aids enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the *TxHmL Program Billing Guidelines*.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

(A) lifts;

(B) mobility aids;

(C) positioning devices;

(D) control switches/pneumatic switches and devices;

(E) environmental control units;

- (F) medically necessary supplies;
- (G) communication aids;
- (H) adapted/modified equipment for activities of daily living; and
- (I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of \$10,000 per individual per IPC year.

(3) Adaptive aids do not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor home modifications are physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications may be provided up to a lifetime limit of \$7,500 per individual. After the \$7,500 lifetime limit has been reached, an individual is eligible for an additional \$300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor home modifications do not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

- (A) purchase and repair of mobility/wheelchair ramps;
- (B) modifications to bathroom facilities;
- (C) modifications to kitchen facilities; and
- (D) specialized accessibility and safety adaptations.

(i) Dental treatment may be provided up to a maximum of \$1,000 per individual per IPC year for the following treatments:

- (1) emergency dental treatment;
- (2) preventive dental treatment;
- (3) therapeutic dental treatment; and

(4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite is provided for the relief of an unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports.

(1) Respite includes:

- (A) assistance with activities of daily living and functional living tasks;
- (B) assistance with planning and preparing meals;
- (C) transportation or assistance in securing transportation;
- (D) assistance with ambulation and mobility;
- (E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(o) of this subchapter are met, in other locations.

(k) Professional therapies provide assessment and treatment by a licensed professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) and include training and consultation with an individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are:

- (1) audiology services;
- (2) speech/language pathology services;
- (3) occupational therapy services;
- (4) physical therapy services;
- (5) dietary services;
- (6) social work services; and
- (7) behavioral support.

(l) FMS are provided if the individual's IPC includes at least one TxHmL Program service to be delivered through the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual's IPC includes at least one TxHmL Program service to be delivered through the CDS option.

§9.556. Eligibility Criteria for TxHmL Program Services and CFC Services.

(a) An applicant or individual is eligible for TxHmL Program services if:

(1) the applicant or individual meets the financial eligibility criteria as described in Appendix B of the TxHmL waiver application approved by CMS and found at www.dads.state.tx.us;

(2) the applicant or individual meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the TxHmL Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered TxHmL Program services designated for a member of the reserved capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) the applicant or individual has been assigned an LON 1, 5, 8, or 6 in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment);

(4) the applicant or individual has an IPC cost that does not exceed \$17,000;

(5) the applicant or individual is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the TxHmL Program, as identified in the Mutually Exclusive Services table in Appendix I of the HCS Handbook available at www.dads.state.tx.us;

(6) the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHmL Program over participation in the ICF/IID Program;

(7) the applicant's or individual's service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community;

(8) the applicant or individual lives in the applicant's or individual's own home or family home; and

(9) the applicant or individual requires the provision of:

(A) at least one TxHmL Program service per month or a monthly monitoring visit by a service coordinator as described in §9.583(p) of this subchapter (relating to TxHmL Program Principles for LIDDAs); and

(B) at least one TxHmL Program service per IPC year.

(b) Except as provided in subsection (c) of this section, an applicant or individual is eligible for a CFC service under this subchapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section; and

(2) requires the provision of the CFC service.

(c) To be eligible for a CFC service under this subchapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a TxHmL Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring visit by a service coordinator as described in §9.583(p) of this subchapter.

§9.558. *Individual Plan of Care (IPC).*

(a) An IPC must be developed for each applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's

needs for services and supports change, but no less than annually, in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) An IPC must be based on the PDP and specify the type and amount of each TxHmL Program service and CFC service to be provided to the individual, as well as non-TxHmL Program and non-CFC services and supports to be provided during the IPC year. The type and amount of each TxHmL Program service and CFC service in the IPC must be supported by:

(1) documentation that non-TxHmL Program and non-CFC sources for the service are unavailable and the service supplements rather than replaces natural supports or non-TxHmL Program and non-CFC services;

(2) assessments of the individual, including the DADS HCS/TxHmL CFC PAS/HAB Assessment form, that identify specific services necessary for the individual to continue living in the community, to ensure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program services and CFC services are necessary for the individual to live in the community; are necessary to prevent the individual's admission to institutional services, and are sufficient, when combined with services or supports available from non-TxHmL Program and non-CFC sources (if applicable), to ensure the individual's health and welfare in the community.

(c) Before electronic transmission to DADS, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b) of this section.

(d) DADS reviews an electronically transmitted initial, revised, or renewal IPC and approves, modifies, or does not approve the IPC.

(e) An electronically transmitted IPC must contain information identical to the information contained on the signed copy of the IPC described in subsection (c) of this section.

(f) DADS may review an IPC at any time to determine if the type and amount of each service specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to DADS in accordance with a request from DADS for documentation.

(g) If an individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, the service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the individual will receive support consultation, CFC support consultation instead of support consultation.

§9.567. *Process for Enrollment.*

(a) DADS notifies a LIDDA, in writing, of the availability of TxHmL Program services in the LIDDA's local service area and directs the LIDDA to offer TxHmL Program services to the applicant:

(1) whose interest list request date, assigned in accordance with §9.566(c)(2) or (d) of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by DADS;

(2) whose name is not coded in the DADS data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue

in an amount that would allow DADS to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA must make the offer of TxHmL Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) A LIDDA must make the offer of TxHmL Program services to an applicant described in subsection (a)(2) or (3) of this section in accordance with DADS procedures.

(d) The LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of TxHmL Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer of TxHmL Program services; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of TxHmL Program services, the LIDDA terminates those services that are similar to services provided under the TxHmL Program; and

(2) information regarding the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is available at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of TxHmL Program services, the LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at www.dads.state.tx.us;

(2) using a DADS form, provide the applicant and LAR both an oral and a written explanation of all TxHmL Program services and CFC services; and

(3) give the applicant or LAR the Verification of Freedom of Choice form, which is available at www.dads.state.tx.us to document the applicant's choice regarding the TxHmL Program and ICF/IID Program.

(f) The LIDDA must withdraw an offer of TxHmL Program services made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of TxHmL Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the Verification of Freedom of Choice form;

(3) within 30 calendar days after the applicant or LAR receives the contact information regarding all available program providers in the LIDDA's local service area in accordance with subsection (n)(1) of this section, the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form; or

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer.

(g) If the LIDDA withdraws an offer of TxHmL Program services made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of TxHmL Program services, the LIDDA must terminate those services that are similar to services provided under the TxHmL Program.

(i) If the LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) The LIDDA must retain in the applicant's record:

(1) the Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

(3) any correspondence related to the offer of TxHmL Program services.

(k) If an applicant or LAR chooses participation in the TxHmL Program, the LIDDA must compile and maintain information necessary to process the applicant's enrollment in the TxHmL Program.

(1) The LIDDA must complete an ID/RC Assessment.

(A) The LIDDA must:

(i) determine or validate a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The LIDDA must:

(A) provide names and contact information to the applicant or LAR regarding all program providers in the LIDDA's local service area;

(B) arrange for meetings or visits with potential program providers as desired by the applicant or the LAR; and

(C) ensure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or LAR, and retained by the LIDDA in the applicant's record.

(3) The LIDDA must assign a service coordinator who, together with other members of the service planning team, must:

(A) develop a PDP; and

(B) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs.

(l) The service coordinator must:

(1) in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the applicant or LAR of the applicant's right to participate in the CDS option; and

(B) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) if the applicant or LAR chooses to participate in the CDS option, comply with §9.583(s) of this subchapter (relating to TxHmL Program Principles for LIDDAs).

(m) The service coordinator must develop a proposed IPC with the applicant or LAR based on the PDP and in accordance with §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(n) If an applicant or LAR chooses to receive a TxHmL Program service or CFC service provided by a program provider, the service coordinator must review the proposed IPC with potential program providers selected by the applicant or the LAR.

(o) If transportation as a community support activity is included on the PDP, a transportation plan must be developed by:

(1) the program provider if the individual chooses a program provider to provide transportation as a community support activity; or

(2) the service planning team if the individual chooses to receive transportation as a community support activity through the CDS option.

(p) A service coordinator must:

(1) ensure that the proposed IPC includes a sufficient number of RN nursing units for the program provider's RN to perform an initial nursing assessment, unless, as described in §9.578(q) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(2) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC for the program provider's RN to perform an initial nursing assessment as required by paragraph (1) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB from the program provider, will result in the applicant not receiving the service unless, as described in §9.578(r) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record; and

(3) negotiate and finalize the proposed IPC with the selected program provider.

(q) A service coordinator must:

(1) using a DADS form, provide an oral and written explanation to an applicant or LAR of:

(A) the eligibility requirements for TxHmL Program services as described in §9.556(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.556(b) of this subchapter to applicants who do not receive MAO Medicaid;

(ii) the eligibility requirements for CFC services as described in §9.556(c) of this subchapter to applicants who receive MAO Medicaid; and

(2) provide an oral and written explanation to the applicant or LAR of:

(A) the reasons TxHmL Program services may be terminated as described in §9.570(a)(1) of this subchapter (relating to Termination and Suspension of TxHmL Program Services and CFC Services); and

(B) if the applicant's PDP includes CFC services, the reasons CFC services may be terminated as described in §9.570(a)(2) of this subchapter.

(r) After the selected program provider agrees to provide the services listed on the IPC, the LIDDA must submit enrollment information, including the completed ID/RC Assessment and the proposed IPC to DADS. DADS notifies the applicant or LAR, the selected program provider and FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter.

(s) Prior to the applicant's service begin date, the LIDDA must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed IPC, and the applicant's PDP, and if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(t) If a selected program provider initiates services before DADS notification of enrollment approval, the program provider

may not be reimbursed in accordance with §9.573(a)(5)(M) of this subchapter (relating to Reimbursement).

§9.568. *Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.*

(a) At least annually, and before the expiration of an individual's IPC, the service planning team and the program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, initiates revisions to the PDP and the IPC in response to changes in the individual's needs and identified outcomes.

(2) If CFC PAS/HAB is included on the PDP, the service planning team must complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs:

(A) at least annually and before the expiration of the individual's IPC; and

(B) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB.

(3) The service coordinator must electronically transmit annual renewals and necessary revisions of the IPC to DADS for approval and retain documentation as described in §9.567 of this subchapter (relating to Process for Enrollment) and §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(4) The service coordinator must send the program provider and FMSA, if applicable, a copy of:

(A) the revised PDP;

(B) the current IPC; and

(C) if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(b) The service coordinator must electronically transmit annual evaluations of LOC or revisions of LOC to DADS for approval in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination).

(c) A LIDDA must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must electronically transmit an ID/RC Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, before that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to DADS in accordance with §9.563 of this subchapter (relating to DADS Review of Level of Need (LON)).

(3) A LIDDA must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

(d) If an individual or LAR requests support management during an IPC year, the service coordinator or the program provider must revise the IPC as described in the HCS Handbook available at www.dads.state.tx.us.

§9.578. *Program Provider Certification Principles: Service Delivery.*

(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP and, if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form as provided by the LIDDA;

(2) a copy of the individual's current IPC as provided by the LIDDA; and

(3) a copy of the individual's current ID/RC Assessment as provided by the LIDDA.

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR;

(2) develop:

(A) in conjunction with the individual, the individual's family or LAR, an implementation plan for:

(i) TxHmL Program services, except for transportation as a community support activity; and

(ii) CFC services, except for CFC support management; and

(B) a transportation plan, if transportation as a community support activity is included on the PDP.

(d) The program provider must provide:

(1) TxHmL Program services in accordance with an individual's PDP, IPC, implementation plan, transportation plan, §9.555 of this subchapter (relating to Description of TxHmL Program Services), and Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(2) CFC services in accordance with an individual's PDP, IPC, and implementation plan.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level com-

mensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) A program provider must develop a written service backup plan for a TxHmL Program service or a CFC service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:

(A) contain the name of the service;

(B) specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

(C) in the event of a service interruption resulting in an adverse effect as described in subparagraph (B) of this paragraph, describe the actions the program provider will take to ensure the individual's health and safety.

(2) A program provider must ensure that:

(A) if the action in the service backup plan required by paragraph (1) of this subsection identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(B) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter.

(3) If a service backup plan is implemented, a program provider must:

(A) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(B) document whether or not the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(o) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services or CFC services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services or CFC services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or CFC services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) Respite must not be provided in an institution such as an ICF/IID, nursing facility, or hospital.

(p) The program provider must ensure that nursing is provided in accordance with:

(1) Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(2) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(3) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(4) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(q) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(r) If an individual or LAR refuses a nursing assessment described in §9.555(c)(10)(A) of this subchapter, the program provider must not:

- (1) provide nursing services to the individual; or
- (2) provide community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB to the individual unless:
 - (A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and
 - (B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.
- (s) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (r) of this section, the program provider must:
 - (1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and
 - (2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.
- (t) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(j)(6) of this subchapter (relating to TxHmL Program Principles for LIDDAs), the program provider must immediately send the written notification described in subsection (s) of this section to DADS.
- (u) The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.
- (v) The program provider must:
 - (1) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the TxHmL Program:
 - (A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;
 - (B) assist in the implementation of the applicant's transition plan as described in the plan; and
 - (C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and
 - (2) for 365 calendar days after an individual 21 years of age or older has enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility:
 - (A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;
 - (B) assist in the implementation of the individual's transition plan as described in the plan;
 - (C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and
 - (D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or

readmission to a nursing facility, notify the service planning team of the event or condition.

- (w) A program provider must ensure that CFC PAS/HAB is provided in accordance with the individual's PDP, IPC, and implementation plan.
- (x) CFC ERS must be provided in accordance with this subsection.
 - (1) A program provider must ensure that CFC ERS is provided only to an individual who:
 - (A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and
 - (B) would otherwise require extensive routine supervision.
 - (2) A program provider must ensure that CFC ERS is provided in accordance with the individual's PDP, IPC, and implementation plan.
 - (3) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:
 - (A) the date DADS authorizes the proposed IPC that includes CFC ERS; or
 - (B) the effective date of the individual's IPC as determined by the service planning team.
 - (4) At the time CFC ERS equipment is installed, a program provider must ensure that:
 - (A) the equipment is installed in accordance with the manufacturer's installation instructions;
 - (B) an initial test of the equipment is made;
 - (C) the equipment has an alternate power source in the event of a power failure;
 - (D) the individual is trained on the use of the equipment, including:
 - (i) demonstrating how the equipment works; and
 - (ii) having the individual activate an alarm call;
 - (E) an explanation is given to the individual that the individual must:
 - (i) participate in a system check each month; and
 - (ii) contact the CFC ERS provider if:
 - (I) the individual's telephone number or address changes; or
 - (II) one or more of the individual's responders change; and
 - (F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.
 - (5) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (4) and (5) of this subsection are documented in the individual's record.
 - (6) A program provider must ensure that, on or before the date CFC ERS equipment is installed:

(A) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(B) public emergency personnel:

(i) is designated as a second responder if the individual provides the name of only one responder; or

(ii) is designated as the sole responder if the individual does not provide the names of any responders; and

(C) the name and telephone number of each responder is documented in the individual's record.

(7) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(8) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(9) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the service coordinator to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(10) If a system check is not conducted in accordance with paragraph (7) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) the good cause is documented in the individual's record.

(11) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(12) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(13) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the service coordinator receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) written notices required by subparagraphs (A) and (B) of this paragraph is maintained in the individual's record.

(14) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by paragraph (7) of this subsection:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(15) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (14) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(16) A program provider must ensure that, if the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(17) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (16) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(18) A program provider must ensure that the following information is documented in an individual's record:

(A) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(B) the equipment or subscriber number;

(C) a description of the problem;

(D) the date the equipment or battery was repaired or replaced; and

(E) the good cause for failure to comply as described in paragraphs (15)(A) and (17)(A) of this subsection.

(y) A program provider must ensure that CFC support management is provided to an individual or LAR if:

- (1) the individual is receiving CFC PAS/HAB; and
- (2) the individual or LAR requests to receive CFC support management.

§9.579. *Certification Principles: Qualified Personnel.*

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

- (1) its operations meet necessary requirements; and
- (2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service or a CFC service if that service provider:

- (1) is qualified to provide the service;
- (2) unless the program provider agrees to pay a higher amount, provides the service at or below:
 - (A) for any service except CFC ERS, the direct services portion of the applicable TxHmL Program rate; and
 - (B) for CFC ERS, the reimbursement rate; and
- (3) contracts with or is employed by the program provider.

(d) The program provider must:

- (1) conduct initial and periodic training that ensures:
 - (A) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and
 - (B) staff members, service providers, and volunteers are knowledgeable about the information described in §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

- (A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or
- (B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

- (1) conflicts of interest between program provider personnel and an individual;
- (2) financial impropriety toward an individual;
- (3) abuse, neglect, or exploitation of an individual; and
- (4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees the provision of TxHmL Program services and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

- (1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and
- (2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

- (1) has a valid driver's license; and
- (2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that a service provider of behavioral support:

- (1) meets one of the following:
 - (A) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;
 - (B) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;
 - (C) is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider);
 - (D) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;
 - (E) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;
 - (F) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or
 - (G) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; and

(2) completes the web-based DADS HCS and TxHmL Behavioral Support Services Provider Policy Training available at www.dads.state.tx.us:

- (A) before providing behavioral support services;
- (B) within 90 calendar days after the date DADS issues notice to program providers that DADS revised the web-based training; and
- (C) within three years after the most recent date of completion.

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453;

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code, Chapter 701; and

(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.

(r) The program provider must comply with §49.304 of this title (relating to Background Checks).

(s) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(t) If the service provider of community support or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (s) of this section as if the contractor were the program provider.

(u) A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

§9.583. *TxHmL Program Principles for LIDDAs.*

(a) A LIDDA must offer TxHmL Program services to an applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(b) A LIDDA must process enrollments in the TxHmL Program in accordance with §9.567 of this subchapter.

(c) A LIDDA must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all LIDDA staff who may assist an individual or LAR in such process.

(d) A LIDDA must ensure that an individual or LAR is informed orally and in writing of the processes for filing complaints as follows:

- (1) the telephone number of the LIDDA to file a complaint;
- (2) the toll-free telephone number of DADS to file a complaint; and
- (3) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation.

(e) A LIDDA must maintain for each individual for an IPC year:

- (1) a copy of the IPC;
- (2) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;
- (3) a copy of the ID/RC Assessment;
- (4) documentation of the activities performed by the service coordinator in providing service coordination; and
- (5) any other pertinent information related to the individual.

(f) For an individual receiving TxHmL Program services and CFC services within a LIDDA's local service area, the LIDDA must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) A LIDDA must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability); and

(2) have received training about:

(A) the TxHmL Program and CFC, including:

- (i) the requirements of this subchapter;
- (ii) the CFC services as described in §9.554 of this subchapter (relating to Description of the TxHmL Program and CFC); and

(iii) the TxHmL Program services as described in §9.555 of this subchapter (relating to Description of TxHmL Program Services); and

(B) Chapter 41 of this title (relating to Consumer Directed Services Option).

