

Amendments to and new section in chapter governing

Community Living Assistance and Support Services (CLASS) Program And Community First Choice (CFC)

Chapter 45, Subchapters A - I

EFFECTIVE DATE: March 20, 2016

DADS maintains the formatted version of CLASS Program rules on its website to enhance public access to information concerning the programs. The *Texas Register* and the Texas Administrative Code remain the official sources for all DADS rules.

Reason for Amendments and New Section

The amendments and new section implement Community First Choice (CFC), a state Medicaid plan option. CFC services are available to individuals enrolled in the CLASS Program and other DADS §1915(c) waiver programs.

Process

The amendments and new section were proposed for public comment in the November 27, 2015 issue of the *Texas Register* and adopted with changes in the March 11, 2016, issue of the *Texas Register*.

Questions

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**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 45, CLASS AND CFC
SUBCHAPTER A – GENERAL PROVISIONS**

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Subchapter A – General Provisions

§45.101. Purpose.

Effective: March 20, 2016

This chapter describes:

- (1) policies and procedures for the CLASS Program; and
- (2) CFC services.

§45.102. Application.

Effective: March 21, 2011

This chapter applies to a program provider and an individual.

§45.103. Definitions.

Effective: March 20, 2016

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

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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

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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,

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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

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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

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(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.

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(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

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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

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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 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.

(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

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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

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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.

Effective: March 20, 2016

(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;

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- (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.

§45.105. Excluded Services.

Effective: March 21, 2011

The CLASS Program does not provide for the following:

- (1) room and board except for out-of-home respite as described in §45.806(b)(2) of this chapter (relating to Respite);
- (2) special education and related services as defined in 20 United States Code (USC) §1401 that otherwise are available to the individual through a state or local educational agency; and
- (3) vocational rehabilitation services that otherwise are available to the individual through a program funded under 29 USC Chapter 16, Subchapter I.

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Subchapter B – Eligibility, Enrollment, and Review

Division 1, Eligibility and Maintenance of Interest List

§45.201. Eligibility Criteria for CLASS Program Services and CFC Services.

Effective: March 20, 2016

(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).

§45.202. CLASS Interest List.

Effective: November 15, 2015

(a) DADS maintains an interest list that contains the names of individuals interested in receiving CLASS Program services.

(b) A person may request an individual's name be added to the CLASS interest list by:

(1) calling DADS toll-free number; or

(2) submitting a written request to DADS.

(c) DADS adds an individual's name to the CLASS interest list:

(1) if the individual resides in Texas; and

(2) with an interest list request date as follows:

(A) for an individual who requests to be added to the interest list in accordance with subsection (b) of this section, the date of the request;

(B) for an individual under 22 years of age residing in a nursing facility, the date of admission to the nursing facility; or

(C) for an individual determined diagnostically or functionally ineligible for another DADS waiver program, one of the following dates, whichever is earlier:

(i) the request date of the interest list for the other waiver program; or

(ii) an existing request date for the CLASS Program for the individual.

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(d) DADS removes an individual's name from the CLASS interest list if:

(1) the individual or LAR requests in writing that the individual's name be removed from the interest list, unless the individual is under 22 years of age and residing in a nursing facility;

(2) the individual moves out of Texas, unless the individual is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the individual declines the offer of CLASS Program services or, as described in §45.211(d) of this chapter (relating to Written Offer of CLASS Program Services), DADS withdraws an offer of CLASS Program Services, unless:

(A) the individual is a military family member living outside of Texas:

(i) while the military member is on active duty; or

(ii) for less than one year after the former military member's active duty ends; or

(B) the individual is under 22 years of age and residing in a nursing facility;

(4) the individual is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(5) the individual is deceased; or

(6) DADS has denied the individual enrollment in the CLASS Program and the individual or LAR has had an opportunity to exercise the individual's right to appeal the decision in accordance with §45.301 of this subchapter (relating to Individual's Right to a Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

(e) If DADS removes an individual's name from the CLASS interest list in accordance with subsection (d)(1) - (4) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) reinstates the individual's name to the interest list based on the original request date described in subsection (c)(2)(A) - (C) of this section; and

(2) notifies the individual or LAR in writing that the individual's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(f) If DADS removes an individual's name from the CLASS interest list in accordance with subsection (d)(1) - (4) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on:

(A) the date DADS receives the oral or written request; or

(B) because of extenuating circumstances as determined by DADS, the original request date described in subsection (c)(2)(A) - (C) of this section; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS removes an individual's name from the CLASS interest list in accordance with subsection (d)(6) of this section and DADS subsequently receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the interest list in accordance with paragraph (1) of this subsection.