(h) A LIDDA must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service or CFC service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) coordinates and develops an individual's IPC based on the individual's PDP;

(4) coordinates and monitors the delivery of TxHmL Program services and CFC services and non-TxHmL Program and non-CFC services;

(5) records each individual's progress; and

(6) develops a plan required by §9.570(c)(2) of this subchapter (relating to Termination and Suspension of TxHmL Program Services) that addresses assistance for the individual after termination of the individual's TxHmL Program services and CFC services.

(i) A LIDDA must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(j) A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(4) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(5) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(s) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, employment assistance, supported employment, respite, or CFC PAS/HAB, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(6) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(7) ensure that, if needed, the individual or LAR participates in developing a plan required by §9.570(c)(2) of this subchapter that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(8) in accordance with DADS instructions, manage the process to transfer an individual's TxHmL Program services and CFC services from one program provider to another or transfer from one FMSA to another, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:

(i) to receive TxHmL Program services and CFC services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing the individual or LAR with a list of and contact information for TxHmL Program providers and FMSAs in the geographic location preferred by the individual or LAR.

(k) When a change to an individual's PDP or IPC is indicated, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(l) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service or a CFC service from a program provider, submit to the program provider:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form

(m) A service coordinator must:

(1) review the status of an individual whose services have been suspended at least every 90 calendar days following the effective date of the suspension and document in the individual's record the reasons for continuing the suspension; and

(2) if the suspension continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the suspension status.

(n) A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (j) of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (j) of this section are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

(o) A service coordinator must conduct:

(1) a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility; and

(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(p) A service coordinator must have a face-to-face contact with an individual to provide service coordination during a month in which it is anticipated that the individual will not receive a TxHmL Program service unless:

(1) the individual's TxHmL Program services have been suspended; or

(2) the service coordinator had a face-to-face contact with the individual that month to comply with §2.556(d) of this title (relating to MRA's Responsibilities).

(q) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA must, in the provision of service coordination in the TxHmL Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title.

(r) A service coordinator must:

(1) at least annually, in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(s) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on Form 1584;

(3) document, in the individual's PDP, a description of the services provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup plan; and

(5) ensure the service planning team develops a transportation plan if an individual's PDP includes transportation as a community support activity to be delivered through the CDS option.

(t) For an individual participating in the CDS option, the LIDDA must recommend to DADS that FMS and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(u) If a LIDDA makes a recommendation under subsection (t) of this section, the local authority must:

(1) electronically transmit the individual's IPC to DADS; and

(2) in accordance with Chapter 41, Subchapter D of this title, submit documentation required by DADS in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551, Austin, Texas 78714-9030.

(v) At least annually, a service coordinator must:

(1) using a DADS form, provide an oral and written explanation to an individual or LAR of:

(A) the eligibility requirements for TxHmL Program services as described in §9.556(a) of this subchapter (relating to Eligibility Criteria for TxHmL Program Services and CFC Services); and

(B) if the individual's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.556(b) of this subchapter to individuals who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §9.556(c) of this subchapter to individuals who receive MAO Medicaid;

(2) using a DADS form, provide an oral and written explanation to an individual or LAR of all TxHmL Program services and CFC services; and

(3) using a DADS form, provide an oral and written explanation to an individual or LAR of:

(A) the reasons an individual's TxHmL Program services may be terminated as described in §9.570(a)(1) of this subchapter (relating to Termination and Suspension of TxHmL Program Services and CFC Services); and

(B) if the individual's PDP includes CFC services, the reasons CFC services may be terminated as described in §9.570(a)(2) of this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600971

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



CHAPTER 18. NURSING FACILITY ADMINISTRATORS

SUBCHAPTER A. GENERAL INFORMATION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §18.3, in Subchapter A, General Information, in Chapter 18, Nursing Facility Administrators, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8876). An amendment to §18.2 is adopted with changes to the proposed text.

The purpose of the amendment and repeal is, along with Chapter 89, to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012. The adoption amends the definition of "Nursing Facility Administrators Advisory Committee" (NFAAC) to reference new §89.6, and repeals §18.3, which describes the NFAAC.

A change was made to the order of defined terms in §18.2 to put them in alphabetical order.

DADS received no comments regarding adoption of the amendments and repeal.

40 TAC §18.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

§18.2. Definitions.

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.

(2) Administrative law judge (ALJ)--A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.

(3) Administrator--A licensed nursing facility administrator.

(4) Administrator-in-training (AIT)--A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.

(5) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the DADS' Licensing and Credentialing Section.

(6) Applicant--A person applying for a Texas nursing facility administrator license.

(7) Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.

(8) Complaint--An allegation that a licensed nursing facility administrator violated one or more of the licensure rules or statutory requirements.

(9) DADS--The Department of Aging and Disability Services.

(10) Deficiency--Violation of a federal participation requirement in a nursing facility.

(11) Domains of the NAB--The five categories for education and continuing education of the National Association of Long Term Care Administrator Boards, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(12) Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.

(13) Formal hearing--A hearing held by SOAH to adjudicate a sanction taken by DADS against a licensed nursing facility administrator.

(14) Good standing--The licensure status of a nursing facility administrator who is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by DADS.

(15) Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.

(16) Internship--The 1,000-hour training period in a nursing facility for an AIT.

(17) License--A nursing facility administrator license or provisional license.

(18) Licensee--A person licensed by DADS as a nursing facility administrator.

(19) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent.

(20) NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.

(21) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas.

(22) NCERS--The National Continuing Education Review Service, which is the part of NAB that approves and monitors continuing education activities for nursing facility administrators.

(23) Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause

mental or physical injury, harm, or death to the nursing facility resident.

(24) NFAAC--Nursing Facility Administrators Advisory Committee. The advisory committee described in §89.6 of this title (Nursing Facility Administrators Advisory Committee).

(25) Nursing facility--An institution or facility licensed by DADS as a nursing home, nursing facility, or skilled nursing facility.

(26) Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.

(27) Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.

(28) Preceptor--A licensed nursing facility administrator certified by DADS to provide supervision to an AIT.

(29) PES--Professional examination services. The testing agency that administers the NAB and state examinations to applicants seeking licensure as nursing facility administrators.

(30) Referral--A recommendation made by Regulatory Services Division staff to investigate an administrator's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations.

(31) Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.

(32) Sanctions--Any adverse licensure actions DADS imposes against a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties.

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).

(35) State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT's internship for nursing facility administrator licensure.

(36) Substandard quality of care--Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(37) Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.

(38) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600965
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 438-2430



40 TAC §18.3

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600963
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 438-2430



CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §41.103 and §41.108, in Subchapter A, Introduction; §41.211 and §41.225, in Subchapter B, Responsibilities of Employers and Designated Representatives; §41.309 and §41.323, in Subchapter C, Enrollment and Responsibilities of Financial Management Services Agencies (FMSAS); §41.505 and §41.507, in Subchapter E, Budgets, in Chapter 41, Consumer Directed Services Option, without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8535).

The adopted rules in Chapter 41 implement Community First Choice (CFC), a Medicaid state plan option governed by the

Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the waiver programs include CFC personal assistance services/habilitation (PAS/HAB), which provides services similar to services in the waiver programs, except transportation. An individual may receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option. The adopted rules address CFC PAS/HAB provided through the CDS option.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. INTRODUCTION

40 TAC §41.103, §41.108

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600973

Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER B. RESPONSIBILITIES OF EMPLOYERS AND DESIGNATED REPRESENTATIVES

40 TAC §41.211, §41.225

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600974
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER C. ENROLLMENT AND RESPONSIBILITIES OF FINANCIAL MANAGEMENT SERVICES AGENCIES (FMSAS)

40 TAC §41.309, §41.323

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human

Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600976
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER E. BUDGETS

40 TAC §41.505, §41.507

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600977



CHAPTER 42. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§42.101 - 42.105, in Subchapter A, Introduction; §§42.201, 42.212 - 42.217, 42.221 - 42.223, 42.231, 42.241 - 42.248, 42.251 and 42.252, in Subchapter B, Eligibility, Enrollment, and Review; §§42.402 - 42.405 and 42.407, in Subchapter D, Additional Program Provider Provisions; §§42.621, 42.623, 42.625, 42.626 42.628, 42.630 - 42.632, and 42.641, in Subchapter F, Service Descriptions and Requirements; and new §42.651, in Subchapter F, Service Descriptions and Requirements, in Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program. Amendments to §§42.103, 42.104, 42.201, 42.212, 42.214, 42.223, 42.403 - 42.405, 42.625, 42.626, 42.631, and new 42.651 are adopted with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8545). Amendments to §§42.101, 42.102, 42.105, 42.213, 42.215 - 42.217, 42.221, 42.222, 42.231, 42.241 - 42.248, 42.251, 42.252, 42.402, 42.407, 42.621, 42.623, 42.628, 42.630, 42.632, and 42.641 are adopted without changes to the proposed text.

The adopted rules in Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program, implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-based Services (HCS) Program, the Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the DBMD Program consist of: (1) CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of DBMD residential habilitation, except transportation; (2) CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and (3) CFC support management. The

adopted rules give an individual the option to receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option.

The adopted rules, for consistency with the DBMD waiver application, add to the eligibility criteria for DBMD Program services that an individual must require the provision of at least one DBMD Program service per month or a monthly monitoring visit by a case manager, and at least one DBMD Program service per IPC period. The adopted rules require a case manager, for a month in which the case manager does not meet with an individual or LAR as required by §42.223(a) of this chapter (relating to Periodic Review and Update of IPC and IPP), to have a face-to-face or telephone contact with the individual or LAR or other persons acting on behalf of the individual, such as an advocate or family member, to provide case management to help ensure the individual's continued eligibility for the DBMD Program.

The adopted rules also require a case manager to ensure that the service planning team develops a transportation plan when an individual's IPC includes transportation as a residential habilitation activity or as an adaptive aid. The transportation plan helps ensure that the transportation hours requested are the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

Changes were made in §42.103(18) to delete the reference to §42.651(a) because licensure as a personal emergency response system provider or contracting with such a provider is no longer a requirement.

Changes were made in §42.103(20) to clarify that CFC PAS/HAB does not include transporting the individual and to clarify that "transporting" means driving the individual from one location to another.

A change was made in §42.104(e) to correct the title of §42.626.

A change was made in §42.201(b) to add that not receiving licensed assisted living or licensed home health assisted living is a CFC eligibility criteria. The agency made the changes because an individual receiving either of those DBMD Program services is not eligible for CFC services.

A change was made in §42.201(c) to clarify that the subsection sets forth the CFC eligibility criteria for an individual receiving MAO Medicaid.

Changes were made in §42.212(k)(3)(A) and §42.223(a)(4)(C)(i), (b)(2)(A)(iii)(I), and (d)(1)(B)(i) to change "or" to "and" because, in each case, two provisions must be followed if they both apply.

Changes were made in §42.214(a)(2) and §42.405(a)(11) regarding the IPC and transportation to be consistent with the wording used in similar rules.

Changes were made in §42.223(a)(4)(A), (b)(2)(A)(i), (b)(2)(B)(i), and (d)(1)(A) and in §42.404(f)(3) to correct rule cross-references.

A change was made in §42.403(m) to require a program provider to ensure that a staff member who is responsible for developing the IPP for CFC PAS/HAB completes person-centered service planning training approved by HHSC. The change clarifies the staff members who are required to complete the training.

A change was made in §42.405(a)(11) to correct the name of the waiver service "residential habilitation."

Changes were made in §42.625(a) and §42.631(a)(3) to correct the title of §42.402.

Changes were made to §42.626(b)(1)(A)(ii) to clarify that §42.104(e) is referencing transportation and to distinguish "transportation" from "assistance in securing transportation."

A change was made in §42.631(a)(3) to change the reference from §42.201(i) to §42.201 because there are qualifications for a respite service provider in §42.201 that are in addition to those in §42.201(i).

A change was made in §42.651 to delete subsection (a), which required a program provider or a contractor of the program provider to have a license as a personal emergency response system provider issued by the Department of State Health Services in accordance with 25 TAC Chapter 140, Subchapter B. The agency made the change because Health and Safety Code, Chapter 781, regarding licensure of personal emergency response system providers was repealed by Senate Bill 202 (84th Texas Legislature, Regular Session, 2015) and, therefore, licensure as a personal emergency response system provider is no longer available. DADS received written comments from the Texas Association for Home Care and Hospice. A summary of the comments and the responses follows.

Comment: Regarding §42.103(20), a commenter suggested that the definitions of "habilitation" and "personal assistance services" should be consistent with the definitions in Texas Government Code, §534.001, and the HCSSA license rules.

Response: The definition in §42.103(20) of "CFC PAS/HAB--CFC personal assistance services/habilitation," which contains the terms "personal assistance services" and "habilitation" is derived from the approved Texas State Plan Amendment and does not conflict with the definition of "personal assistance services" or "habilitation" in Health and Safety Code, §142.001, or the definition of "habilitation services" in Government Code, §534.001. The agency did not make a change in response to this comment.

Comment: Regarding §42.103(23), a commenter stated there is potential hazard posed to a direct service worker from the change to the definition of "chore services" that includes "heavy household chores and moving heavy items/furniture." The commenter requested that this be removed so that the definition matches the CLASS definition of chore service (i.e., limited to "household chores necessary to maintain the home in a clean, sanitary, and safe environment").

Response: These rules changed the definition of "chore services" in §42.103(23) to distinguish between the "chore services" offered under the DBMD waiver and the "household chores necessary to maintain the home in a clean, sanitary, and safe environment" included in §42.103(20) in the definition of "CFC PAS/HAB" offered under the Medicaid state plan. The definition of "CFC PAS/HAB" in §45.103(21) governing CLASS program providers also includes "household chores necessary to maintain the home in a clean, sanitary, and safe environment." The CLASS Program does not offer chore services as a waiver service so the term "chore services" is not defined in the CLASS rules. These rules added examples of chore services in §42.103(23) that duplicate the examples given in the current §42.622(a), which includes heavy household chores, such as moving heavy items of furniture. Section 42.622(c)(1)(B) requires a DBMD program provider to ensure that a person pro-

viding chore services can perform household tasks. The agency did not change the definition in response to this comment.

Comment: Regarding §42.103(44), a commenter stated that health maintenance activities (HMAs) do not need to be delegated by a registered nurse (RN) so the definition of "health-related tasks" is misleading. The commenter asked that it be changed to "These include tasks delegated by an RN and HMAs that do not require delegation as defined in 22 TAC §225.4 (relating to Definitions)."

Response: Health maintenance activities, as defined in 22 TAC §225.4, may be exempt from delegation or may require delegation, depending on an RN assessment. For clarification, the agency made a change in §42.103(44) to include HMAs that may not require delegation as an example of "health-related tasks."

Comment: Regarding §42.103(60), a commenter asked if a home and community support services agency (HCSSA) is considered "licensed home health assisted living." If so, the commenter asked if "attendants" are required to have cardiopulmonary resuscitation (CPR) and first aid training.

Response: "Licensed home health assisted living" is a DBMD Program service that, as defined in §42.103(60), is a service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence. A "service provider," as defined in §42.103(94), is a person who provides a DBMD Program service or CFC service directly to an individual and who is an employee or contractor of a program provider. A program provider providing licensed home health assisted living must ensure, in accordance with §42.403(b), that a service provider who provides services directly to an individual in a residence where licensed home health assisted living is provided has current documentation of completion of hands-on skills training in CPR, first aid, and choking prevention. The agency did not make a change in response to the comment.

SUBCHAPTER A. INTRODUCTION

40 TAC §§42.101 - 42.105

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.103. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's service planning team, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring

(3) Adaptive aid--An item or service (including a medically necessary supply or device) that enables an individual to retain or increase the ability to:

(A) perform activities of daily living; or

(B) perceive, control, or communicate with the environment in which the individual lives.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R); or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(7) Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(8) ALF--Assisted living facility. An entity required to be licensed under the Texas Health and Safety Code, (THSC), Chapter 247, Assisted Living Facilities.

(9) Behavioral emergency--A situation in which an individual is acting in an aggressive, destructive, violent, or self-injurious manner that poses a risk of death or serious bodily harm to the individual or others.

(10) Behavioral support--Formerly referred to as "behavior communication," a service that provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life, with a particular emphasis on communication as it affects behavior.

(11) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(12) Calendar day--Any day, including weekends and holidays.

(13) Case management--Services that assist an individual to gain access to needed waiver and other state plan services, as well as needed medical, social, education, and other services, regardless of the funding source for the services.

(14) Case manager--A service provider who is responsible for the overall coordination and monitoring of DBMD Program services and CFC services provided to an individual.

(15) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(16) CFC--Community First Choice.

(17) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(18) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(19) CFC FMS--The term used for FMS on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(20) CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing activities of daily living and instrumental activities of daily living based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(21) CFC support consultation--The term used for support consultation on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(22) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the *DBMD Provider Manual*.

(23) Chore services--Services, other than CFC PAS/HAB household chores, needed to maintain a clean, sanitary, and safe environment in an individual's home that consist of heavy household chores, such as washing floors, windows and walls, securing loose rugs and tiles, and moving heavy items or furniture.

(24) CMS--The Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(25) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(26) Contract--A provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(27) DADS--The Department of Aging and Disability Services.

(28) DAHS--Day Activity and Health Services. Day activity and health services as defined in §98.2 of this title (relating to Definitions).

(29) DBMD Program--The Deaf Blind with Multiple Disabilities Waiver Program.

(30) DBMD Program specialist--Employee in DADS state office who is the primary contact for the DBMD Program.

(31) Deafblindness--A chronic condition in which a person:

(A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

(B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(32) Denial--A DADS action that disallows:

(A) an individual's request for enrollment in the DBMD Program;

(B) a DBMD Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) a portion of the amount or level of a DBMD Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(33) Dental treatment--A service that provides the following services, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of DADS website at www.dads.state.tx.us):

(A) therapeutic, orthodontic, routine preventive, and emergency treatment; and

(B) sedation.

(34) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(35) DFPS--Department of Family and Protective Services.

(36) Dietary services--A therapy service that:

(A) assists an individual to meet basic or special therapeutic nutritional needs through the development of individual meal plans; and

(B) is provided by a person licensed in accordance with Texas Occupations Code, Chapter 701, Dietitians.

(37) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(38) FMS--Financial management services. Services, as defined in §41.103 of this title provided to an individual participating in the CDS option.

(39) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS to an individual participating in the CDS option.

(40) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(41) Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(42) Good cause--As determined by DADS, a reason outside the control of the CFC ERS provider.

(43) HCSSA (Home and community support services agency)--An entity required to be licensed under THSC, Chapter 142, Home and Community Support Services.