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Division 2, Enrollment Process

§45.211. Written Offer of CLASS Program Services.

Effective: November 15, 2015

(a) DADS sends a written offer in accordance with this subsection.

(1) DADS sends a written offer of CLASS Program services to:

(A) the individual whose interest list request date, assigned in accordance with §45.202(c)(2) of this subchapter (relating to CLASS Interest List), is earliest on the CLASS interest list; or

(B) an individual who is residing in a nursing facility and requesting CLASS Program services.

(2) DADS encloses with the written offer:

(A) a Selection Determination form which includes a list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) a CLASS Applicant Acknowledgement form.

(b) The individual or LAR accepts DADS offer of CLASS Program services by:

(1) documenting the selection of one CMA and one DSA on the Selection Determination form; and

(2) ensuring the completed Selection Determination form and CLASS Applicant Acknowledgement form are submitted to DADS and postmarked or faxed no later than 60 calendar days after the date of the written offer.

(c) Upon timely receipt of the Selection Determination form and CLASS Applicant Acknowledgement form completed by the individual or LAR, DADS notifies the CMA and DSA selected by the individual or LAR.

(d) DADS withdraws an offer of CLASS Program services made to an individual if:

(1) the completed Selection Determination form and CLASS Applicant Acknowledgement form are postmarked or faxed more than 60 calendar days after the date of the written offer;

(2) the individual or LAR does not complete the enrollment process as described in

§45.212 of this division (relating to Process for Enrollment of an Individual); or

(3) the individual was offered CLASS Program services because the individual is residing in a nursing facility and the individual was discharged from the nursing facility before the effective date of the enrollment IPC.

§45.212. Process for Enrollment of an Individual.

Effective: March 20, 2016

(a) After notification by DADS that an individual selected a CMA as a program provider, the CMA must assign a case manager to perform the following functions within 14 calendar days of DADS notification to the CMA:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a contract;

(2) conduct an initial face-to-face, in-home visit with the individual and LAR or person actively involved with the individual to provide an oral and written explanation of the following to the individual and LAR or person actively involved with the individual:

(A) CLASS Program services, including transition assistance services if the individual is receiving institutional services;

(B) CFC services;

(C) the eligibility requirements for:

(i) CLASS Program services as described in §45.201(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(ii) CFC services as described in §45.201(c) of this subchapter to individuals who do not receive MAO Medicaid; and

(iii) CFC services as described in §45.201(d) of this subchapter to individuals who receive MAO Medicaid;

(D) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(E) the CDS option as described in §45.217 of this division (relating to CDS Option);

(F) that CLASS Program services or

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CFC services may be terminated as described in §§45.406 - 45.409 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice Because of Ineligibility or Leave from the State or Because DSAs Cannot Ensure Health and Safety, Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements, Termination of CLASS Program Services and CFC Services Without Advance Notice, and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy);

(G) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing);

(H) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858);

(I) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §49.309 of this title (relating to Complaint Process);

(J) voter registration, if the individual is 18 years of age or older; and

(K) that 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, the individual and LAR or person actively involved with the individual may request that the DSA provide:

(i) habilitation;

(ii) out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment);

(iii) adaptive aids;

(iv) nursing; or

(v) CFC PAS/HAB; and

(3) obtain the signature of the individual or LAR on a Verification of Freedom of Choice form designating the individual's choice for

enrollment in the CLASS Program over enrollment in the ICF/IID Program.

(b) The CMA must:

(1) within two business days of the case manager's face-to-face, in-home visit required by subsection (a)(2) of this section:

(A) collect and maintain the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the CLASS Provider Manual; and

(B) provide the individual's selected DSA with the collected information required by subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility as required by §45.302(1) of this chapter (relating to Mandatory Participation Requirements of an Individual); and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrollment into CLASS Program services.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days of the case manager's initial face-to-face, in-home visit as required by §45.302(1) of this chapter, but is making good faith efforts to complete the application, the CMA may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (1) of this subsection.

(1) The CMA may not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial face-to-face, in-home visit.

(2) The CMA must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC as required by §45.302(1) of this chapter and is not making good faith efforts to complete the application, the CMA must request, in writing, that DADS withdraw the offer of a program vacancy made to the individual in accordance with §45.211(d)(3) of this

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subchapter (relating to Written Offer of CLASS Program Services).

(e) If DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services or CFC services to an individual because they have determined that they cannot ensure the individual's health and safety, the CMA must provide to DADS, in writing, the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(f) The case manager must determine whether an 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 transition assistance services as described in §62.5(e) of this title (relating to Service Description);

(3) the individual's proposed enrollment IPC does not include support family services or continued family services; and

(4) the individual anticipates needing transition assistance services as described in §62.5(e) of this title.

(g) If the case manager determines that an individual meets the criteria described in subsection (f) of this section, the case manager must:

(1) provide the individual or LAR with a list of transition assistance services providers in the catchment 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 transition assistance services the individual needs as described in §62.5(e) of this title;

(B) estimating the monetary amount for each transition assistance service identified, which must be within the service limit described in §45.218(a)(4) of this division (relating to Service Limits); and

(C) documenting the individual's or

LAR's choice of transition assistance services provider;

(3) submit the completed form to DADS for authorization;

(4) send the form authorized by DADS to the selected transition assistance services provider; and

(5) include the transition assistance services and the monetary amount authorized by DADS on the individual's proposed enrollment IPC.

(h) After notification by DADS that an individual selected the DSA as a program provider, the DSA must ensure that the following functions are performed during a face-to-face in-home visit within 14 calendar days after the CMA provides information to the DSA as required by subsection (b)(1)(B) of this section:

(1) a DSA staff person informs the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by §49.309 of this title;

(2) an appropriate professional completes an adaptive behavior screening assessment in accordance with the assessment instructions; and

(3) a registered nurse, in accordance with the CLASS Provider Manual, completes:

(A) a nursing assessment using the DADS CLASS/DBMD Nursing Assessment form;

(B) the DADS Related Conditions Eligibility Screening Instrument; and

(C) the ID/RC Assessment.

(i) A DSA must:

(1) ensure that the diagnosis of the individual's condition documented on the ID/RC Assessment is authorized by a physician;

(2) submit to DADS: for a DADS decision regarding the individual's diagnostic eligibility:

(A) the completed adaptive behavior screening assessment;

(B) the completed DADS Related Conditions Eligibility Screening Instrument; and

(C) the completed ID/RC Assessment;

and

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(3) send the completed DADS CLASS/DBMD Nursing Assessment form described in subsection (h)(3)(A) of this section to the CMA.

(j) In accordance with §45.213 of this division (relating to Determination of Diagnostic Eligibility by DADS), DADS reviews the documentation described in subsection (i)(2) of this section.

(k) If a DSA receives written notice from DADS that diagnostic eligibility is approved for an individual, as described in §45.213(d), the DSA must notify the individual's CMA of DADS decision within one business day after receiving the notice from DADS.

(l) If DADS denies diagnostic eligibility, DADS sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program in accordance with §45.402(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program).

(m) If the CMA receives notice from the DSA that DADS approves diagnostic eligibility, the CMA must comply with this subsection.

(1) The CMA must ensure that the service planning team develops:

(A) a proposed enrollment IPC, PAS/HAB plan, and IPPs for the individual in accordance with §45.214 of this division (relating to Development of Enrollment IPC); and

(B) a transportation plan, if transportation as a habilitation activity or as an adaptive aid is included on the IPC.

(2) The CMA must submit the documents described in paragraph (1)(A) and (B) of this subsection to DADS for review in accordance with §45.214 of this division.

(n) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS review of an Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(2) the CLASS Program services and CFC services specified in the IPC meet the

requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b) of this division.

(o) If DADS notifies the individual's CMA, in accordance with §45.216(c) of this division, that the individual's request for enrollment is approved:

(1) the CMA must, within one business day after DADS notification, notify the individual or LAR and the individual's DSA of DADS decision; and

(2) the CMA and DSA must initiate CLASS Program services and CFC services for the individual in accordance with the individual's IPC within seven calendar days after DADS notification.

(p) If DADS notifies the CMA that the individual's request for enrollment is approved but action is being taken as described in §45.216(e) of this division, including modifying the individual's proposed enrollment IPC, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service or CFC service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service or CFC Service).

(q) The CMA and DSA must not provide CLASS Program services to an individual until notified by DADS that the individual's request for enrollment into the CLASS Program has been approved.