(44) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(45) HHSC--Texas Health and Human Services Commission.

(46) Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(47) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(48) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(49) ID/RC Assessment (Intellectual Disability/Related Condition Assessment)--An assessment conducted to determine if an individual meets the diagnostic eligibility criteria for the DBMD Program.

(50) Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(51) Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(52) Institutional services--Services provided in an ICF/IID or a nursing facility.

(53) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(54) Intervener--A service provider with specialized training and skills in deafblindness who, working with one individual at a time, serves as a facilitator to involve an individual in home and community services and activities, and who is classified as an "Intervener",

"Intervener I", "Intervener II", or "Intervener III" in accordance with Texas Government Code, §531.0973.

(55) IPC--Individual Plan of Care. A written plan developed by an individual's service planning team using person-centered planning and documented on a DADS form that:

(A) meets:

(i) the criteria in §42.201(a)(5) of this chapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services); and

(ii) the requirements described in §42.214(a)(1) and (b)(1) - (6) of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).

(56) IPP--Individual Program Plan. A written plan documented on a DADS form and completed by an individual's case manager that describes the goals and objectives for each DBMD Program service and CFC service, other than CFC support management, included on the individual's IPC.

(57) IPC period--The effective period of an IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of service approved by DADS until the first calendar day of the same month of the effective date of service in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC.

(58) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(59) Licensed assisted living--A service provided in a residence licensed in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) for four to six individuals.

(60) Licensed home health assisted living--A service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence.

(61) LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(62) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(63) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(64) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body. The term does not include a protective device.

(65) Medicaid--A program funded jointly by the states and the federal government that provides medical benefits to groups of

low-income people, some who may have no medical insurance or inadequate medical insurance.

(66) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(67) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(68) Military family member--A person who is the spouse or child (regardless of age) of:

- (A) a military member; or
- (B) a former military member.

(69) Minor home modifications--Physical adaptation to an individual's residence necessary to address the individual's specific needs and enable the individual to function with greater independence or control the residence's environment.

(70) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(71) Nursing--Treatments and health care procedures provided by an RN or LVN that are:

- (A) ordered by a physician; and
- (B) provided in compliance with:
 - (i) Texas Occupations Code, Chapter 301, Nurses;

and

(ii) rules at Texas Board of Nursing at Texas Administrative Code (TAC), Title 22, Part 11, Texas Board of Nursing.

(72) Nursing facility--A facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(73) Occupational therapy--Services that:

(A) address physical, cognitive, psychosocial, sensory, and other aspects of performance to support an individual's engagement in everyday life activities that affect health, wellbeing, and quality of life; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 454, Occupational Therapists.

(74) Orientation and mobility--Service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

(75) Person-centered planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of an IPC that meets the individual's outcomes. The process:

- (A) identifies existing supports and services necessary to achieve the individual's outcomes;
- (B) identifies natural supports available to the individual and negotiates needed services and supports;
- (C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and
- (D) accommodates the individual's style of interaction and preferences regarding time and setting.

(76) Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(77) Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

(78) Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

- (A) the free movement or normal functioning of all or a part of the individual's body; or
- (B) normal access by an individual to a portion of the individual's body.

(79) Physical therapy--Services that:

- (A) prevent, identify, correct, or alleviate acute or prolonged movement dysfunction or pain of anatomic or physiologic origin; and
- (B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 453, Physical Therapists.

(80) Physician--As defined in §97.2 of this title (relating to Definitions), a person who is:

- (A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;
- (B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(81) Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide DBMD Program services, excluding an FMSA.

(82) Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

- (A) used only:
 - (i) to protect an individual from injury; or
 - (ii) for body positioning of the individual to ensure health and safety; and
- (B) not used to modify or control behavior.

(83) Psychoactive medication restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(84) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(85) Reduction--A DADS action taken as a result of a review of a revision or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(86) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(87) Respite--Services provided on a short-term basis to an individual because of the absence or need for relief of an individual's unpaid caregiver.

(88) Responder--A person designated to respond to an alarm call activated by an individual.

(89) Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a psychoactive medication restraint.

(90) Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations or activities, or restricts an individual's rights, including a restraint, a protective device, and seclusion.

(91) RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(92) Seclusion--A restrictive intervention that is the involuntary separation of an individual away from other individuals in an area that the individual is prevented from leaving.

(93) Service planning team--A team convened and facilitated by a DBMD Program case manager for the purpose of developing, reviewing, and revising an individual's IPC. The team consists of:

(A) the individual;

(B) if applicable, the individual's LAR or an actively involved person;

(C) the DBMD Program case manager;

(D) except as described in subparagraph (E) of this paragraph, the program director or a RN designated by the program provider;

(E) if the DBMD Program case manager and program director are the same person, a RN designated by the program provider, in addition to the DBMD Program case manager;

(F) other persons whose inclusion is requested by the individual, LAR, or actively involved person; and

(G) other persons selected by the program provider who are:

(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(94) Service provider--A person who provides a DBMD Program service or a CFC service directly to an individual and who is an employee or contractor of a program provider.

(95) Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(96) Speech, language, audiology therapy--Services that:

(A) address the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

(97) Specialized nursing--Nursing provided to an individual who has a tracheostomy or is dependent on a ventilator.

(98) SSA--Social Security Administration.

(99) SSI--Supplemental Security Income.

(100) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(101) Support consultation--A service, as defined in §41.103 of this title, that may be chosen by an individual who chooses to participate in the CDS option.

(102) Supported employment--Assistance provided, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(103) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(104) TAC--Texas Administrative Code.

(105) TAS--Transition Assistance Services. Services provided to a Medicaid-eligible person receiving institutional services in

Texas to assist with setting up a household when transitioning from institutional services into the DBMD Program.

(106) TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(107) Transfer--The movement of an individual from a DBMD Program provider or a FMSA to a different DBMD Program provider or FMSA.

(108) Transportation plan--A written plan, based on person-centered planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation will be delivered to support an individual's desired goals and objectives for transportation identified in the IPP.

(109) Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.

§42.104. Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC.

(a) The Deaf Blind with Multiple Disabilities (DBMD) Program is a Medicaid waiver program. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program.

(b) DADS operates the DBMD Program under the authority of HHSC.

(c) DADS limits the enrollment in the DBMD Program to the number of individuals approved by CMS and funded by the State of Texas.

(d) The DBMD Program offers the following services approved by CMS:

- (1) adaptive aids;
- (2) assisted living:
 - (A) licensed assisted living; and
 - (B) licensed home health assisted living;
- (3) behavioral support;
- (4) case management;
- (5) chore services;
- (6) day habilitation;
- (7) dental treatment;
- (8) dietary services;
- (9) employment assistance;
- (10) intervener;
- (11) minor home modifications;
- (12) nursing;
- (13) occupational therapy;
- (14) orientation and mobility;
- (15) physical therapy;
- (16) residential habilitation;
- (17) respite;
- (18) speech, language, audiology therapy;
- (19) supported employment;

(20) TAS; and

(21) if the individual's IPC includes at least one DBMD Program service to be delivered through the CDS option:

- (A) FMS; and
- (B) support consultation.

(e) A program provider may only provide and bill for residential habilitation if the activity provided is transportation as described in §42.626(b)(1)(A)(ii)(I) of this chapter (relating to Day Habilitation, Residential Habilitation, and CFC PAS/HAB).

(f) CFC is a state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to an individual:

- (1) CFC PAS/HAB;
- (2) CFC ERS; and
- (3) CFC support management for an individual receiving CFC PAS/HAB.

(g) A program provider with a contract enrollment date on or after September 1, 2009, must serve all counties within a DADS region.

(h) A program provider with a contract enrollment date before September 1, 2009, may continue to serve only the counties specified in its contract. If such a program provider chooses to provide services in additional counties, the program provider does not have to serve all the counties within the DADS region.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600978
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW

DIVISION 1. ELIGIBILITY

40 TAC §42.201

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct

Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.201. *Eligibility Criteria for DBMD Program Services and CFC Services.*

(a) An individual is eligible for DBMD Program services if:

(1) the individual meets the financial eligibility criteria as described in Appendix B of the DBMD Program waiver application approved by CMS and found at www.dads.state.tx.us;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual, as documented on an ID/RC Assessment form:

(A) has one or more diagnosed related conditions and, as a result:

(i) has deafblindness;

(ii) has been determined to have a progressive medical condition that will result in deafblindness; or

(iii) functions as a person with deafblindness; and

(B) has one or more additional disabilities that result in impairment to independent functioning;

(4) the individual's related conditions, as described in paragraph (3)(A) of this section, manifested before the individual became 22 years of age;

(5) the individual has an IPC with a cost for DBMD Program services at or below \$114,736.07;

(6) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the *DBMD Provider Manual* available at www.dads.state.tx.us;

(7) the individual does not reside in:

(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, Convalescent and Nursing Homes and related Institutions;

(C) an ALF, unless it provides licensed assisted living in the DBMD Program;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a residential facility operated by the Texas Youth Commission; or

(G) a jail or prison;

(8) at least one program provider is willing to provide DBMD Program services to the individual;

(9) the individual resides or moves to reside in a county served by a program provider; and

(10) the individual requires the provision of:

(A) at least one DBMD Program Service per month or monthly monitoring; and

(B) at least one DBMD Program Service during an IPC period.

(b) Except as provided in subsection (c) of this section, an individual is eligible for a CFC service under this chapter if the individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving licensed assisted living or licensed home health assisted living.

(c) To be eligible for a CFC service under this chapter, an individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a DBMD Program service at least monthly, as required by 42 CFR §441.510(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600979

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 2. ENROLLMENT PROCESS

40 TAC §§42.212 - 42.217

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.212. *Process for Enrollment of an Individual.*

(a) A program provider, after notification by DADS that an individual designated the program provider on a completed Documentation of Provider Choice form, must assign a case manager to the individual.

(b) The program provider must ensure that the assigned case manager contacts the individual or LAR within five business days after the program provider receives the DADS notification. During the initial contact, the case manager must:

(1) verify that the individual resides in a county for which the program provider has a contract;

(2) determine if the individual is currently enrolled in Medicaid;

(3) determine if the individual is currently enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the DBMD Program, as identified in the Mutually Exclusive Services table in Appendix V of the *DBMD Provider Manual* available at www.dads.state.tx.us; and

(4) arrange with the individual and LAR for an initial face-to-face, in-home visit to occur as soon as possible but no later than 30 calendar days after the program provider receives the DADS notification.

(c) During the initial face-to-face, in-home visit, the case manager must:

(1) provide an oral and written explanation to the individual or LAR of:

(A) DBMD Program services, including TAS if the individual is receiving institutional services;

(B) CFC services;

(C) the eligibility requirements for:

(i) DBMD Program services as described in §42.201(a) of this subchapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services);

(ii) CFC services as described in §42.201(b) of this subchapter to individuals who do not receive MAO Medicaid; and

(iii) CFC services as described in §42.201(c) of this subchapter to individuals who receive MAO Medicaid;

(D) the reasons DBMD Program services and CFC services may be terminated as described in §§42.244 - 42.247 of this chapter (relating to Termination of DBMD Program Services and CFC Services With Advance Notice Due to Ineligibility or Leave from the State, Termination of DBMD Program Services and CFC Services With Advance Notice Due to Non-compliance with Mandatory Participation Requirements, Termination of DBMD Program Services and CFC Services Without Advance Notice, and Termination of DBMD Program Services and CFC Services Without Advance Notice Due to Behavior Causing Immediate Jeopardy);

(E) the individual's rights and responsibilities, including the right to request a Medicaid Fair Hearing as described in §42.251 of this chapter (relating to Individual's Right to a Fair Hearing);

(F) the mandatory participation requirements as described in §42.252 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(G) the procedures for an individual or LAR to file a complaint regarding a DBMD Program provider;

(H) the CDS option as described in §42.217 of this chapter (relating to Consumer Directed Services (CDS) Option);

(I) the voter registration process, if the individual is 18 years of age or older;

(J) how to contact the program provider, the case manager, and the RN;

(K) that the individual or LAR may request the provision of residential habilitation, case management, nursing, out-of-home respite in a camp, adaptive aids, intervener services, or CFC PAS/HAB while the individual is temporarily staying at a location outside the contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days; and

(L) procedures for reporting an allegation of abuse, neglect, and exploitation;

(2) if possible:

(A) complete an adaptive behavior screening assessment or ensure an appropriate professional completes the adaptive behavior screening assessment; and

(B) ensure an RN completes a nursing assessment using the DADS CLASS/DBMD Nursing Assessment form;

(3) complete the ID/RC Assessment form; and

(4) obtain the signature of the individual or LAR on:

(A) the Verification of Freedom of Choice form designating the individual's choice regarding enrollment in the DBMD Program over enrollment in the ICF/IID Program; and

(B) DADS Release of Information Consent form or a similar form developed by the program provider.

(d) If one or both of the assessments described in subsection (c)(2) of this section is not completed during the initial face-to-face, in-home visit, the case manager must ensure that the assessment is completed within 10 business days after the date of the initial face-to-face, in-home visit.

(e) If an individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, the case manager must determine whether the individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS as described in §62.5(e) of this title (relating to Service Description);

(3) the individual's proposed enrollment IPC does not include licensed assisted living or licensed home health assisted living; and

(4) the individual anticipates needing TAS as described in §62.5(e) of this title.

(f) If the case manager determines that an individual meets the criteria described in subsection (e) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the service delivery area in which the individual will reside;

(2) complete, with the individual or LAR, the Transition Assistance Services (TAS) Assessment and Authorization form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(A) identifying the TAS the individual needs as described in §62.5(e) of this title; and

(B) estimating the monetary amount for each TAS identified, which must be within the service limit described in §62.5(d) of this title;

(3) submit the completed form to DADS for authorization;

(4) send the form authorized by DADS to the selected TAS provider; and

(5) include the TAS and the monetary amount authorized by DADS on the individual's enrollment IPC as described in §42.214 of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)).

(g) The program provider must:

(1) gather and maintain the information necessary to process the individual's request for enrollment in the DBMD Program using forms prescribed by DADS in the *DBMD Provider Manual*;

(2) assist the individual who does not have Medicaid financial eligibility or the individual's LAR to:

(A) complete an application for Medicaid financial eligibility; and

(B) submit the completed application to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit;

(3) document in the individual's record any problems or barriers the individual or LAR encounters that may inhibit progress towards completing:

(A) the application for Medicaid financial eligibility; and

(B) enrollment in DBMD Program services; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(h) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (g)(2)(B) of this section as a result of problems or barriers documented in subsection (g)(3) of this section but is making progress in collecting the documentation necessary for an application, the program provider may grant one or more 30 calendar day extensions.

(1) The program provider must ensure the case manager documents the rationale for an extension in the individual's record.

(2) The program provider must not issue an extension that will cause the period of Medicaid application preparation to exceed 12 months after the date of the case manager's initial face-to-face, in-home visit.

(3) The program provider must notify DADS DBMD program specialist in writing if the individual or LAR:

(A) fails to submit a completed Medicaid application to HHSC within 12 months after the date of the case manager's initial face-to-face, in-home visit; or

(B) does not cooperate with the case manager in completing the enrollment process described in this section.

(i) A program provider must ensure:

(1) the related conditions documented on the ID/RC Assessment form for the individual are on DADS Approved Diagnostic

Codes for Persons with Related Conditions list contained in the *DBMD Provider Manual*;

(2) the ID/RC Assessment is submitted to a physician for review; and

(3) the DADS Prior Authorization for Dental Services form is sent to a dentist as described in the *DBMD Provider Manual* if the individual or LAR requests dental services other than an initial dental exam.

(j) After receiving the signed and dated ID/RC Assessment from the physician establishing that the individual meets the eligibility criteria described in §42.201(a)(3) and (4) of this subchapter, the case manager must:

(1) convene a service planning team meeting within 10 business days after receipt of the signed and dated ID/RC Assessment; and

(2) if a DADS Prior Authorization for Dental Services form was submitted to a dentist as described in subsection (i)(3) of this section, ensure that the signed and completed form is available for the service planning team to review.

(k) During the service planning team meeting, the case manager must ensure:

(1) if the individual or LAR is requesting dental services other than an initial dental exam, the DADS Prior Authorization for Dental Services form has been signed by the dentist as described in §42.624(b) of this chapter (relating to Dental Treatment);

(2) an enrollment IPC is developed as described in §42.214 of this chapter; and

(3) if:

(A) the enrollment IPC includes transportation as a residential habilitation activity or as an adaptive aid, the service planning team develops a transportation plan; and or

(B) the enrollment IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB:

(i) the service planning team determines whether the individual requires a service backup plan in accordance with §42.407 of this chapter (relating to Service Backup Plans); and

(ii) that a service backup plan is developed if needed.

(l) Within ten business days after the service planning team meeting, the case manager must:

(1) complete an enrollment Individual Program Plan (IPP) as described in §42.215 of this chapter (relating to Development of Enrollment Individual Program Plan (IPP));

(2) submit a request for enrollment to DADS for review as described in §42.216 of this chapter (relating to DADS Review of Request for Enrollment) that includes the following:

(A) a copy of the completed enrollment IPC;

(B) a copy of the ID/RC Assessment form signed by a physician;

(C) a copy of the completed enrollment IPP;

(D) a copy of the adaptive behavior screening assessment;

(E) a copy of the Related Conditions Eligibility Screening Instrument form;

(F) a copy of the DBMD Summary of Services Delivered form (for pre-assessment services) with supporting documentation;

(G) a copy of the Verification of Freedom of Choice, Waiver Program form;

(H) a copy of the Non-Waiver Services form;

(I) a copy of the Documentation of Provider Choice form;

(J) a copy of the DADS CLASS/DBMD Nursing Assessment form; and

(K) if applicable:

(i) Prior Authorization for Dental Services form;

(ii) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(iii) Provider Agency Model Service Backup Plan form;

(iv) Specialized Nursing Certification form;

(v) copies of letters of denial from non-waiver resources;

(vi) TAS Assessment and Authorization; and

(vii) a copy of the transportation plan;

(3) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC, the enrollment IPP, and if completed, the transportation plan to the FMSA; and

(4) keep the original ID/RC Assessment, signed by a physician, in the individual's record.

(m) Within five business days after receiving a written notice from DADS approving or denying the individual's request for enrollment, the program provider must notify the individual or LAR of DADS decision. If DADS:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services and CFC services as described on the IPC; or

(2) denies the request for enrollment, the program provider must send the individual or LAR a copy of DADS written notice of denial.

(n) The program provider must not provide DBMD Program services or CFC services to an individual until notified by DADS that the individual's request for enrollment is approved. If a program provider provides DBMD Program services or CFC services to an individual before the effective date of service approved by DADS, DADS does not reimburse the program provider for those services.