§45.213. Determination of Diagnostic Eligibility by DADS.

Effective: March 20, 2016

(a) DADS reviews the documentation submitted by an individual's DSA as required by §45.212(i)(2) of this division (relating to Process for Enrollment of an Individual) and §45.221(a)(2) of this subchapter (related to Annual Review and Reinstatement of Diagnostic Eligibility) to determine if the individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services).

(b) If requested by DADS, the DSA must submit current data obtained from standardized

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evaluations and formal assessments to support the related condition diagnosis required by §45.201(a)(3) of this subchapter.

(c) If DADS determines that the documentation submitted by the DSA in accordance with subsection (a) of this section evidences that the individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter, DADS approves diagnostic eligibility for the individual.

(d) If DADS approves diagnostic eligibility for the individual, DADS notifies the individual's DSA of the approval, in writing. If DADS denies diagnostic eligibility for the individual, DADS notifies the individual's DSA and CMA of the denial, in writing.

(e) DADS approval of diagnostic eligibility is effective:

(1) the date DADS receives the completed ID/RC Assessment; and

(2) through the last calendar day of the IPC period.

§45.214. Development of Enrollment IPC.

Effective: March 20, 2016

(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

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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).

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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.

Effective: March 20, 2016

(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 the

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.

§45.216. DADS Review of an Enrollment IPC.

Effective: March 20, 2016

(a) DADS reviews a proposed enrollment IPC, PAS/HAB plan, IPPs and, if required by §45.214(a)(1)(D) of this division (relating to Development of Enrollment IPC), the transportation plan to determine if:

(1) the IPC meets the requirement described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(2) the CLASS Program services and CFC services specified in the IPC meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b) of this division.

(b) At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS request.

(c) DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved if DADS determines that:

(1) the proposed enrollment IPC meets the requirement described in subsection (a)(1) of this section; and

(2) the CLASS Program services and CFC services specified in the IPC meet the requirements described in subsection (a)(2) of this section.

(d) If DADS determines that the proposed enrollment IPC does not meet the requirement described in subsection (a)(1) of this section, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this subchapter (relating to Individual's Right to a Fair Hearing).

(e) DADS denies a CLASS Program service or

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CFC service and modifies an IPC in accordance with this subsection.

(1) DADS denies a CLASS Program service or CFC service if DADS determines that the proposed enrollment IPC meets the requirement described in subsection (a)(1) of this section but one or more of the CLASS Program services or CFC services specified in the IPC does not meet the requirements described in subsection (a)(2) of this section.

(2) If DADS denies a service as described in paragraph (1) of this subsection, DADS:

(A) modifies and authorizes the IPC;

(B) approves the individual's request for enrollment with the modified IPC; and

(C) notifies the individual's CMA, in writing, of the action taken.

(f) If DADS notifies the CMA of the denial of the CLASS Program service or CFC service and of the enrollment IPC modified in accordance with subsection (e) of this section, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service or CFC service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service or CFC Service).

§45.217. CDS Option.

Effective: March 20, 2016

(a) During the initial face-to-face, in-home visit with the individual and LAR, as described in §45.212(a)(2) of this division (related to Process for Enrollment of an Individual), and annually thereafter, the CMA must ensure that an individual's case manager informs the individual and LAR or person actively involved with the individual of:

(1) the CDS option in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination); and

(2) the CLASS Program services and CFC service provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

(b) If the individual or LAR chooses to participate in the CDS option, the case manager must:

(1) use the list of FMSAs found at www.dads.state.tx.us to provide the name and contact information to the individual or LAR of each FMSA providing services in the catchment area in which the individual lives;

(2) document the individual's or LAR's choice of FMSA in accordance with DADS instructions;

(3) document each service to be provided through the CDS option on the IPC;

(4) if the only service to be provided through the CDS option is CFC PAS/HAB, include on the IPC:

(A) CFC FMS instead of FMS; and

(B) if the individual will receive support consultation, CFC support consultation instead of support consultation; and

(5) ensure the individual or LAR completes the required forms as described in Chapter 41, Subchapter D of this title.

§45.218. Service Limits.

Effective: July 1, 2015

(a) The following limits apply to an individual's services:

(1) for adaptive aids and dental treatment, a maximum combined cost of \$10,000 during an IPC period, which includes the cost of repair and maintenance of an adaptive aid;

(2) for minor home modifications:

(A) \$10,000 during the time an individual is enrolled in the CLASS Program, which may be paid in one or more IPC periods; and

(B) after reaching the \$10,000 limit described in subparagraph (A) of this paragraph, a maximum of \$300 for repair and maintenance during an IPC period;

(3) for respite, 30 days of in-home respite and out-of-home respite, combined, during an IPC period; and

(4) for transition assistance services, a maximum cost of \$2,500.

(b) An individual may receive transition

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assistance services only once in the individual's lifetime.

§45.219. [Repealed]

Division 3, Reviews

§45.221. Annual Review and Reinstatement of Diagnostic Eligibility.

Effective: March 20, 2016

(a) A DSA must:

(1) ensure that, no more than 120 calendar days before the expiration of an individual's IPC period, a registered nurse in accordance with the CLASS Provider Manual, completes:

(A) the DADS Related Conditions Eligibility Screening Instrument;

(B) the ID/RC Assessment in accordance with the CLASS Provider Manual; and

(C) a nursing assessment of the individual utilizing the DADS CLASS/DBMD Nursing Assessment form;

(2) submit to DADS at least 60 calendar days before the expiration of an individual's IPC period for a DADS decision regarding the individual's diagnostic eligibility:

(A) the results of a completed adaptive behavior screening assessment;

(B) the completed DADS Related Conditions Eligibility Screening Instrument; and

(C) the completed ID/RC Assessment; and

(3) send the completed DADS CLASS/DBMD Nursing Assessment form to the CMA.

(b) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments conducted of the individual.

(c) DADS reviews the documentation submitted by the DSA in accordance with subsection (a)(2) of this section and notifies the DSA of its determination in accordance with §45.213 of this subchapter (relating to Determination of Diagnostic Eligibility by DADS).

(d) A DSA must ensure an appropriate

professional completes an adaptive behavior screening assessment in accordance with the assessment instructions:

(1) at least every five years after completion of the most current assessment; and

(2) if significant changes that may be permanent occur in the individual's functioning.

(e) DADS does not pay a CMA or DSA for CLASS Program services or CFC services provided during a period of time in which DADS has not approved an individual's diagnostic eligibility unless the DSA requests and is granted a reinstatement of such approval.

(f) To request reinstatement of approval of diagnostic eligibility, the DSA must submit to DADS the documentation described in subsection (a)(2) of this section.

(g) DADS does not grant reinstatement of approval of diagnostic eligibility:

(1) if the DSA does not submit the documentation described in subsection (a)(2) of this section;

(2) for a period of time for which DADS denied diagnostic eligibility; or

(3) for a period of time during which the individual is not financially eligible for Medicaid as required by §45.201(a)(1) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services).

(h) If DADS grants a reinstatement of approval of diagnostic eligibility, the reinstatement will be for a period of not more than 180 calendar days before the date DADS receives the documentation submitted by the DSA in accordance with subsection (f) of this section.

§45.222. Renewal IPC and Requirement for Authorization to Continue Services.

Effective: March 21, 2011

(a) A renewal IPC is effective for an IPC period.

(b) The effective date of a renewal IPC is:

(1) for renewal of an enrollment IPC, the first calendar day of the same month of the enrollment IPC's effective date in the following year; or

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(2) for any other renewal IPC, the first calendar day of the month after the month in which the IPC period expires.

(c) A provider must submit a proposed renewal IPC and obtain authorization from DADS for such IPC in accordance with §45.223 of this division (relating to Renewal and Revision of an IPC) to continue providing services to an individual after the expiration of:

(1) the IPC period of the individual's enrollment IPC; or

(2) the IPC period of the individual's renewal IPC.

§45.223. Renewal and Revision of an IPC.

Effective: March 20, 2016

(a) Beginning the effective date of an individual's IPC, as determined by §45.214(h) of this subchapter (relating to Development of Enrollment IPC) or §45.222(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, in accordance with the CLASS Provider Manual, meet with the individual or LAR in the individual's home, or as requested by the individual or LAR, in another location where the individual receives CLASS Program services or CFC services.