(o) Within ten business days after receiving a written notice from DADS approving the individual's request for enrollment, the program provider must provide to the individual or LAR a copy of the approved enrollment IPC and IPP, and if a service backup plan is needed, a copy of the service backup plan.

§42.214. *Development of Enrollment Individual Plan of Care (IPC).*

(a) A program provider must ensure that an individual's case manager convenes a service planning team meeting in which the service planning team:

(1) develops an enrollment IPC that:

(A) identifies the type of each DBMD Program service and CFC service, other than CFC support management, to be provided to the individual;

(B) specifies the number of units of:

(i) each DBMD Program service to be provided to the individual; and

(ii) each CFC service, other than CFC support management, to be provided to the individual; and

(C) does not exceed the service limits described in:

(i) Subchapter F, Divisions 1 - 3, of this chapter (relating to Service Descriptions and Requirements) if the enrollment IPC includes adaptive aids, minor home modifications, dental treatment, and respite;

(ii) Subchapter F, Division 5, of this chapter if the enrollment IPC includes CFC ERS; or

(iii) §62.5(d) of this title (relating to Service Description) if the enrollment IPC includes TAS;

(D) specifies the frequency of each DBMD Program service and CFC service, other than CFC support management, to be provided to the individual;

(E) states if the individual will receive CFC support management;

(F) if the individual will receive TAS, includes the TAS and monetary amount authorized by DADS in accordance with §42.212(f)(5) of this chapter (relating to Process for Enrollment of an Individual);

(G) includes an effective date of service that:

(i) is at least 10 business days after submission of the enrollment IPC to DADS as described in §42.212(l)(2) of this chapter; and

(ii) does not overlap with the end date of another Medicaid waiver program or another DADS-operated program described in the *DBMD Provider Manual*, other than DAHS, in which the individual may have been enrolled; and

(H) identifies whether the individual needs a service backup plan for residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services critical to the individual's health and safety;

(2) if the IPC includes transportation as a residential habilitation activity or as an adaptive aid, develops a transportation plan; and

(3) identifies the individual's non-waiver resources using the Non-Waiver Services form.

(b) A program provider must ensure that the DBMD Program services and CFC services, other than CFC support management, on the enrollment IPC:

(1) are necessary to protect the individual's health and welfare in the community;

(2) address at least one of the individual's related conditions or the additional disability that impairs independent functioning;

(3) supplement rather than replace the individual's natural supports and other non-waiver services and supports for which the individual is eligible;

(4) prevent the individual's admission to an institution;

(5) are the most appropriate type and amount of DBMD Program services and CFC services to meet the individual's needs; and

(6) are cost effective.

(c) A program provider must:

(1) ensure that the enrollment IPC is signed and dated by each member of the service planning team;

(2) submit a request for enrollment to DADS as described in §42.212(1)(2) of this subchapter; and

(3) maintain the original of the enrollment IPC in the individual's record.

(d) A program provider must maintain the following in the individual's record and provide copies to DADS upon request:

(1) current data obtained from standardized evaluations and formal assessments to support the individual's diagnoses in accordance with §42.201(a)(3) and (4) of this chapter (relating to Eligibility Criteria for DBMD Program Services and CFC Services);

(2) documentation, including assessments of the individual, that support the DBMD Program services and CFC services recommended on the IPC; and

(3) documentation that no other sources are available for DBMD Program services or CFC services recommended on the IPC.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600980

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 3. REVIEW

40 TAC §§42.221 - 42.223

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules

for the proper and efficient operation of the medical assistance program.

§42.223. *Periodic Review and Update of IPC and IPP.*

(a) Case manager's review.

(1) Beginning the effective date of service of an individual's IPC, as determined in accordance with §42.216(i) of this subchapter (relating to DADS Review of Request for Enrollment), a case manager must, in accordance with the schedule in the *DBMD Provider Manual*, meet face-to-face with the individual or LAR at a time and place acceptable to the individual or LAR to:

(A) review whether the DBMD Program services and CFC services are being provided as outlined in the IPC and IPP;

(B) review the individual's progress toward achieving the goals and objectives described in the IPP for each DBMD Program service and CFC service;

(C) determine if the services are meeting the individual's needs;

(D) determine if the individual's needs have changed;

(E) review assessments, evaluations, and progress notes prepared by service providers since the previous review;

(F) if the individual's IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB, and none of these services are identified as critical to the individual's health and safety, discuss with the individual or LAR whether any of these services may now be critical to the individual's health and safety and needs a service backup plan; and

(G) if a service backup plan for residential habilitation, nursing, specialized nursing services, or CFC PAS/HAB has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine if the plan was effective.

(2) A case manager must:

(A) document the results of the review in the individual's record using the IPP review form;

(B) document on the IPP review form for an individual who has a service backup plan if the service backup plan was:

(i) implemented;

(ii) effective; and

(iii) revised by the service planning team to address any problems or concerns regarding implementation of the service backup plan; and

(C) provide a copy of the completed IPP review form to the individual or LAR within 10 business days after the date of the review.

(3) A case manager must convene a service planning team meeting within five business days after the date of a meeting described in paragraph (1) of this subsection if the case manager:

(A) identifies needed changes in the individual's services; or

(B) determines that residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services may now be critical to the individual's health and safety, as described in paragraph (1)(F) of this subsection, or that the service backup plan was ineffective, as described in paragraph (1)(G) of this subsection.

(4) During a service planning team meeting described in paragraph (3) of this subsection, a case manager must:

(A) develop a revision IPC that meets the requirements described in §42.214(b)(1) - (6) of this subchapter (relating to Development of Enrollment Individual Plan of Care (IPC));

(B) develop a revision IPP that meets the requirements described in §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter (relating to Development and Enrollment Individual Program Plan (IPP)); and

(C) if:

(i) the revision IPC includes transportation as a residential habilitation activity or as an adaptive aid, develop a transportation plan; and

(ii) the revision IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter (relating to Service Backup Plans).

(5) A case manager must:

(A) ensure the revision IPC is signed and dated by each member of the service planning team; and

(B) within 10 business days after the date of the service planning meeting, submit to DADS:

(i) a copy of the completed revision IPC;

(ii) a copy of the revision IPP;

(iii) a copy of the most recent IPC approved by DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications form;

(II) Prior Authorization for Dental Services form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(IV) Provider Agency Model Service Backup Plan form;

(V) Specialized Nursing Certification form;

(VI) an adaptive behavior screening assessment; and

(VII) a copy of the transportation plan.

(6) DADS reviews a revision IPC in accordance with §42.221 of this division (relating to Utilization Review of IPC by DADS) and may request additional assessments and supporting documentation related to the individual's diagnosis.

(7) If DADS requests the information described in paragraph (6) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.

(8) Within 10 business days after receiving a written notice from DADS authorizing services on a revision IPC, a case manager must:

(A) provide to the individual or LAR a copy of the revision IPC and revision IPP, and any new or revised service backup plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the revision IPC, the revision IPP, and if completed, the transportation plan to the FMISA.

(9) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on the revision IPC have been authorized by DADS.

(b) Annual review by the service planning team.

(1) Within 90 calendar days before the end of an IPC period:

(A) an individual's case manager must convene a service planning team meeting to review the IPC and IPP; and

(B) an RN must complete an annual nursing assessment of the individual using the DADS CLASS/DBMD Nursing Assessment form.

(2) During the service planning team meeting:

(A) the service planning team must:

(i) develop a renewal IPC in accordance with §42.214(b)(1) - (6) of this subchapter and renewal IPP in accordance with §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter;

(ii) complete a renewal ID/RC Assessment in accordance with the *DBMD Provider Manual*;

(iii) if:

(I) the renewal IPC includes transportation as a residential habilitation activity or as an adaptive aid, develop a transportation plan; and

(II) the renewal IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter; and

(iv) ensure the renewal IPC is signed and dated by each member of the service planning team; and

(B) the case manager must:

(i) provide an oral and written explanation of the topics described in §42.212(c)(1)(A) - (L) of this subchapter (relating to Process for Enrollment of an Individual) to the individual or LAR;

(ii) orally explain to the individual or LAR that the individual may transfer to a different program provider;

(iii) give the individual or LAR the Documentation of Provider Choice form for the DADS region in which the individual resides;

(iv) orally explain to the individual or LAR that the individual may request a service planning team meeting to discuss the reason the provider declined the request to provide services outside the program provider's contracted service delivery area; and

(v) have documentation that the activities required under clauses (i) - (iv) of this subparagraph were performed.

(3) A case manager must, within 10 business days after the date of the service planning team meeting, but at least 30 calendar days before the end of the current IPC period, submit to DADS:

(A) a copy of the completed renewal IPC;

(B) a copy of the most recent IPC approved by DADS;

(C) a copy of the ID/RC Assessment;

- (D) a copy of the renewal IPP;
 - (E) a copy of the Related Conditions Eligibility Screening Instrument;
 - (F) a copy of the Non-Waiver Services form;
 - (G) a copy of the Documentation of Provider Choice form;
 - (H) a copy of the DADS CLASS/DBMD Nursing Assessment form; and
 - (I) if applicable:
 - (i) an adaptive behavior screening assessment if the last assessment occurred five years prior or if significant changes have occurred;
 - (ii) Specifications for Minor Home Modifications form;
 - (iii) Prior Authorization for Dental Services form;
 - (iv) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;
 - (v) Provider Agency Model Service Backup Plan form;
 - (vi) Specialized Nursing Certification form; and
 - (vii) a copy of the transportation plan.
- (4) DADS:
- (A) reviews:
 - (i) a renewal IPC in accordance with §42.221 of this division; and
 - (ii) a renewal ID/RC Assessment in accordance with §42.222 of this division (relating to Annual Review and Reinstatement of Lapsed Diagnostic Eligibility); and
 - (B) may request additional assessments and supporting documentation related to the individual's diagnosis.
- (5) If DADS requests the information described in paragraph (4)(B) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.
- (6) Within 10 business days after receiving a written notice from DADS authorizing services on a renewal IPC, a case manager must:
- (A) provide to the individual or LAR a copy of the renewal IPC and renewal IPP, and any new or revised service backup plan; and
 - (B) if the individual will receive a service through the CDS option, send a copy of the renewal IPC, the renewal IPP, and if completed, the transportation plan to the FMSA.
- (7) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on a renewal IPC have been authorized by DADS.
- (c) Review and revision in an emergency.
- (1) If a program provider delivers a DBMD Program service or CFC PAS/HAB to an individual in an emergency to ensure the individual's health and welfare and the service is not on the IPC and IPP or exceeds the amount on the IPP, a case manager must:

- (A) within five business days after providing the service, convene a service planning team meeting to review and revise the IPC in accordance with §42.214(b)(1) - (6) of this subchapter and a revision IPP in accordance with §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter and include on the revision IPP, documentation of how the requested services addressed the emergency;
 - (B) if the revision IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter;
 - (C) ensure the revision IPC is signed and dated by each member of the service planning team; and
 - (D) within 10 business days after the service planning meeting, submit to DADS:
 - (i) a copy of the completed revision IPC;
 - (ii) a copy of the revision IPP;
 - (iii) a copy of the most recent IPC approved by DADS; and
 - (iv) if applicable:
 - (I) Specifications for Minor Home Modifications form;
 - (II) Prior Authorization for Dental Services form;
 - (III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;
 - (IV) Provider Agency Model Service Backup Plan form;
 - (V) Specialized Nursing Certification form; and
 - (VI) an adaptive behavior screening assessment.
- (2) DADS:
- (A) reviews the revision IPC in accordance with §42.221 of this division; and
 - (B) may request additional assessments and supporting documentation related to the individual's diagnosis.
- (3) If DADS requests the information described in paragraph (2)(B) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.
- (4) Within ten business days after receiving a written notice from DADS authorizing services on a revision IPC, a case manager must provide to the individual or LAR a copy of the revision IPC and revision IPP, and any new or revised service backup plan.
- (5) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on the revision IPC have been authorized by DADS.
- (d) Review and revision other than the reviews described in subsections (a) - (c) of this section.
- (1) If a program provider becomes aware at any time during an individual's IPC period that changes to the individual's services may be necessary, the individual's case manager must:
- (A) within five business days after becoming aware that changes to the individual's services may be necessary, convene a service planning team meeting to review and, if determined necessary, revise an IPC in accordance with §42.214(b)(1) - (6) of this subchapter

and IPP in accordance with §42.215(2)(A) - (D) and (3)(A) - (G) of this subchapter;

(B) if:

(i) the revision IPC includes transportation as a residential habilitation activity or as an adaptive aid, develop a transportation plan; and

(ii) the revision IPC includes residential habilitation, nursing, specialized nursing, or CFC PAS/HAB services, ensure compliance with §42.407 of this chapter;

(C) ensure the revised IPC is signed and dated by each member of the service planning team; and

(D) within 10 business days after the date of the service planning meeting, submit the following to DADS:

- (i) a copy of the completed revision IPC;
- (ii) a copy of the revision IPP;
- (iii) a copy of the most recent IPC approved by

DADS; and

(iv) if applicable:

(I) Specifications for Minor Home Modifications

form;

(II) Prior Authorization for Dental Services

form;

(III) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

Plan form;

(IV) Provider Agency Model Service Backup

(V) Specialized Nursing Certification form;

(VI) an adaptive behavior screening assessment;

and

(VII) a copy of the transportation plan.

(2) DADS:

(A) reviews the revision IPC in accordance with §42.221 of this division; and

(B) may request additional assessments and supporting documentation related to the individual's diagnosis.

(3) If DADS requests the information described in paragraph (2)(B) of this subsection, a case manager must submit the information to DADS within 10 calendar days after the date of the request.

(4) Within 10 business days after receiving a written notice from DADS authorizing services on the revision IPC, a case manager must:

(A) provide to the individual or LAR a copy of the revision IPC and revision IPP, and any new or revised service backup plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the revision IPC, the revision IPP, and if completed, the transportation plan to the FMSA.

(5) A program provider must electronically access the Medicaid Eligibility Service Authorization Verification (MESAV) to verify that the services on the revision IPC have been authorized by DADS.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600981

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 4. TRANSFER BETWEEN PROGRAM PROVIDERS

40 TAC §42.231

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600982

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 5. DENIAL, SUSPENSION, REDUCTION, AND TERMINATION

40 TAC §§42.241 - 42.248

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600983
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



DIVISION 6. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §42.251, §42.252

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600984
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS

40 TAC §§42.402 - 42.405, 42.407

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.403. Training.

(a) A program provider must ensure that a program director and all service providers complete a general orientation curriculum before assuming job duties and annually while holding the position of program director or service provider. The general orientation curriculum must include training on:

- (1) the rights of an individual;
- (2) confidentiality;
- (3) abuse, neglect, and exploitation;
- (4) the program provider's complaint process; and

(5) the DBMD Program and CFC, including the requirements of this chapter and the DBMD Program services and CFC services specified in §42.104 of this chapter (relating to Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC).

(b) A program provider must ensure that, before assuming job duties, a program director, an intervener, and a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, residential habilitation, respite, and supported employment completes and has current documentation of completion of hands-on skills training in:

- (1) cardiopulmonary resuscitation (CPR);
- (2) first aid; and

(3) choking prevention.

(c) A program provider must:

(1) ensure that a service provider required to complete hands-on skills training in accordance with subsection (b) of this section periodically updates hands-on skills training in accordance with guidelines of the training organization; and

(2) maintain a copy of current training documentation in the service provider's file.

(d) A program provider must ensure that a person who is a program director or case manager completes, within six months after assuming job duties:

(1) the DBMD Program case management training provided by DADS or training developed by the program provider that addresses the following elements from the DADS DBMD Program case management curriculum;

(A) the DBMD Program service delivery model:

provider;

(i) the role of the case manager and DBMD Program

(ii) the role of the service planning team;

(iii) person-centered planning; and

(iv) the CDS option;

(B) DBMD Program services, including how these services:

(i) complement other Medicaid services;

(ii) supplement family supports and non-waiver services available in the individual's community; and

(iii) prevent institutionalization;

(C) DBMD Program process and procedures for:

(i) eligibility and enrollment;

(ii) service planning, service authorization, and program plans;

(iii) access to non-waiver resources; and

(iv) complaint procedures and the fair hearing process; and

(D) rules, policies, and procedures about:

(i) prevention of abuse, neglect, and exploitation of an individual;

(ii) reporting abuse, neglect, and exploitation to local and state authorities; and

(iii) financial improprieties toward an individual; and

(2) the Service Provider Curriculum required by DADS as described in subsection (e) of this section, if providing direct services to an individual.

(e) A program provider must ensure an intervener and a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, nursing, specialized nursing, residential habilitation, respite, and supported employment:

(1) completes, within 90 calendar days after assuming job duties, the Service Provider Training provided by DADS or training

developed by the program provider that addresses the following elements from the DADS Service Provider Training curriculum:

(A) methods and strategies for communication;

(B) active participation in home and community life;

(C) orientation and mobility;

(D) behavior as communication;

(E) causes and origins of deafblindness; and

(F) vision, hearing, and the functional implications of deafblindness; and

(2) who has not completed the Service Provider training is accompanied at all times while providing services to an individual by a service provider who has completed Service Provider Training.

(f) A program provider must ensure an intervener and a service provider of licensed assisted living, licensed home health assisted living, day habilitation, employment assistance, residential habilitation, respite, and supported employment, before providing direct services to an individual, annually, and when the individual's needs change, completes specific training that includes:

(1) the special needs of the individual, including the individual's:

(A) methods of communication;

(B) specific visual and audiological loss; and

(C) adaptive aids; and

(2) managing challenging behavior, including training in:

(A) prevention of aggressive behavior; and

(B) de-escalation techniques; and

(3) instruction in the individual's home with full participation by the individual, LAR, or other involved persons, as appropriate, concerning the specific tasks to be performed.

(g) If a program provider develops training based on DADS curriculum as described in subsections (d)(1) or (e)(1) of this section, the program provider must ensure that the instructor who delivers the training has completed the appropriate training provided by DADS.

(h) The program provider must ensure a service provider performing a delegated task is:

(1) trained to perform the delegated task in accordance with state law and rules:

(A) before providing direct services to an individual;

(B) annually; and

(C) when the individual's needs change; and

(2) supervised by a physician or nurse in accordance with state law and rules.

(i) The program provider must document the training described in subsections (d) and (e) of this section by a certificate or form letter that includes the:

(1) name of the person who received the training;

(2) date(s) the training was completed; and

(3) name of the person certifying the completion of the course.

(j) A program provider must ensure compliance with the training and training documentation requirements described in §42.408(c)(8) and (9) of this subchapter (relating to Protective Devices).

(k) A program provider must ensure compliance with the training and training documentation requirements described in §42.409(d)(3) of this subchapter (relating to Restraints).