(b) During each meeting described in subsection (a) of this section, the case manager must:

(1) review the individual's progress toward achieving the goals and objectives as described on the IPP for each CLASS Program service and each CFC service listed on the individual's IPC;

(2) if an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, habilitation, or CFC PAS/HAB, and any of those service are not identified as critical to meeting the individual's health and safety, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety;

(3) if a service backup plan has been implemented, discuss the implementation of the service backup plan with the individual or LAR to

determine whether or not the plan was effective;

(4) if the case manager determines a service may now be critical to the individual's health and safety, as described in paragraph (2) of this subsection, or that the service backup plan was ineffective as described in paragraph (3) of this subsection, convene a service planning team meeting to discuss revisions to the IPC and the service backup plan; and

(5) complete the DADS IPP Service Review form in accordance with the CLASS Provider Manual.

(c) An individual's case manager must:

(1) at least annually, but no more than 90 calendar days before the end of the IPC period of the IPC being renewed, convene a service planning team meeting to develop a proposed renewal IPC, new IPPs and a new PAS/HAB plan, and if transportation as a habilitation activity or as an adaptive aid is included on the IPC, a new transportation plan;

(2) except as provided in subsection (d) of this section, within five business days after becoming aware that the individual's need for a CLASS Program service or CFC service changes:

(A) develop a proposed revised IPC and revised IPP(s) and, if necessary, a revised PAS/HAB plan and a new or revised transportation plan; and

(B) if the individual may need cognitive rehabilitation therapy, begin assisting the individual to obtain an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery); and

(3) if the proposed renewal or proposed revised IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, habilitation, or CFC PAS/HAB, ensure that the IPC identifies whether the service is critical to the individual's health and safety, as required by §45.231(a)(2) of this division (relating to Service Backup Plans).

(d) If an individual receiving CFC PAS/HAB or LAR requests CFC support management during an IPC year, the case manager must revise the IPC as described in the CLASS Provider Manual.

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(e) The case manager must:

(1) ensure that a proposed renewal IPC and proposed revised IPC meet the requirements described in §45.214(a)(1)(B) and (b) of this subchapter; and

(2) ensure that new or revised IPPs are reviewed, signed, and dated as evidence of agreement by:

- (A) the individual or LAR;
- (B) the case manager; and
- (C) the DSA.

(f) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC or a proposed revised IPC, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

- (A) the individual or LAR;
- (B) the case manager; and
- (C) the DSA;

(2) submit to DADS for its review:

(A) the signed proposed renewal IPC, new IPPs, new PAS/HAB plan and, if required by subsection (c)(1) of this section, a new transportation plan, and the completed DADS CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §45.221(a)(3) of this division (relating to Annual Review and Reinstatement of Diagnostic Eligibility) at least 30 calendar days before the end of the IPC period; or

(B) the signed proposed revised IPC, any revised IPPs, and if required by subsection (c)(2)(A) of this section, the revised PAS/HAB plan, and the new or revised transportation plan, and the completed DADS CLASS/DBMD Nursing Assessment form at least 30 calendar days before the effective date proposed by the service planning team; and

(3) if the individual receives a service through the CDS option, send to the FMSA a copy of the signed proposed renewal or signed proposed revised IPC, revised IPP for a service received through the CDS option and, if required by subsection (c)(1) or (2)(A) of this section, the new or revised PAS/HAB and transportation plans.

(g) If the individual or LAR requests a CLASS Program service or a CFC service that the case manager or DSA has determined does not meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) or (b) of this subchapter, the CMA must comply with this subsection.

(1) The CMA must, in accordance with the CLASS Provider Manual, send the individual or LAR written notice of the denial of or proposal to reduce the requested CLASS Program service, copying the DSA and, if applicable, the FMSA.

(2) If the CMA is required to send a written notice of the denial of, or proposal to reduce, a CLASS Program service or CFC service as described in paragraph (1) of this subsection, the CMA must:

(A) in accordance with the time frames described in subsection (e)(2) of this section, submit to DADS for its review:

(i) the proposed renewal IPC or proposed revised IPC, which 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 new PAS/HAB plan or any revised PAS/HAB plan; and

(iv) if transportation as a habilitation activity or as an adaptive aid is included on the IPC, the new or revised transportation plan; and

(B) if the individual receives a service through the CDS option, send to the FMSA a copy of the proposed renewal or proposed revised IPC, the revised IPP for a service received through the CDS option and, if required by subsection (c)(1) or (2)(A) of this section, the new or revised PAS/HAB and transportation plans to the FMSA.

(h) At DADS request, the CMA must submit additional documentation supporting the proposed IPC to DADS within 10 calendar days after the date of DADS request.

(i) If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the

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requirement described in §45.201(a)(5) of this subchapter and the CLASS Program services and CFC services specified in the IPC meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b) of this subchapter:

(1) DADS notifies the individual's CMA, in writing, that the IPC is authorized; and

(2) 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.

(j) The process by which an individual's CLASS program services or CFC services are terminated or a CLASS Program service or CFC service is denied, based on DADS review of a proposed renewal IPC or proposed revised IPC, is described in §45.225(c) - (e) of this division (relating to Utilization Review of an IPC by DADS).

(k) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

§45.224. Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy.

Effective: March 20, 2016

(a) If a DSA provides licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, respite, an adaptive aid, dental treatment, or CFC PAS/HAB to an individual that is not included on the individual's IPC in accordance with §45.805(b) of this chapter (relating to DSA: Service Delivery), the DSA, must, within seven calendar days after providing the service, submit to the CMA:

(1) documentation describing the circumstances necessitating the provision of the new service or the increase in the amount of the existing service; and

(2) documentation by a registered nurse of the nurse's determination that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy as required by §45.805(b) of this chapter.

(b) Within seven calendar days after the CMA receives the documentation described in

subsection (a) of this section, the CMA must:

(1) based on the documentation, develop a proposed revised IPC and revise the IPP; and

(2) submit the proposed revised IPC, revised IPP, and documentation to DADS.

(c) DADS authorizes the IPC only if, after reviewing the documentation described in subsection (a) of this section, it determines that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy. At DADS request, the CMA must submit additional documentation supporting the proposed revised IPC to DADS within 10 calendar days after DADS request.

(d) If DADS does not authorize the IPC, DADS does not pay the DSA for the service provided.

§45.225. Utilization Review of an IPC by DADS.

Effective: March 20, 2016

(a) At DADS discretion, DADS conducts a utilization review of an IPC to determine if:

(1) the IPC meets the requirement described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(2) the CLASS Program services and CFC services specified in the IPC meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b) of this subchapter (relating to DADS Review of an Enrollment IPC).

(b) If requested by DADS, a CLASS Program provider must submit documentation supporting the IPC to DADS within 10 calendar days after DADS request.

(c) If DADS determines that an IPC does not meet the requirement described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services and CFC services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) DADS denies or proposes reduction of a

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CLASS Program service or CFC service and modifies an IPC in accordance with this subsection.

(1) DADS denies or proposes reduction of a CLASS Program service or CFC service if DADS determines that the IPC meets the requirement described in §45.201(a)(5) of this subchapter but one or more of the CLASS Program services or CFC services specified in the IPC do not meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b).

(2) If DADS denies or proposes reduction of a CLASS Program service or CFC service as described in paragraph (1) of this subsection, DADS:

(A) modifies and authorizes the IPC; and

(B) notifies the individual's CMA, in writing, of the action taken.

(e) If DADS notifies the CMA of the denial or proposed reduction of the individual's CLASS Program services or CFC services and of the IPC modified in accordance with subsection (d) of this section:

(1) for a denial of a CLASS Program service or CFC service, the CMA must:

(A) send the individual or LAR written notice of the denial of the CLASS Program service or CFC service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service or CFC Service); and

(B) coordinate the implementation of the modified IPC; or

(2) for a proposed reduction of a CLASS Program service or CFC service:

(A) the CMA must send the individual or LAR written notice of the proposal to reduce the CLASS Program service or CFC service in accordance with §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service or CFC Service); and

(B) the modified IPC is handled as follows:

(i) in accordance with §45.405(d) of this chapter, if the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service or CFC

service, as specified in the written notice, the modified IPC may not be implemented; or

(ii) if the individual or LAR does not request a fair hearing before the effective date of the reduction of a CLASS Program service or CFC service, as specified in the written notice, the CMA must coordinate the implementation of the modified IPC.

(f) The IPC period of an enrollment IPC or a renewal IPC modified by DADS in accordance with subsection (d) of this section does not change as a result of DADS modification.

§§45.226 - 45.230. *[Reserved]*

§45.231. Service Backup Plans.

Effective: March 20, 2016

(a) If an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, habilitation, or CFC PAS/HAB, the case manager must ensure that:

(1) the service planning team determines whether the service is critical to the individual's health and safety; and

(2) the IPC identifies whether the service is critical to the individual's health and safety, as determined by the service planning team.