(l) If requested by an individual or LAR, a program provider must:

(1) allow the individual or LAR to:

(A) train a CFC PAS/HAB service provider in the specific assistance needed by the individual; and

(B) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

(m) A program provider must ensure that a staff member who is responsible for developing the IPP for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(1) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(2) within two years after hire, if the staff member is hired after June 1, 2015.

§42.404. Service Delivery.

(a) A program provider must ensure that:

(1) a full-time case manager is assigned to provide case management services to no more than 30 individuals or other persons receiving services through another Medicaid waiver at one time;

(2) a part-time case manager is assigned to provide case management services to no more than 15 individuals or other persons receiving services through another Medicaid waiver at one time; and

(3) for a month in which a case manager does not meet with an individual or LAR as required by §42.223(a) of this chapter (relating to Periodic Review and Update of IPC and IPP), the case manager has a face-to-face or telephone contact with the individual, LAR, primary caregiver, or actively involved family members and friends, to provide case management.

(b) In determining the number of individuals or other persons receiving services through another Medicaid waiver at one time to whom a case manager will be assigned, the program provider must take into consideration:

(1) the intensity of needs of each individual or person;

(2) the frequency and duration of contacts the case manager will need to make with the individual or person; and

(3) the amount of travel time involved in making such contacts.

(c) A program provider must have:

(1) a sufficient number of case managers available at all times to ensure the provision of case management services; and

(2) a written process that ensures a case manager can readily become familiar with an individual to whom the case manager is

not ordinarily assigned but to whom the case manager may be required to provide case management services.

(d) A program provider must have written policies and procedures that ensure backup service providers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to deliver services.

(e) A program provider must provide each DBMD Program service and CFC service authorized in an individual's IPC in accordance with:

(1) the individual's current IPC;

(2) the individual's current IPP; and

(3) the requirements in this chapter.

(f) A program provider must:

(1) provide or ensure the provision of each DBMD Program service listed in §42.104(d) of this chapter (relating to Description of Deaf Blind with Multiple Disabilities (DBMD) Waiver Program and CFC);

(2) provide the assisted living service as either licensed assisted living or licensed home health assisted living in accordance with §42.630 of this chapter (relating to Residential Services);

(3) provide or ensure the provision of each CFC service listed in §42.104(f)(1) - (3) of this chapter; and

(4) ensure that CFC support management is provided to an individual or LAR as described in the DBMD Provider Manual if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management.

(g) A program provider must offer an individual choices and opportunities for accessing and participating in community activities, including employment opportunities and experiences available to peers without disabilities, and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's IPC and IPP.

(h) A program provider may accept or decline the request of an individual or LAR for the provision of residential habilitation, nursing, out-of-home respite in a camp, case management, adaptive aids, intervener services, or CFC PAS/HAB to the individual while the individual is temporarily staying at a location outside the program provider's contracted service delivery area but within the state of Texas.

(i) If the program provider accepts the request of an individual or LAR, as described in subsection (h) of this section, the program provider:

(1) may provide residential habilitation, nursing, out-of-home respite in a camp, adaptive aids, intervener services, CFC PAS/HAB, and case management services as described in §42.623(a)(2) - (4)(A), (B), and (D) of this chapter (relating to Case Management) as well as by telephone contact with the individual;

(2) must document in the service delivery log:

(A) that the individual is receiving services outside the program provider's contracted service delivery area;

(B) the location where the individual is receiving the services;

(C) the estimated length of time the individual is expected to be outside the program provider's contracted service delivery area; and

(D) contact information for the individual or LAR;

(3) must, if the individual receives services outside the program provider's contracted service delivery area for 30 consecutive days, inform the individual or LAR, on or before the 35th day, that:

(A) to ensure the continued provision of the services, the individual must do one of the following before the 61st day:

(i) transfer to a program provider that has a contracted service delivery area that includes the area in which the individual is receiving the services; or

(ii) return to the program provider's contracted service delivery area; and

(B) if the individual receives services outside the program provider's contracted service delivery area during a period of 60 consecutive days, the individual must return to the contracted service delivery area and receive services in that area before the program provider may accept another request from the individual or LAR for the provision of the services outside the program provider's contracted service delivery area; and

(4) must, if the individual expresses a desire for the individual to transfer to a program provider that has a contracted service delivery area that includes the area in which the individual is receiving services:

(A) give the individual and LAR the Documentation of Provider Choice form for the contracted service delivery area in which the individual is receiving the services;

(B) have the individual or LAR select a program provider and designate that selection on the Documentation of Provider Choice form; and

(C) coordinate the individual's transfer in accordance with §42.231 of this chapter (relating to Coordination of Transfers).

(j) If the program provider declines the request of an individual or LAR as described in subsection (h) of this section, the program provider must:

(1) inform the individual or LAR orally or in writing:

(A) of the reasons for declining the request; and

(B) that the individual may request a service planning team meeting to discuss the reasons for declining the request; and

(2) document the discussion and the final outcome if the service planning team meeting is held.

(k) If a program provider or case manager is unable to meet a timeframe specified in this chapter, it must be for a reason not directly caused by the program provider or case manager, or for a reason beyond the program provider's or case manager's control, such as a man-made or natural disaster. The program provider or case manager must document the program provider's or case manager's efforts to meet a timeframe and maintain the documentation in the individual's record. The documentation must include:

(1) the reason the timeframe could not be met, which must be beyond the program provider's or case manager's control; and

(2) a description of the program provider's or case manager's ongoing efforts to meet a timeframe.

§42.405. *Recordkeeping Requirements.*

(a) A program provider must ensure that an individual's record includes the following:

(1) the individual's current IPC and each revision IPC for the current IPC period;

(2) the individual's current IPP and each revision IPP for the current IPC period;

(3) the individual's current ID/RC Assessment and the last ID/RC Assessment signed by a physician or, if applicable, the last level of care form signed by a physician;

(4) current adaptive behavior screening assessment;

(5) Summary of Services Delivered form completed as described in the *DBMD Provider Manual*;

(6) any other relevant documentation supporting services on the IPC;

(7) documentation of the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed to include:

(A) assessments, evaluations, and progress notes submitted to a case manager by a service provider for review in accordance with §42.223(a)(1)(E) of this chapter (relating to Periodic Review and Update of IPC and IPP);

(B) the IPP reviews for the current IPC period prepared by a case manager in accordance with §42.223(a)(2) of this chapter; and

(C) for day habilitation, residential habilitation, and CFC PAS/HAB, the individual's progress or lack of progress in achieving the following outcomes:

(i) the ability to effectively communicate the individual's wants and needs to a day habilitation, residential habilitation, or CFC PAS/HAB service provider;

(ii) the ability to actively participate in activities of daily living to the extent of the individual's ability;

(iii) the ability to implement the individual's choices;

(iv) the ability to access and participate in community activities; and

(v) the ability to move safely and efficiently within the day habilitation, residential habilitation, or CFC PAS/HAB setting.

(8) the Verification of Freedom of Choice form designating the individual's or LAR's choice regarding enrollment in the DBMD Program over enrollment in the ICF/IID Program;

(9) the Documentation of Provider Choice form documenting the individual's or LAR's choice of a program provider;

(10) if applicable, any new or revised Provider Agency Model Service Backup Plan form for residential habilitation, nursing, specialized nursing, or CFC/PAS HAB for the current IPC period;

(11) if the IPC includes transportation as a residential habilitation activity or as an adaptive aid, a copy of the individual's transportation plan;

(12) if a protective device is used, the documentation required by §42.408 of this subchapter (relating to Protective Devices); and

(13) if a restraint is used, the documentation required by §42.409 of this subchapter (relating to Restraints).

(b) In addition to the requirements in subsection (a) of this section, a program provider must ensure a service provider documents service activities in the individual's record, including:

- (1) the date, the time service activities begin and end, and the duration of contact;
- (2) the type of contact (phone or face to face);
- (3) the person with whom the contact occurred;
- (4) a description of the service activities provided, unless the service activity provided is a non-delegated task provided by an unlicensed service provider that is documented on the IPP; and
- (5) the signature and title of the service provider.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600985

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



SUBCHAPTER F. SERVICE DESCRIPTIONS AND REQUIREMENTS

DIVISION 3. REQUIREMENTS FOR OTHER DBMD PROGRAM SERVICES

40 TAC §§42.621, 42.623, 42.625, 42.626, 42.628, 42.630 - 42.632

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.625. *Employment Services.*

(a) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment meets the qualifications described in §42.402(g) of this chapter (relating to Qualifications of Program Provider Staff).

(b) Before including employment assistance on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(c) The program provider must ensure that employment assistance:

(1) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and found at www.dads.state.tx.us;

(3) is not provided to an individual with the individual present at the same time that one of the following services is provided:

(A) day habilitation;

(B) residential habilitation;

(C) supported employment;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual;

or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

(d) Before including supported employment on an individual's IPC, a program provider must ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(e) A program provider must ensure that supported employment:

(1) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is provided in accordance with the individual's IPC and with Appendix C of the DBMD waiver application approved by CMS and found at www.dads.state.tx.us;

(3) is not provided to an individual with the individual present at the same time that one of the following services are provided:

(A) day habilitation;

(B) residential habilitation;

(C) employment assistance;

(D) respite; or

(E) CFC PAS/HAB; and

(4) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

§42.626. *Day Habilitation, Residential Habilitation, and CFC PAS/HAB.*

(a) Day habilitation.

(1) A program provider must ensure day habilitation:

(A) is provided in a non-residential setting separate from the individual's own or family home or the residence in which the individual receives licensed assisted living or licensed home health assisted living that:

(i) is accessible to and usable by the individual;

(ii) is maintained in good repair;

(iii) has at least two means of egress; and

(iv) is in continuous compliance with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations;

(B) reinforces:

(i) therapeutic outcomes identified by other DBMD Program services and CFC services; and

(ii) for an individual eligible for public education services, education goals in the Individualized Education Program (IEP) and services provided by the school district;

(C) includes transportation necessary for the individual's participation in day habilitation activities;

(D) is not provided to the individual at the same time that one of the following services is provided:

(i) employment assistance with the individual present;

(ii) supported employment with the individual present;

(iii) residential habilitation;

(iv) respite; or

(v) CFC PAS/HAB.

(2) A program provider must ensure a day habilitation service provider works with one individual at a time unless the individual's service planning team documents on the IPP that the individual's needs can be met with a day habilitation service provider to individual ratio of one-to-two or one-to-three.

(3) A program provider must ensure that for a service-provider-to-individual ratio higher than one-to-three, that the IPP includes a recommendation from the service planning team and supporting documentation of the individual's ability to integrate and meaningfully participate in an environment with a ratio higher than one-to-three.

(4) A program provider must ensure a day habilitation service provider:

(A) develops and implements a written emergency response plan that describes the actions the day habilitation service provider will take in the event of an emergency such as a fire or other man-made or natural disaster at a day habilitation site including evacuation or sheltering-in-place of the individual, as appropriate;

(B) takes into account the needs and abilities of the individual in developing the emergency response plan;

(C) requires its staff members to demonstrate competency in implementation of the emergency response plan at the time job duties are assumed and annually thereafter;

(D) reviews the emergency response plan at least annually and, if necessary, revises the plan;

(E) maintains a copy of the current emergency response plan in a location that is easily accessible by all staff at the day habilitation site;

(F) conducts a fire drill at least once every 90 calendar days; and

(G) documents that requirements in subparagraphs (C) - (F) of this paragraph are met.

(5) A program provider may bill for time spent by a day habilitation service provider:

(A) in direct contact with an individual;

(B) participating as a member of an individual's service planning team; or

(C) performing tasks delegated by a physician or RN.

(b) Residential habilitation.

(1) A program provider must ensure:

(A) residential habilitation:

(i) is not provided to an individual receiving licensed assisted living or licensed home health assisted living;

(I) in the individual's own or family home; or

(II) in a setting outside the individual's own or family home appropriate for the type of residential habilitation activities described in the individual's IPP;

(ii) includes:

(I) transportation; or

(II) assistance in securing transportation;

(III) assistance with ambulation and mobility;

(IV) reinforcement of behavioral support or therapy activities;

(V) assistance with medications and the performance of tasks delegated by an RN in accordance with state law;

(VI) supervision of the individual's safety and security;

(VII) assistance with acquisition, retention, or improvement in skills related to activities of daily living, including:

(-a-) personal grooming and cleanliness;

(-b-) bed making and household chores; and

(-c-) preparation and consumption of food;

(VIII) use of natural supports and typical community services; and

(IX) social interaction and participation in leisure activities; and

(iii) is not provided to the individual at the same time that one of the following services are provided:

(I) employment assistance with the individual present;

(II) supported employment with the individual present;

(III) day habilitation;

(IV) respite; or

(V) CFC PAS/HAB;

(B) a residential habilitation service provider works with no more than one individual at a time; and

(C) if an individual's IPC includes residential habilitation, compliance with §42.407 of this chapter (relating to Service Backup Plans).

(2) A program provider may bill for time spent by a residential habilitation service provider transporting an individual.

(c) CFC PAS/HAB.

(1) A program provider must ensure CFC PAS/HAB is not provided to an individual receiving licensed assisted living or licensed home health assisted living.

(2) A program provider must ensure CFC PAS/HAB is not provided to the individual at the same time that one of the following services are provided:

(A) employment assistance with the individual present;

(B) supported employment with the individual present;

(C) day habilitation;

(D) respite; or

(E) residential habilitation.

(3) A program provider must ensure a CFC PAS/HAB service provider works with no more than one individual at a time.

(4) If an individual's IPC includes CFC PAS/HAB, a program provider must ensure compliance with §42.407 of this chapter (relating to Service Backup Plans).

§42.631. *Respite.*

(a) General.

(1) A program provider may deliver respite as:

(A) in-home respite; or

(B) out-of-home respite.

(2) A program provider must not:

(A) bill DADS for more than 30 calendar days or 720 hours of respite per IPC period;

(B) provide respite to an individual receiving licensed assisted living or licensed home health assisted living;

(C) permit an individual's spouse or a service provider of residential habilitation or CFC PAS/HAB with whom the individual lives to provide respite; or

(D) provide respite to an individual at the same time that one of the following services are provided to the individual:

(i) employment assistance with the individual present;

(ii) supported employment with the individual present;

(iii) day habilitation;

(iv) residential habilitation; or

(v) CFC PAS/HAB.

(3) A program provider must ensure that a respite service provider meets the qualifications described in §42.402 of this chapter (relating to Qualifications of Program Provider Staff) and the training requirements described in §42.403 of this chapter (relating to Training).

(b) In-home respite. A program provider must ensure that in-home respite is provided in the private residence of:

(1) the individual;

(2) the individual's family; or

(3) a respite service provider.

(c) Out-of-home respite.

(1) A program provider must ensure that out-of-home respite is provided in a location listed in paragraph (2) of this subsection acceptable to the individual or LAR that:

(A) is an accessible, safe, and comfortable environment for the individual; and

(B) promotes the individual's health and welfare.

(2) A program provider must provide out-of-home respite in one of the following:

(A) an ICF/IID with a certified capacity of six or less persons;

(B) an ALF with a licensed capacity of six or less persons; or

(C) an outdoor camp accredited by the American Camping Association.

(3) A program provider may provide out-of-home respite in a residence in which licensed assisted living or licensed home health assisted living is provided if:

(A) a vacancy exists in the residence;

(B) the individual or LAR approves; and

(C) the service planning team for each individual receiving services in that residence makes a determination that the respite visit will cause no threat to the health, safety and welfare, or rights and needs of that individual.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600987

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 4. ADDITIONAL REQUIREMENTS

40 TAC §42.641

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600988

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 5. CFC ERS

40 TAC §42.651

The new rule is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§42.651. CFC ERS.

(a) A program provider must ensure that CFC ERS is provided only to an individual:

(1) who is not receiving licensed assisted living or home health licensed assisted living; and

(2) who:

(A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(B) would otherwise require extensive routine supervision.

(b) Installing equipment.

(1) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(2) At the time CFC ERS equipment is installed, a program provider must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(3) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (1) and (2) of this subsection are documented in the individual's record.

(c) Securing responders. A program provider must ensure that, on or before the date CFC ERS equipment is installed:

(1) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(2) public emergency personnel:

(A) is designated as a second responder if the individual provides the name of only one responder; or

(B) is designated as the sole responder if the individual does not provide the names of any responders; and

(3) the name and telephone number of each responder is documented in the individual's record.

(d) Conducting a system check.

(1) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(2) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(3) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the case manager to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(e) Failing to complete a system check. If a system check is not conducted in accordance with subsection (d)(1) of this section, the program provider must ensure that:

(1) the failure to comply is because of good cause; and

(2) the good cause is documented in the individual's record.

(f) Alarm call.

(1) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(2) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(3) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the case manager receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraphs (A) and (B) of this paragraph is maintained in the individual's record.

(g) Equipment failure.

(1) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by subsection (d)(1) of this section:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(2) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (1) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(h) Low battery.

(1) A program provider must ensure that, if the ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(2) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (1) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(i) Documenting equipment failure or low battery. A program provider must ensure that the following information is documented in an individual's record:

(1) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(2) the equipment or subscriber number;

(3) a description of the problem;

(4) the date the equipment or battery was repaired or replaced; and

(5) the good cause for failure to comply as described in subsection (g)(2) and subsection (h)(2) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600989

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§45.101, 45.103, and 45.104, in Subchapter A, General Provisions; §§45.201, 45.212 - 45.217, 45.221, 45.223 - 45.225, and 45.231, in Subchapter B, Eligibility,

Enrollment, and Review; §45.301 and §45.302, in Subchapter C, Rights and Responsibilities of an Individual; §§45.402 - 45.409, in Subchapter D, Transfer, Denial, Suspension, Reduction, and Termination of Services; §45.505, in Subchapter E, Support Family Services; §§45.702, 45.704, and 45.705, in Subchapter G, Additional CMA Requirements; §§45.803 - 45.805, 45.807, and 45.808, in Subchapter H, Additional DSA Requirements; and §45.902, in Subchapter I, Fiscal Monitoring; and new §45.621, in Subchapter F, Adaptive Aids and Minor Home Modifications, in Chapter 45, Community Living Assistance and Support Services. Amendments to §§45.103, 45.104, 45.201, 45.214, 45.215, 45.702, and 45.804, and new §45.621 are adopted with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8589). The rules will be republished. Amendments to §§45.101, 45.212, 45.213, 45.216, 45.217, 45.221, 45.223 - 45.225, 45.231, 45.301, 45.302, 45.402 - 45.409, 45.505, 45.704, 45.705, 45.803, 45.805, 45.807, 45.808, and 45.902 are adopted without changes to the proposed text. The rules will not be republished.

The adopted rules in Chapter 45 implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Community Living Assistance and Support Services (CLASS) Program, the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the CLASS, HCS, TxHmL, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

CFC services in the CLASS Program consists of: (1) CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of habilitation, except transportation; (2) CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and (3) CFC support management. The adopted rules give an individual the option to receive CFC PAS/HAB through a CLASS direct services agency (DSA) or the consumer directed services (CDS) option.

The adopted rules also require a case manager to ensure that the service planning team develops a transportation plan if transportation as a habilitation activity or as an adaptive aid is included on the individual plan of care (IPC). The transportation plan is used to document how transportation will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the individual program plan (IPP). The plan helps ensure that the transportation hours requested are in the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

The adopted rules, for consistency with the CLASS waiver application, add to the eligibility criteria for the CLASS Program that an individual must require the provision of: (1) at least one program service per month or monthly monitoring; and (2) at least one program service per IPC period. The adopted rules also require the case management agency (CMA) to ensure that, for a month in which a case manager does not meet with an individual or LAR as required by §45.223(a), the case manager has a face-to-face or telephone contact with the individual or LAR or other persons acting on behalf of the individual, such as an advocate or family member, to provide case management to help ensure an individual's continued eligibility for the CLASS program.

The adopted rules require a service provider of respite who is hired on or after July 1, 2015 to have (1) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or (2) a successfully completed written competency-based assessment demonstrating the service provider's ability to assist with activities of daily living and independent activities of daily living required for the individual to whom the service provider will provide habilitation or respite and at least three written personal references from persons who are not relatives of the service provider that evidence the service provider's ability to provide a safe and healthy environment for the individual. This new qualification for a respite service provider is consistent with the CLASS waiver application and with qualifications for a respite service provider in other DADS waiver programs.

The adopted rules also make editorial changes for clarity.

A change was made in §45.103(19) to delete the reference to §45.621(a) because licensure as a personal emergency response system provider is no longer a requirement and §45.621(a) has been deleted.

A change was made in §45.103(21) to clarify that CFC PAS/HAB does not include transporting the individual and to clarify that "transporting" means "driving the individual from one location to another."

A change was made in §45.103(93) to add a reference to a new CFC service because an IPC would also be revised to add a new CFC service or change the amount of a CFC service.

A change was made in §45.104(e) to correct a reference to a rule.

A change was made in §45.201(b) to correct a reference to a rule.

A change was made in §45.201(c) to clarify that an individual is not eligible for a CFC service if the individual is receiving support family services or continued family services. Minor editorial changes were also made in §45.201(c).

A change was made in §45.201(d) to reference the CFC eligibility criteria in §45.201(c), including the requirement that the individual is not receiving support family services or continued family services, instead of restating the criteria in §45.201(d).

A change was made in §45.214(a)(1)(B)(vii) to add "habilitation" because habilitation is a service listed in §45.231(a).

A change was made in §45.215(a)(1) to correct the name of "CFC support management."

A change was made in §45.215(a)(2) to clarify that an IPP is not required for CFC support management.

A change was made in §45.621 to delete subsection (a), which required a DSA and a contractor of the DSA to have a license as a personal emergency response system provider in accordance with 25 TAC Chapter 140, Subchapter B. The agency made the change because Health and Safety Code, Chapter 781, regarding licensure of personal emergency response system providers, was repealed by Senate Bill 202 (84th Texas Legislature, Regular Session, 2015) and, therefore, licensure as a personal emergency response system is no longer available.

An editorial correction was made in §45.702(c)(3) to add "and" between subparagraphs (A) and (B).

A change was made in §45.804 to change the word "completing" to "developing" to make the provision consistent with terminology in the definition of "PAS/HAB plan" in §45.103(77) and to clarify which staff are required to complete person-centered service planning training.

DADS received written comments from the Texas Association for Home Care and Hospice. A summary of the comments and the responses follows.

Comment: Regarding §45.103(21), A commenter suggested that the definitions of "habilitation" and "personal assistance services" should be consistent with the definitions in Texas Government Code, §534.001, and in the HCSSA license rules.

Response: The definition in §45.103(21) of "CFC PAS/HAB--CFC personal assistance services/habilitation," which contains a description of "personal assistance services" and "habilitation," is derived from the approved CFC state plan amendment and does not conflict with the definition of "personal assistance services" or "habilitation" in Texas Health and Safety Code, §142.001, or the definition of "habilitation services" in Texas Government Code, §534.001. The agency did not make a change in response to this comment.

Comment: A commenter stated that health maintenance activities do not need to be delegated by a registered nurse and requested that the definition of "health-related tasks" in §45.103 include a statement that "these include tasks delegated by a registered nurse and health related tasks that do not require delegation as defined in 22 TAC §225.4 (relating to Definitions)."

Response: Health maintenance activities, as defined in 22 TAC §225.4, may be exempt from delegation or may require delegation, depending on an assessment by a registered nurse. For clarification, the agency made a change in §45.103(46) to include health maintenance activities that may not require delegation as an example of "health-related tasks."

Comment: A commenter suggested adding a service provider of CFC PAS/HAB in the qualifications in §45.803(d)(20) that apply to a service provider of habilitation or respite.

Response: Section 45.803(d)(20) states the qualifications for a service provider of habilitation or respite who is hired on or after July 1, 2015. The qualifications for a service provider of CFC PAS/HAB are stated in §45.803(d)(23). The agency did not make a change in response to the comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§45.101, 45.103, 45.104

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human

Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.103. *Definitions.*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) **Actively involved**--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) **Adaptive aid**--An item or service that enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives, and:

(A) is included in the list of adaptive aids in the *CLASS Provider Manual*; or

(B) is the repair and maintenance of an adaptive aid on such list that is not covered by a warranty.

(3) **Adaptive behavior**--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(4) **Adaptive behavior level**--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(5) **Adaptive behavior screening assessment**--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R);

or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(6) **ADLs**--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(7) **Alarm call**--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(8) **Aquatic therapy**--A service that involves a low-risk exercise method done in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(9) **Auditory integration training/auditory enhancement training**--Specialized training that assists an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(10) **Behavior support plan**--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific objectives and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(11) **Behavioral support**--Specialized interventions that assist an individual in increasing adaptive behaviors and replacing or modifying challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training of and consultation with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluation of the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluation of the plan's effectiveness; and

(F) counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(12) **Business day**--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(13) **Case management**--A service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's IPC;

(D) coordinating the provision of CLASS Program services and CFC services;

(E) monitoring the effectiveness of the CLASS Program services and CFC services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services and non-CFC services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(14) Catchment area--As determined by DADS, a geographic area composed of multiple Texas counties.

(15) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(16) CDSA--FMSA.

(17) CFC--Community First Choice.

(18) CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(19) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the DSA or a contractor of the DSA.

(20) CFC FMS--The term used for FMS on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(21) CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(22) CFC support consultation--The term used for support consultation on the IPC of an individual if the individual receives only CFC PAS/HAB through the CDS option.

(23) CFC support management--Training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the *CLASS Provider Manual*.

(24) CMA--Case management agency. A program provider that has a contract with DADS to provide case management.

(25) CLASS Program--The Community Living Assistance and Support Services Program.

(26) CMS--The Centers for Medicare and Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(27) Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(28) Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(29) Continued family services--Services provided to an individual 18 years of age or older who resides with a support family, as described in §45.531 of this chapter (relating to Support Family Requirements), that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. The individual must be receiving support family services immediately before receiving continued family services. Continued family services consist of services described in §45.533 of this chapter (relating to Support Family Duties).

(30) Contract--A provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(31) DADS--The Department of Aging and Disability Services.

(32) Denial--An action taken by DADS that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(33) Dental treatment--A service that:

(A) consists of the following:

(i) emergency dental treatment, which is procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatment, which is examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatment, which includes fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatment, which is procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labio-lingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(34) Dietary services--The provision of nutrition services, as defined in Texas Occupations Code, Chapter 701.

(35) Direct services--The following services:

(A) CLASS Program services other than case management, FMS, support consultation, support family services, continued family services, or transition assistance services; and

(B) CFC PAS/HAB, CFC ERS, and CFC support management.

(36) DSA--Direct services agency. A program provider that has a contract with DADS to provide direct services.

(37) DFPS--The Department of Family and Protective Services.

(38) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(39) Enrollment IPC--The first IPC developed for an individual upon enrollment into the CLASS Program.

(40) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(41) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS.

(42) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(43) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(44) Good cause--As determined by DADS, a reason outside the control of the CFC ERS provider.

(45) Habilitation--A service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting face-to-face with an individual who is awake to train the individual in the following activities:

- (i) self-care;
- (ii) personal hygiene;
- (iii) household tasks;
- (iv) mobility;
- (v) money management;
- (vi) community integration;
- (vii) use of adaptive equipment;
- (viii) management of caregivers;
- (ix) personal decision making;
- (x) interpersonal communication;
- (xi) reduction of challenging behaviors;
- (xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

- (I) self-care;
- (II) personal hygiene;
- (III) ambulation and mobility;
- (IV) money management;
- (V) community integration;
- (VI) use of adaptive equipment;
- (VII) self-administration of medication;
- (VIII) reinforce any therapeutic goal of the individual;
- (IX) provide transportation to the individual; and

(X) protect the individual's health, safety and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication; or

(V) arranging transportation for the individual;

and

(C) habilitation delegated, which is tasks delegated by a registered nurse to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(46) Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN, health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation, and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(47) HHSC--Health and Human Services Commission.

(48) Hippotherapy--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §45.803(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(49) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(50) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(51) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(52) ICF/MR--ICF/IID.

(53) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS to determine the level of care for an individual.

(54) Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(55) Institutional services--Medicaid-funded services provided in a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242, or in an ICF/IID.

(56) Intellectual disability--Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).

(57) IPC--Individual plan of care. A written plan developed by an individual's service planning team using person-centered planning and documented on a DADS form that:

(A) meets:

(i) the requirement described in §45.201(a)(5) of this chapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(ii) the requirements described in §45.214(a)(1)(B) and (b) of this chapter (relating to Development of Enrollment IPC); and

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).

(58) IPC cost--The estimated annual cost of CLASS Program services on an IPC.

(59) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of an enrollment IPC, as described in §45.214(h) of this chapter, until the first calendar day of the same month of the effective date in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §45.222(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(60) IPP--Individual program plan. A written plan documented on a DADS form that describes the goals and objectives to be met by the provision of each CLASS Program service and CFC service, other than CFC support management, on an individual's IPC that:

(A) are supported by justifications;

(B) are measurable; and

(C) have timelines.

(61) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(62) Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(63) Licensed vocational nursing--The provision of vocational nursing, as defined in Texas Occupations Code, Chapter 301.

(64) Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(65) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(66) Massage therapy--The provision of massage therapy as defined in Texas Occupations Code, Chapter 455.

(67) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(68) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(69) Military family member--A person who is the spouse or child (regardless of age) of:

- (A) a military member; or
- (B) a former military member.

(70) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(71) Minor home modification--A physical adaptation to an individual's residence that is necessary to address the individual's specific needs and that enables the individual to function with greater independence in the individual's residence or to control his or her environment and:

(A) is included on the list of minor home modifications in the *CLASS Provider Manual*; or

(B) except as provided by §45.618(c) of this chapter (relating to Repair or Replacement of Minor Home Modification), is the repair and maintenance of a minor home modification purchased through the CLASS Program that is needed after one year has elapsed from the date the minor home modification is complete and that is not covered by a warranty.

(72) Music therapy--The use of musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(73) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(74) Nursing facility--A facility that is licensed in accordance with Texas Health and Safety Code, Chapter 242.

(75) Occupational therapy--The provision of occupational therapy, as described in Texas Occupations Code, Chapter 454.

(76) Own home or family home--A residence that is not:

- (A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are individuals with an intellectual disability, a related condition, or a physical disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(77) PAS/HAB plan--Personal Assistance Services (PAS)/Habilitation (HAB) Plan. A written plan developed by an individual's service planning team and documented on a DADS form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(78) Person-centered planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of an IPC that meets the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(79) Physical therapy--The provision of physical therapy, as defined in Texas Occupations Code, Chapter 453.

(80) Physician--Based on the definition in §97.2 of this title (relating to Definitions), a person who:

(A) is licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) is licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health for the individual in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(81) Prevocational services--Services that are not job-task oriented and are provided to an individual who the service planning team does not expect to be employed (without receiving supported employment) within one year after prevocational services are to begin, to prepare the individual for employment. Prevocational services consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's PAS/HAB plan;

(iii) that are essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

(82) Program provider--A DSA or a CMA.

(83) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(84) Recreational therapy--Recreational or leisure activities that assist an individual to restore, remediate or habilitate the individual's level of functioning and independence in life activities, promote health and wellness, and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(85) Reduction--An action taken by DADS as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(86) Registered nurse--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(87) Registered nursing--The provision of professional nursing, as defined in Texas Occupations Code, Chapter 301.

(88) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adap-

tive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(89) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *CLASS Provider Manual*.

(90) Renewal IPC--An IPC developed for an individual in accordance with §45.223 of this chapter (relating to Renewal and Revision of an IPC) because the IPC will expire within 90 calendar days.

(91) Respite--The temporary assistance with an individual's ADLs if the individual has the same residence as a person who routinely provides such assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of habilitation or CFC PAS/HAB or an employee in the CDS option of habilitation or CFC PAS/HAB, DADS does not authorize respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with ADLs to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or continued family services, DADS does not authorize respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving continued family services, the individual does not receive respite on the same day the individual receives continued family services; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite services consist of the following:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

- (I) self-care;
- (II) personal hygiene;
- (III) ambulation and mobility;
- (IV) money management;
- (V) community integration;
- (VI) use of adaptive equipment;
- (VII) self-administration of medication;
- (VIII) reinforce any therapeutic goal of the individual;
- (IX) provide transportation to the individual; and
- (X) protect the individual's health, safety, and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that do not involve interacting face-to-face with an individual:

- (I) shopping for the individual;
- (II) planning or preparing meals for the individual;
- (III) housekeeping for the individual;
- (IV) procuring or preparing the individual's medication;
- (V) arranging transportation for the individual;

or

(VI) protecting the individual's health, safety, and security while the individual is asleep.

(92) Responder--A person designated to respond to an alarm call activated by an individual.

(93) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §45.223 of this chapter to add a new CLASS Program service or CFC service or change the amount of an existing service.

(94) Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(95) Service planning team--A planning team convened and facilitated by a CLASS Program case manager consisting of the following persons:

- (A) the individual;
- (B) if applicable, the individual's LAR;
- (C) the case manager;
- (D) a representative of the DSA;
- (E) other persons whose inclusion is requested by the individual or LAR and who agree to participate; and
- (F) a person selected by the DSA, with the approval of the individual or LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(96) Service provider--A person who is an employee or contractor of a DSA who provides a direct service.

(97) Specialized licensed vocational nursing--The provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(98) Specialized registered nursing--The provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(99) Speech and language pathology--The provision of speech-language pathology, as defined in Texas Occupations Code, Chapter 401.

(100) Specialized therapies--Services to promote skills development, maintain skills, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:

- (A) aquatic therapy;
- (B) hippotherapy;
- (C) massage therapy;
- (D) music therapy;
- (E) recreational therapy; and
- (F) therapeutic horseback riding.

(101) Staff person--A full-time or part-time employee of the program provider.

(102) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(103) Support consultation--A service, as defined in §41.103 of this title, that may be provided to an individual who chooses to participate in the CDS option.

(104) Supported employment--Assistance provided to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(105) Support family services--Services provided to an individual under 18 years of age who resides with a support family, as described in §45.531 of this chapter, that allow the individual to reside successfully in a community setting by supporting the individual to acquire, maintain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Support family services consist of the services described in §45.533 of this chapter.

(106) System check--A test of the CFC ERS equipment to determine if:

- (A) the individual can successfully activate an alarm call; and
- (B) the equipment is working properly.

(107) Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(108) Therapeutic horseback riding--The provision of therapy that:

(A) involves an individual interacting with and riding on horses; and

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual.

(109) Temporary admission--Being admitted for 180 consecutive calendar days or less.

(110) Transition assistance services--In accordance with Chapter 62 of this title (relating to Transition Assistance Services), services provided to an individual who is receiving institutional services and is eligible for and enrolling into the CLASS Program.

(111) Transportation plan--A written plan, based on person-centered planning and developed with an individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation will be delivered to support an individual's desired goals and objectives for transportation as identified in the IPP.

§45.104. Description of the CLASS Program and CFC Option.

(a) The CLASS Program is a Medicaid waiver program approved by CMS under §1915(c) of the Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program. CLASS Program services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution.

(b) DADS operates the CLASS Program under the authority of HHSC.

(c) DADS limits the enrollment in the CLASS Program to the number of individuals approved by CMS or by available funding from the state.

(d) The CLASS program offers the following services:

- (1) adaptive aids;
- (2) auditory integration training/auditory enhancement training;
- (3) behavioral support;
- (4) case management;
- (5) cognitive rehabilitation therapy;
- (6) dental treatment;
- (7) habilitation;
- (8) licensed vocational nursing;
- (9) minor home modifications;
- (10) dietary services;
- (11) occupational therapy;
- (12) physical therapy;
- (13) prevocational services;
- (14) registered nursing;
- (15) respite, which consists of:

(A) in-home respite; and

(B) out-of-home respite;

(16) speech and language pathology;

(17) specialized licensed vocational nursing;

(18) specialized registered nursing;

(19) specialized therapies, which consist of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding;

(20) support family services;

(21) continued family services;

(22) employment assistance;

(23) supported employment;

(24) transition assistance services; and

(25) if the individual's IPC includes at least one CLASS Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(e) A DSA may only provide and bill for habilitation if the activity provided is transportation as described in §45.103(45)(B)(i)(IX) of this subchapter (relating to Definitions).

(f) CFC is a state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to individuals:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600990

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



SUBCHAPTER B. ELIGIBILITY,
ENROLLMENT, AND REVIEW
DIVISION 1. ELIGIBILITY AND
MAINTENANCE OF INTEREST LIST

40 TAC §45.201

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.201. Eligibility Criteria for CLASS Program Services and CFC Services.

(a) An individual is eligible for CLASS Program services if:

(1) the individual meets the financial eligibility criteria described in Appendix B of the CLASS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria for the CLASS Program as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual has been diagnosed with a related condition that manifested before the individual was 22 years of age;

(4) the individual demonstrates a need for CFC PAS/HAB;

(5) the individual has an IPC cost for CLASS Program services at or below \$114,736.07;

(6) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the CLASS Program, as identified in the Mutually Exclusive Services table in Appendix III of the *CLASS Provider Manual* available at www.dads.state.tx.us;

(7) the individual resides in the individual's own home or family home; and

(8) the individual requires the provision of:

(A) at least one CLASS Program service per month or monthly monitoring; and

(B) at least one CLASS Program service during an IPC period.

(b) An individual is not considered to reside in the individual's own home or family home if the individual is admitted to one of the facilities listed in §45.103(76)(A) - (G) of this chapter (relating to Definitions) for more than 180 consecutive calendar days.

(c) Except as provided in subsection (d) of this section, an individual is eligible for a CFC service under this chapter if the individual:

(1) meets the criteria described in subsections (a) and (b) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving support family services or continued family services.

(d) To be eligible for a CFC service under this chapter, an individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (c) of this section, receive a CLASS Program service at least monthly, as required by 42 CFR §441.510(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600991

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 2. ENROLLMENT PROCESS

40 TAC §§45.212 - 45.217

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.214. Development of Enrollment IPC.

(a) A CMA must, within 30 calendar days after notification by the DSA of DADS approval of diagnostic eligibility for an individual as required by §45.212(k) of this division (relating to Process for Enrollment of an Individual), ensure that an individual's case manager:

(1) convenes a service planning team meeting in which the service planning team develops:

(A) a PAS/HAB plan based on information obtained from assessments conducted and observations made by the DSA as required by §45.212(h) of this division;

(B) a proposed enrollment IPC that:

(i) identifies the type of each CLASS Program service and CFC service, other than CFC support management, to be provided to an individual;

(ii) specifies the number of units of each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(iii) for each CLASS Program service:

(I) is within the service limit described in §45.218 of this division (relating to Service Limits);

(II) if an adaptive aid, meets the requirements in Subchapter F, Division 1, of this chapter (relating to Adaptive Aids, Minor Home Modifications, and CFC ERS); and

(III) if a minor home modification, meets the requirements in Subchapter F, Division 2, of this chapter;

(iv) for CFC ERS, meets the requirements in Subchapter F, Division 3, of this chapter;

(v) states if an individual will receive CFC support management;

(vi) describes any other service or support to be provided to the individual through sources other than CLASS Program services or CFC services; and

(vii) if it includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, habilitation, or CFC PAS/HAB, identifies whether the service is critical to the individual's health and safety, as required by §45.231(a)(2) of this subchapter (relating to Service Backup Plans);

(C) an IPP for each CLASS Program service and CFC service listed on the proposed enrollment IPC, other than CFC support management; and

(D) a transportation plan, if transportation as a habilitation activity or as an adaptive aid is included on the IPC; and

(2) if the individual may need cognitive rehabilitation therapy, begin assisting the individual in obtaining an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery).

(b) The case manager must ensure that each CLASS Program service and CFC service on the proposed enrollment IPC, other than CFC support management:

(1) is necessary to protect the individual's health and welfare in the community;

(2) addresses the individual's related condition;

(3) is not available to the individual through sources other than CLASS Program services or CFC services, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) is the most appropriate type and amount of CLASS Program service and CFC service to meet the individual's needs; and

(5) is cost effective.

(c) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, the case manager must:

(1) ensure that during the service planning team meeting required by subsection (a) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit the following to DADS for its review:

(i) the proposed enrollment IPC;

(ii) the IPPs;

(iii) the PAS/HAB plan;

(iv) the completed DADS CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §45.212(i)(3) of this division; and

(v) if transportation as a habilitation activity or as an adaptive aid is included on the IPC, the transportation plan; and

(B) if the individual will receive a service through the CDS option, send to the FMSA a copy of the proposed enrollment IPC, the IPP for each service the individual will receive through the CDS option, the PAS/HAB plan and, if required by subsection (a)(1)(D) of this section, the transportation plan.

(d) If the individual or LAR requests a CLASS Program service or CFC service that the case manager or DSA has determined does not meet the criteria described in subsection (b) of this section, does not meet the requirements described in Subchapter F of this chapter, or exceeds a service limit described in §45.218 of this division, the CMA must comply with this subsection.

(1) The CMA must, in accordance with *CLASS Provider Manual*, send the individual or LAR written notice of the denial of the requested CLASS Program service or CFC service, copying the DSA and FMSA, if the individual or LAR requests a CLASS Program service or CFC service that the CMA or DSA has determined:

(A) does not meet the criteria described in subsection (b) of this section;

(B) does not meet the requirements described in Subchapter F of this chapter; or

(C) exceeds a service limit described in §45.218 of this division.

(2) If the CMA is required to send written notice of denial of a CLASS Program service or CFC service as described in paragraph (1) of this subsection, the CMA must also:

(A) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:

(i) the proposed enrollment IPC that includes the type and amount of CLASS Program services or CFC services in dispute and not in dispute and is signed and dated by:

(I) the individual or LAR;

(II) the case manager; and

(III) the DSA;

(ii) the IPPs;

(iii) the PAS/HAB plan; and

(iv) if transportation as a habilitation activity or as an adaptive aid is included on the IPC, the transportation plan; and

(B) if the individual will receive a service through the CDS option, send to the FMSA a copy of the proposed enrollment IPC, the IPP for each service the individual will receive through the CDS option, the PAS/HAB plan, and if required by subsection (a)(1)(D) of this section, the transportation plan.

(e) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS Review of an Enrollment IPC). At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after the date of DADS request.

(f) If DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved, as described in §45.216(c) of this division, the CMA must send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA.

(g) The process by which an individual's request for enrollment or a CLASS Program service or CFC service is denied, based on DADS review of a proposed enrollment IPC, is described in §45.216(d) - (f) of this division.

(h) The effective date of an enrollment IPC is one of the following, whichever is later:

(1) the effective date as determined by the service planning team; or

(2) the date DADS notifies the CMA that the individual's request for enrollment is approved and the IPC is authorized in accordance with §45.216(c) or (e)(2)(C) of this division.

(i) An enrollment IPC is effective for an IPC period.

(j) An individual's enrollment IPC must be reviewed and updated in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

§45.215. *Development of IPPs.*

(a) The case manager must:

(1) develop an IPP for each CLASS Program service and CFC service listed on a proposed enrollment IPC, other than CFC support management, and submit the IPPs to DADS in accordance with §45.214 of this division (relating to Development of an Enrollment IPC); and

(2) develop a new or revised IPP for each CLASS Program service and CFC service, other than CFC support management, and submit the IPPs to DADS in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

(b) The case manager must ensure that each IPP is reviewed, signed, and dated as evidence of agreement by:

(1) the individual or LAR;

(2) the case manager; and

(3) the DSA.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600992

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 3. REVIEWS

40 TAC §§45.221, 45.223 - 45.225

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600993

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



DIVISION 4. SERVICE BACKUP PLANS

40 TAC §45.231

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas

Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600994
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §45.301, §45.302

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600995

Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER D. TRANSFER, DENIAL, SUSPENSION, REDUCTION, AND TERMINATION OF SERVICES

40 TAC §§45.402 - 45.409

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600996
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855



SUBCHAPTER E. SUPPORT FAMILY SERVICES

DIVISION 1. INTRODUCTION

40 TAC §45.505

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make

recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600997

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



SUBCHAPTER F. ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS DIVISION 3. CFC ERS

40 TAC §45.621

The new rule is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.621. CFC ERS.

(a) A DSA must ensure that CFC ERS is provided only to an individual:

- (1) who is not receiving support family services or continued family services; and
- (2) who:

(A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(B) would otherwise require extensive routine supervision.

(b) Installing equipment.

(1) A DSA must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(2) At the time CFC ERS equipment is installed, a DSA must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(3) A DSA must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (1) and (2) of this subsection are documented in the individual's record.

(c) Securing responders. A DSA must ensure that, on or before the date CFC ERS equipment is installed:

(1) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(2) public emergency personnel:

(A) is designated as a second responder if the individual provides the name of only one responder; or

(B) is designated as the sole responder if the individual does not provide the names of any responders; and

(3) the name and telephone number of each responder is documented in the individual's record.

(d) Conducting a system check.

(1) At least once during each calendar month a DSA must ensure that a system check is conducted on a date and time agreed to by the individual.

(2) A DSA must ensure that the date, time, and result of the system check is documented in the individual's record.

(3) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the DSA must ensure that a request is made of the case manager to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the DSA must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(e) Failing to complete a system check. If a system check is not conducted in accordance with subsection (d)(1) of this section, the DSA must ensure that:

- (1) the failure to comply is because of good cause; and
- (2) the good cause is documented in the individual's record.

(f) Alarm call.

(1) A DSA must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(2) A DSA must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(3) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the DSA must ensure that:

(A) the case manager receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the DSA receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraphs (A) and (B) of this paragraph are maintained in the individual's record.

(g) Equipment failure.

(1) A DSA must ensure that, if an equipment failure occurs, other than during a system check required by subsection (d)(1) of this section:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(2) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (1) of this subsection, the DSA must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(h) Low battery.

(1) A DSA must ensure that, if the ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(2) A DSA must ensure that, if a system check or battery replacement is not made in accordance with paragraph (1) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(i) Documenting equipment failure or low battery. A DSA must ensure that the following information is documented in an individual's record:

(1) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(2) the equipment or subscriber number;

(3) a description of the problem;

(4) the date the equipment or battery was repaired or replaced; and

(5) the good cause for failure to comply as described in subsections (g)(2)(A) and (h)(2)(A) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601001



SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

40 TAC §§45.702, 45.704, 45.705

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.702. *Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services.*

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

- (1) infectious and communicable diseases;
- (2) conflicts of interest with CMA staff persons;
- (3) acts of financial impropriety by a case manager; and
- (4) deliberate damage of personal possessions.

(b) A case manager must, at least annually, provide an oral and written explanation of the topics described in §45.212(a)(2)(A) - (J) of this chapter (relating to Process for Enrollment of an Individual) to the individual and LAR or person actively involved with the individual.

(c) After an individual is enrolled in the CLASS Program, a CMA must:

- (1) do the following regarding transfers:

(A) at least annually, provide an oral explanation to the individual and LAR or person actively involved with the individual that the individual may transfer to a different CMA or DSA; and

(B) if the individual or LAR expresses a desire for the individual to transfer to a different CMA or DSA:

(i) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(ii) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(iii) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers), if the individual or LAR selects a different DSA or CMA on the Selection Determination form; and

- (2) at least annually:

(A) give the individual or LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(3) at least annually, provide an oral explanation to the individual or LAR that they may request:

(A) that the DSA provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, nursing, or CFC PAS/HAB while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas during a period of no more than 60 consecutive days; and

(B) that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB as described in subparagraph (A) of this paragraph more than once during an IPC period.

(d) If the CMA is notified by the DSA that the individual is receiving habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area in which the individual resides in accordance with §45.805(g)(1) of this chapter (relating to DSA: Service Delivery), the CMA must:

(1) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area, provide an oral explanation to the individual or LAR, on or before the 35th day of the period services have been provided outside the catchment area, that:

(A) to ensure the continued provision of habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB, the individual must do one of the following before the 61st day:

(i) transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB; or

(ii) return to the catchment area in which the individual resides; and

(B) if the individual receives habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services in that catchment area before the DSA may accept another request from the individual or LAR that the DSA provide habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area; and

(2) if the individual or LAR expresses a desire for the individual to transfer to a DSA contract for the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB:

(A) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual is receiving habilitation, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB;

(B) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual*; and

(C) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers).

(e) If an individual requests that the case manager convene a meeting of the service planning team to discuss the DSA's reasons for declining a request to allow services to be provided outside the catchment area as described in §45.805(h)(1)(B) of this chapter, the case manager must:

(1) convene the meeting to review the reasons the DSA declined the request that was submitted by the DSA; and

(2) facilitate a discussion between the individual or LAR and DSA during the meeting regarding the reasons the DSA declined the request.

(f) If an individual's CLASS Program services and CFC services are terminated in accordance with Subchapter D of this chapter (relating to Transfer, Denial, Suspension, Reduction, and Termination of Services), the CMA must ensure that the case manager informs the individual of:

(1) alternative long-term services and supports in the community, including CFC services through a managed care organization; and

(2) institutional services.

(g) A CMA must have documentation that it provided the oral explanation and information as required under subsections (b), (c)(1)(A), (c)(2) and (3), and (d)(1) of this section and convened a meeting as required under subsection (e) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600998

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

40 TAC §§45.803 - 45.805, 45.807, 45.808

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and

Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

§45.804. *Training of DSA Staff Persons.*

(a) A DSA must ensure:

(1) that a DSA staff person who has direct contact with an individual completes training as described in the *CLASS Provider Manual*;

(2) that a DSA staff person completes training on the CLASS Program and CFC, including the requirements of this chapter and the CLASS Program services and CFC services described in §45.104 of this chapter (relating to Description of the CLASS Program and CFC Option); and

(3) that a DSA staff person who is responsible for developing the PAS/HAB plan completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff person was hired on or before June 1, 2015; or

(B) within two years after the hire date, if the staff person was hired after June 1, 2015.

(b) A DSA must ensure that, before providing services to an individual:

(1) a service provider of habilitation completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed tasks regarding habilitation;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training in the habilitation activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *CLASS Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible; and

(2) a service provider of CFC PAS/HAB completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed CFC PAS/HAB activities;

(B) training in the CFC PAS/HAB activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *CLASS Provider*

Manual, with training to occur in the individual's home with full participation from the individual, if possible.

(c) A DSA must, if requested by the individual or LAR:

(1) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

(d) The supervisor of a service provider of habilitation or CFC PAS/HAB must, in accordance with the *CLASS Provider Manual*, evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600999

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



SUBCHAPTER I. FISCAL MONITORING

40 TAC §45.902

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601000

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: November 27, 2015

For further information, please call: (512) 438-4855



CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §49.102, in Subchapter A, Application and Definitions; and §49.551, in Subchapter E, Enforcement by DADS and Termination by Contractor, in Chapter 49, Contracting for Community Services, without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8626).

The adopted rules in Chapter 49, Contracting for Community Services, implement Community First Choice (CFC), a Medicaid state plan option governed by the Code of Federal Regulations, Title 42 (42 CFR), Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services are available to individuals enrolled in the DADS §1915(c) waiver programs of the Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Deaf-Blind with Multiple Disabilities (DBMD) Program. CFC is authorized by Texas Government Code §534.152 and is governed by rules of the Texas Health and Human Services Commission in Texas Administrative Code, Title 1, Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 27, Community First Choice (CFC). The Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment to implement CFC effective June 1, 2015. Texas Government Code, §534.152(g) authorizes DADS to contract with providers participating in the HCS, TxHmL, CLASS, and DBMD Programs for the delivery of basic attendant and habilitation services through CFC and gives DADS regulatory and oversight authority over those providers.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid;

Texas Government Code, §534.152, which provides HHSC with the authority to implement the CFC program, and gives DADS regulatory and oversight authority of its contractors providing CFC services; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601002
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855

◆ ◆ ◆
**SUBCHAPTER E. ENFORCEMENT BY DADS
AND TERMINATION BY CONTRACTOR
DIVISION 6. TERMINATION BY
CONTRACTOR**

40 TAC §49.551

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct Medicaid in each agency that operates a portion of Medicaid; and Texas Human Resources Code, §32.021, which provides that the HHSC executive commissioner shall adopt necessary rules for the proper and efficient operation of the medical assistance program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201601003
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: November 27, 2015
For further information, please call: (512) 438-4855

◆ ◆ ◆
**CHAPTER 79. LEGAL SERVICES
SUBCHAPTER E. ADVISORY COMMITTEES**

40 TAC §§79.401 - 79.404, 79.406

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter E, Advisory Committees, consisting of §§79.401, 79.402, 79.403, 79.404, and 79.406, in Chapter 79, Legal Services, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8878).

The purpose of the repeal is, along with new Chapter 89, to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012.

The repeal deletes rules about advisory committees that have been abolished and the Nursing Facility Administrators Advisory Committee (NFAAC). The NFAAC is described in new §89.6.

DADS received no comments regarding adoption of the repeal.

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600966
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 20, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 438-2430

◆ ◆ ◆
CHAPTER 89. ADVISORY COMMITTEES

40 TAC §§89.1 - 89.7

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), new §§89.1 - 89.7, in Chapter 89, Advisory Committees. New §§89.4, 89.5, and 89.7 are adopted with changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8879). New §§89.1 - 89.3 and 89.6 are adopted without changes to the proposed text.

The purpose of new Chapter 89 is to implement §531.012 of the Texas Government Code, as amended by Senate Bill 200 of the 84th Legislature, Regular Session, 2015. Section 531.012 requires the executive commissioner of the Texas Health and Human Services Commission to establish and maintain advisory committees to solicit input from the public to address key issues of concern across the health and human services system. Section 531.012 also requires the executive commissioner to adopt rules to govern advisory committees in compliance with Texas Government Code, Chapter 2110, and to address topics specified in §531.012. The new rules govern the advisory committees established to consider issues related to DADS.

The adopted rules describe the purpose, tasks, membership composition, quorum requirements, reporting requirements, and abolishment date of the Aging and Disability Resource Center Advisory Committee, Aging Texas Well Advisory Committee, Foster Grandparent Program Advisory Councils (FGPAC), Nursing Facility Administrators Advisory Committee, and the Texas Respite Advisory Committee (TRAC).

A change was made to §89.4 to correct the lettering of a subsection. The quorum requirements in §89.5(c) and §89.7(c) were reduced to facilitate regular committee meetings of the FGPAC and TRAC. A change was made to §89.7(a) to correct a citation to the Texas Human Resources Code.

DADS received no comments regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.012, which authorizes the executive commissioner to establish and maintain advisory committees.

§89.4. *Aging Texas Well Advisory Committee.*

(a) Executive Order RP-42 created the Aging Texas Well Advisory Committee (ATWAC) and established the purpose and responsibilities of ATWAC. The ATWAC advises and makes recommendations to DADS consistent with Executive Order RP-42.

(b) The tasks of the ATWAC include:

- (1) identifying and discussing aging policy issues;
- (2) assessing state government readiness to address issues facing older Texans;
- (3) promoting increased local community preparedness for aging Texans; and
- (4) assisting DADS by providing recommendations, including recommendations for changes to the Aging Texas Well Plan.

(c) The composition of the membership of the ATWAC, and the number of members required to convene a meeting and transact committee business are set forth in the ATWAC by-laws.

(d) The ATWAC meets quarterly and submits reports of committee meetings to the commissioner or designee. The frequency and type of reports are set forth in the ATWAC by-laws.

(e) The ATWAC is abolished on March 1, 2026.

§89.5. *Foster Grandparent Program Advisory Councils.*

(a) The Domestic Volunteer Service Act of 1973 (United States Code, Title 42 §§4950 et seq.) and Code of Federal Regulations, Title 45, §2552.24 require the creation of advisory councils to secure community participation in the local operation of the Foster Grandparent Program (the Program). DADS operates the Program in eight geographically defined service areas where foster grandparents are recruited, enrolled, and assigned. An independent Foster Grandparent Program Advisory Council (FGPAC) is located in each service area.

(b) The tasks of an FGPAC include:

- (1) assisting the Program to recruit volunteers and volunteer stations where foster grandparents are assigned;
- (2) assisting the Program to meet its administrative and program responsibilities, including fund-raising, publicity, and volunteer recognition events;
- (3) assisting with annual appraisals or surveys of the Program; and
- (4) assisting the Program to recruit FGPAC members.

(c) An FGPAC is composed of no more than 15 members. A quorum of 5 members is required to convene a meeting and transact business.

(d) The membership of an FGPAC must be diverse and reflect the demographics of the geographically defined service area in which foster grandparents are assigned. Members must be knowledgeable of the human and social needs of the service area, competent in the fields of community service, volunteerism, and children's issues, and must be able to assist the FGPAC in completing the tasks described in subsection (b) of this section.

(e) An FGPAC meets no less than semi-annually and submits minutes of the meetings to the commissioner or designee.

(f) The FGPACs are abolished on March 1, 2026.

§89.7. *Texas Respite Advisory Committee.*

(a) The Lifespan Respite Care Act (United States Code, Title 42, §300ii) authorizes a state agency to collaborate with a public or private statewide coalition to address the respite needs of family caregivers of adults or children with special needs. Texas Human Resources Code §161.079 directs DADS to coordinate public awareness outreach efforts regarding the role of informal long-term care caregivers. Texas Human Resources Code, Chapter 161, Subchapter F, creates the Lifespan Respite Services Program operated by DADS. The Texas Respite Advisory Committee (TRAC) assists DADS to develop strategies to reduce barriers to accessing respite services; improve the quality of respite services; and provide training, education, and support to family caregivers.

(b) The tasks of the TRAC include:

- (1) assisting DADS to identify barriers and best practices for providing and coordinating respite services in Texas;
- (2) responding to requests from DADS for information about the respite needs of caregivers;

(3) advising DADS about effective methods for expanding the availability of affordable respite services in Texas through the use of funds available from respite care programs;

(4) cooperating and sharing resources and knowledge among community stakeholders to facilitate barrier free access for primary caregivers; and

(5) educating the public on the need for community-based options for primary caregivers.

(c) The TRAC is composed of no more than 24 members. A quorum of 5 members is required to convene and transact committee business. Members must represent family caregivers, primary caregivers, respite care advocacy organizations, faith-based organizations, and members of public interested in the issue of respite care.

(d) The TRAC meets quarterly and submits quarterly reports of committee meetings to the commissioner or designee.

(e) The TRAC is abolished on March 1, 2026.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600967

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: March 20, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 438-2430



PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS

40 TAC §374.4

The Texas Board of Occupational Therapy Examiners adopts an amendment to §374.4, Code of Ethics, concerning the code of ethics, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8741). The rule will not be republished.

The amendment will update in §374.4 the code of ethics and the principles and related standards of conduct associated with such; the amendment includes further clarifications and cleanups, as well.

The amendment will remove the 2010 version of the Occupational Therapy Code of Ethics by the American Occupational Therapy Association from §374.4 and will replace it with the excerpted principles and related standards of conduct from the 2015 version of the American Occupational Therapy Association's Occupational Therapy Code of Ethics.

One comment was received by the Board from Chrissy Vogeley, Manager of State Affairs of the American Occupational Therapy Association, in support of the proposed amendment and the inclusion of the principles and related standards of conduct from AOTA's 2015 Occupational Therapy Code of Ethics. The Board acknowledged the comment and made no changes to the amendment based on the comment. The language of the amendment remains the same as was initially proposed.

The amendment is adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600964

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: April 1, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 305-6900



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.5

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 800, relating to General Administration *without* changes, as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7803):

Subchapter A. General Provisions, §800.5

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to comply with House Bill (HB) 3337, passed by the 84th Texas Legislature, Regular Session (2015). HB 3337, relating to training and education for state agency administrators and employees, amends Texas Government Code, Chapter 656, by establishing additional requirements for reimbursement for training or education offered by an institution of higher education, including:

--authorization by the agency executive director before tuition reimbursement payment may be made (§656.048(b));

--implementation of an objective policy governing tuition reimbursement, including online courses and courses not credited toward a degree (§656.102(b)(1)); and

--posting the tuition assistance program policy on the agency's website (§656.102 (c)).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§800.5. Commission Professional Development Program

The title of §800.5, "Commission Professional Development Program" is amended to read "Tuition Assistance Program" (TAP), as the new title more accurately describes the reimbursement program, available to employees who seek education at institutions of higher education, which will in turn improve their skill sets in current or prospective job duties for the agency's benefit.

Section 800.5(b)(1) is amended to state that eligibility for tuition assistance requires continuous and full-time employment for one year at the time of application.

Section 800.5(b)(3) is amended to add "identification of" the relationship of the training to the employee's position and to add "or a prospective role within the Agency";

Section 800.5(b)(4) is amended to remove "or his designee" from authorization of training reimbursement from the executive director or designee.

New §800.5(b)(5) is added to specify that the training and education program must be at an accredited institution of higher education, as required by HB 3337.

Section 800.5(c)(1) is amended to be consistent with HB 3337 by specifying that the employee shall "attend and successfully" complete the training, and adds "or education program."

Section 800.5(c)(2) is amended, as required by HB 3337, to state that training is conditional upon "authorization" from the executive director and removes the executive director's designee.

New §800.5(c)(3) is amended to align with the Agency's personnel manual to update language regarding employee participation in the TAP. The employee must agree in writing, prior to beginning the coursework or an exam, to fulfill a six-month service commitment with the Agency.

New §800.5(c)(4) is added to align with the Agency's personnel manual to update language regarding employee noncompliance in the length of service requirement. The employee must reimburse the Agency the cost of training and expenses.

New §800.5(c)(5) is added to align with the Agency's personnel manual to update language regarding employees who are unable to comply with the length of service requirement due to extraordinary circumstances beyond their control. Employees meeting this criterion may request that the executive director waive the reimbursement of the cost of training activities.

New §800.5(c)(6) is added to align with the Agency's personnel manual to update language regarding employees' approved flex work schedule--provided there is no negative impact on customers or work production--and adds that employees cannot use work hours for TAP activities.

New §800.5(d) is added to state that any information relating to application for and receipt of reimbursement for training and

education shall be reported to the Commission on a quarterly basis.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600867

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: March 14, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 475-0829



SUBCHAPTER G. PETITION FOR ADOPTION OF RULES

40 TAC §800.252

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 800, relating to General Administration, *without* changes, as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7805):

Subchapter G. Petition for Adoption of Rules, §800.252

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to comply with House Bill 763 passed by the 84th Texas Legislature, Regular Session (2015). House Bill 763 amends Texas Government Code §2001.021, Petition for Adoption of Rules, by providing a definition of "interested person" for the Commission's long-standing procedures for the submission, consideration, and disposition of a rulemaking petition.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER G. PETITION FOR ADOPTION OF RULES

The Commission adopts the following amendments to Subchapter G:

§800.252. Definitions

New §800.252(2) adds the definition of "interested person" to the list of words and terms in this subchapter. An interested person is defined as:

- (A) a resident of this state;
- (B) a business entity located in this state;
- (C) a governmental subdivision located in this state; or
- (D) a public or private organization located in this state that is not a state agency.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, Chapters 301 and 302.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600868

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: March 14, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 475-0829



CHAPTER 809. CHILD CARE SERVICES
SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §809.130

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 809, relating to Child Care Services, *without* changes, as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8187):

Subchapter G. Texas Rising Star Program, §809.130

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendment to §809.130(e) is to require a regular review of the Texas Rising Star (TRS) guidelines as required by Texas Government Code §2308.3155(b).

The 84th Texas Legislature, Regular Session (2015), enacted Senate Bill 208, which amends Texas Government Code §2308.3155(b) to require that the Commission adopt the Agency's Chapter 809 Child Care Services rules relating to TRS to include:

. . . a timeline and process for regularly reviewing and updating the quality standards used to determine the rating system that includes the Commission's consideration of input from interested parties regarding those standards.

Texas Government Code §2001.039 requires state agencies to review and consider for re-adoption each of its rules not later than the fourth anniversary of the date on which the rules take effect and every four years after that date. State agencies are required to re-adopt, re-adopt with amendments, or repeal a rule as the result of reviewing the rule. The next scheduled review of Chapter 809, including Subchapter G, Texas Rising Star Program rules, is in December 2019.

The amended §809.130(e) requires a regular review of the TRS guidelines every four years, in alignment with the four-year rule review process under Texas Government Code §2001.039. Therefore, the next review of the TRS guidelines will occur in conjunction with the scheduled four-year rule review of Chapter 809 in December 2019.

Additionally, pursuant to Texas Government Code §2308.3155(b), the review of the TRS guidelines requires input from interested parties (stakeholders), and that at least one public hearing be held prior to submitting TRS guidelines stakeholders' recommendations to the Commission.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

The Commission adopts the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Amended §809.130(e) adds new paragraph (1) requiring that the Commission review and update the TRS guidelines at a minimum of every four years in conjunction with the rule review of Chapter 809, conducted pursuant to Texas Government Code §2001.039.

Section 809.130(e)(1)(A) requires that the review and update consider input from stakeholders.

Section 809.130(e)(1)(B) requires at least one public hearing prior to submitting the stakeholder input to the Commission.

Section 809.130(e)(1) is renumbered as new §809.130(e)(2) without changes.

New §809.130(e)(2) is renumbered as new §809.130(e)(3) and amended to state that the Commission may review and amend the TRS guidelines as necessary, provided that the amendments are adopted subject to the requirements of the Texas Open Meetings Act.

Comment:

One commenter agreed with the amendments as proposed. One commenter supported the input from stakeholders, particularly

from child care providers. The commenters requested multiple formats (fax, e-mail, workgroups, and public hearings) by which to provide input.

Response:

The Commission agrees and supports multiple formats and opportunities for child care providers, as well as the general public, to have input to the TRS guidelines review and update. In addition to input through fax and e-mail, the Commission accepts public input during the regularly scheduled Commission meetings. Additionally, the Commission encourages child care providers to provide input to the Local Workforce Development Boards (Boards) regarding the TRS program. Agency staff has regularly scheduled meetings with Boards and receives input from Boards regarding all Agency programs, including the TRS program.

Comment:

One commenter strongly supported the scheduling of a public hearing that will offer child care providers face-to-face communication with the Commission members in order to hear the discussion firsthand and offer verbal input. Another commenter stated that one public hearing is not sufficient in order to have adequate input from all areas of the state. The commenter recommended that there be at least one hearing in each local workforce development area every four years.

Response:

The Commission notes that the rule language states that there be "at least one" public hearing prior to submitting stakeholder input to the Commission. The Commission regularly solicits input from stakeholders through a variety of methods throughout the year. Along with regular Commission public meetings, the Commission conducts public meetings specific to child care and encourages stakeholders and the general public to provide input and comments on all aspects of the state's subsidized child care system, including the TRS program.

COMMENTS WERE RECEIVED FROM:

Marisela Correa, Upper Rio Grande Workforce Development Board (Borderplex)

Elisa Shepherd, Government Relations Manager, Knowledge Universe US

Pat Smith, Executive Director, Little Dudes (verbal testimony at public hearing, December 16, 2015, Dallas, Texas)

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rule affects Texas Labor Code, Title 4, Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600869

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: March 14, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 475-0829



CHAPTER 843. JOB MATCHING SERVICES SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §843.3

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 843, relating to Job Matching Services *without* changes, as published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7806):

Subchapter A. General Provisions, §843.3

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 843 rule change is to comply with Senate Bill (SB) 374, passed by the 84th Texas Legislature, Regular Session (2015). SB 374, relating to state agencies' participation in the federal electronic verification of employment authorization program, E-Verify, amends Texas Government Code, Chapter 673, by adding that state agencies and institutions of higher education as defined by Texas Education Code §61.003 are required to use E-Verify for all newly hired employees.

Additionally, the Agency has provided notice, registration information, and online forms for the E-Verify program to all agency heads, human resource directors, and university presidents. The Agency also will provide technical assistance, upon request.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§843.3. Public Employer Requirements Regarding E-Verify

New §843.3(a) adds that state agencies and institutions of higher education must register and participate in the federal electronic verification of employment authorization E-Verify for all newly hired employees, as required by Texas Government Code §673.002.

New §843.3(b) adds that, in accordance with Texas Government Code, §673.002, the Agency shall provide notice, registration information, and online forms for the E-Verify program to state agencies, and may provide technical assistance, upon request.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 657.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2016.

TRD-201600870

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: March 14, 2016

Proposal publication date: November 6, 2015

For further information, please call: (512) 475-0829



TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §§57.9, 57.14, 57.18, 57.48, 57.51

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to §57.9, Nonsupplanting Requirement; §57.14, Approval of Grant Projects; §57.18, Grant Adjustments; §57.48, Motor Vehicle Years of Insurance Calculations; and §57.51, Refund Determinations. Amended §§57.9, 57.18, and 57.51 are adopted with changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8016) and will be republished. Amended §57.14 and §57.48 are adopted without changes to the proposed text and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §57.9, Nonsupplanting Requirement, add language which defines and clarifies "supplanting," and makes it clear that the term also includes existing resources already available to a program as a cash match.

Amendments to §57.14, Approval of Grant Projects, remove the category, Public Awareness, Crime Prevention, and Education; and add the category, Educational Programs and Marketing, as stated in statute to the program categories eligible for consideration for funding.

Amendments to §57.18, Grant Adjustments, clarify grant adjustments for overtime, job positions, and out-of-state travel and add that notification is to be provided to the ABTPA director of changes of designated officials.

Amendments to §57.48, Motor Vehicle Years of Insurance Calculations, update and clarify the rule with current statute.

Amendments to §57.51, Refund Determinations, implement House Bill 2424, 84th Legislature, Regular Session, 2015, which amended Texas Revised Civil Statutes Annotated Article 4413(37), §6A to change the time period in which a refund claim can be filed from six months to four years.

Amendments are made throughout the sections to revise terminology for consistency with Texas Department of Motor Vehicle (TxDMV) rules and with current ABTPA practice. In addition, nonsubstantive amendments correct punctuation, grammar, capitalization, and references throughout the sections.

COMMENTS

The department received three written comments.

Bryan Sudan, Commander of the Tarrant Regional Auto Crimes Task Force, commented in support of the proposed rule changes.

COMMENT

Lieutenant Tommy Hansen, of the Galveston County Sheriff's Department, expressed concerns that the term "existing resources" included in §57.9(b) is not clearly defined. Lieutenant Hansen is concerned that items, such as benefits, fuel, and other direct expenses, will no longer be considered a match, and agencies who have been fiscally responsible and who have been able to maintain program income to allow them to keep a level of service could be penalized. He highly recommends that this be discussed with the Board and the Grantees. In proposed amendments to §57.18(b) for the required written notification to the ABTPA of any changes, he suggests that the department add Program Manager (Commanders) along with project director, financial officer, and authorized official.

RESPONSE

Mr. Hansen now agrees to the change as proposed by ABTPA staff. No change will be made.

COMMENT

Lisa Davis, Insurance Tax Analyst of the Texas Comptroller of Public Accounts (CPA), suggested several changes. She has concerns on §57.48(a)(3) regarding the new definition of "motor vehicle" in Texas Civil Statutes, Article 4413(37), §1(5) and Insurance Code, Article 5.01(e). She believes that two different definitions might be problematic. She recommends keeping the existing rule language because Art. 4413 is used as a reference to Art. 5.01(e), which is appropriate given that Art. 5.01(e) is broader and the article addresses motor vehicle or automobile insurance for ratemaking purposes. She explains that the comptroller policy has always been that if an insurer writes any form of motor vehicle insurance, then the motor vehicle years are subject to the ABTPA assessment. Ms. Davis also suggests minor changes to §57.51(a) by adding that the amended report for each period and submission of a written claim be to the director or the ABTPA board. On §57.51(c), Ms. Davis suggests replacing the language "financial advisors" with "a third party, such as the state comptroller." Additionally on §57.51(e), she recommends replacing the language, "on the funds available to the ABPTA for the purpose of refunding monies overpaid" with "for the purpose of refunding overpayments."

RESPONSE

The ABTPA agrees with the CPA's comments on both §57.48 and §57.51 and included changes to the proposed rule text to address the comments accordingly.

STATUTORY AUTHORITY

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which provides the Board of the Automobile Burglary and Theft Prevention Authority with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the ABTPA.

CROSS REFERENCE TO STATUTE

Texas Civil Statutes, Article 4413(37).

§57.9. *Nonsupplanting Requirement.*

(a) State funds provided by this Act shall not be used to supplant state or local funds.

(b) Supplanting means the replacement of other funds with ABTPA grant funds. It shall also include using existing resources already available to a program activity as cash match.

(c) Positions which existed prior to new grant award approval and were funded from any source other than ABTPA grant funds are not eligible for grant funding or to be used as cash match.

(d) If a grant program is reduced by 20% or more from the previous year, and as a result, grant funded or match positions are transferred to other duties for the grant year, they may be returned to grant funding in the subsequent grant year. This exception is not available for any positions that have not been grant funded or used as match for more than one grant year.

(e) Each grantee shall certify that ABTPA funds have not been used to replace state or local funds that would have been available in the absence of ABTPA funds. The certification shall be incorporated in each grantee's expenditure report.

§57.18. *Grant Adjustments.*

(a) The grantee must secure prior written approval from the ABTPA director for any of the following:

- (1) changes in the need, objectives, approach, or geographical location of the grant;
- (2) transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;
- (3) changes in overtime, confidential funds, the number of positions or job descriptions of personnel specified in the grant agreement;
- (4) changes in equipment amounts, types, or methods of acquisition;
- (5) out-of-state travel not specified in the grant agreement;

or

(6) other changes for which the grant agreement or uniform grant and contract management standards require prior approval.

(b) The grantee must provide written notification to the ABTPA director within five days from the date of any change in the program director, financial officer, or authorized official.

§57.51. *Refund Determinations.*

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must file an amended report for each period and submit a written claim to the director or the ABTPA board for a determination or a refund not later than four years after the date the semi-annual payment was made to the state comptroller.

(b) The director or the ABTPA board designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the ABTPA determination. If an insurer refuses to provide the requested information, the refund shall be denied in whole or in part.

(c) The director or the ABTPA board designee is authorized to employ or retain the services of a third party, such as the state comptroller, to assist in the determination. The director or the designee shall prepare a written report to the ABTPA based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The ABTPA shall base its determination on the documentary evidence considered by the director or the board designee. The ABTPA decision shall be based on a majority vote of the board. The ABTPA decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ABTPA shall notify the comptroller and request the comptroller to draw warrants for the purpose of refunding overpayments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 29, 2016.

TRD-201600975

David Richards

General Counsel

Automobile Burglary and Theft Prevention Authority

Effective date: March 20, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 465-5665