(b) If an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, habilitation, or CFC PAS/HAB, and identifies any of those services as critical to meeting the individual's health and safety, the DSA must:

(1) develop with input from the service planning team a service backup plan for each service identified as critical using DADS Provider Agency Model Service Backup Plan form; and

(2) ensure that if the action in the service backup plan 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.

(c) If the service backup plan is implemented, the DSA must:

(1) discuss the implementation of the

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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;

(2) document whether or not the plan was effective; and

(3) revise the plan with input from the service planning team if the DSA determines the plan was ineffective.

(d) Requirements regarding service backup plans for individuals receiving services through the CDS option are described in Chapter 41 of this title (relating to Consumer Directed Services Option).

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Subchapter C – Rights and Responsibilities of an Individual

§45.301. Individual's Right to a Fair Hearing.

Effective: March 20, 2016

An individual whose request for enrollment into the CLASS Program is denied or is not acted upon with reasonable promptness, or whose CLASS Program services or CFC services have been denied, suspended, reduced, or terminated by DADS, is entitled to a fair hearing in accordance with Texas Administrative Code, Title 1, Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

§45.302. Mandatory Participation Requirements of an Individual.

Effective: March 20, 2016

An individual, or an LAR on behalf of the individual, must comply with the following mandatory participation requirements:

(1) completing and submitting an application for Medicaid financial eligibility to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit as described in §45.212(a)(2) of this chapter (relating to Process for Enrollment of an Individual) or within another time frame permitted by §45.212(c) of this chapter;

(2) participating on the service planning team to:

(A) develop an enrollment IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC); and

(B) renew and revise the IPC and IPPs as described in §45.223 of this chapter (relating to Renewal and Revision of IPC);

(3) reviewing, agreeing to, signing, and dating an IPC and IPPs in accordance with §45.214 of this chapter, §45.215(b) of this chapter (relating to Development of IPPs), and §45.223 of this chapter;

(4) cooperating with the CMA and DSA in the delivery of CLASS Program services or CFC services listed on the individual's IPC, including:

(A) working with the CMA and DSA in scheduling meetings;

(B) attending scheduled meetings with the case manager or service provider;

(C) being available to receive the CLASS Program services or CFC services;

(D) notifying the CMA or DSA in advance if the individual or LAR is unable to attend a scheduled meeting or is unavailable to receive services in the individual's own or family home; and

(E) admitting CMA and DSA representatives to the individual's own home or family home for a scheduled meeting or to receive CLASS Program services or CFC services;

(5) cooperating with the DSA's service providers to ensure progress toward achieving the goals and objectives described in the IPP for each CLASS Program service or CFC service listed on the IPC;

(6) if found by HHSC to be financially eligible for CLASS Program services based on the special institutional income limit, paying the required co-payment in a timely manner;

(7) notifying the CMA and DSA if the individual receives notice from HHSC of a change in the status of the individual's financial eligibility for Medicaid;

(8) not engaging in criminal behavior in the presence of the case manager or service provider;

(9) not permitting a person present in the individual's own or family home to engage in criminal behavior in the presence of the service provider or case manager;

(10) not engaging in a pattern of harassment of the case manager or service provider that interferes with the ability to provide CLASS Program services or CFC services or acting in a manner that is threatening to the health and safety of the case manager or service provider;

(11) not permitting a person present in the individual's own or family home to:

(A) engage in a pattern of harassment of the case manager or service provider that interferes with the ability to provide CLASS Program services or CFC services; or

(B) act in a manner that is threatening to the health and safety of the case manager or

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service provider;

(12) in accordance with §45.409 of this chapter (relating to Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy), not exhibiting behavior or permitting a person present in the individual's residence to exhibit behavior that places the health and safety of the case manager or service provider in immediate jeopardy;

(13) not initiating or participating in fraudulent health care practices;

(14) not engaging in behavior that endangers the individual's health or safety; and

(15) not permitting a person present in the individual's own home or family home to engage in behavior that endangers the individual's health or safety.

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Subchapter D - Transfer, Denial, Suspension, Reduction, and Termination of Services

§45.401. Coordination of Transfers.

Effective: March 21, 2011

(a) A CMA must, upon receiving notice from an individual or LAR of the individual's intention to transfer to another CMA or DSA:

(1) document in the individual's record the date the transfer request was received; and

(2) make transfer arrangements, including completing appropriate documentation, in accordance with the *CLASS Provider Manual* with:

(A) the individual or LAR; and

(B) the receiving CMA or DSA, as appropriate.

(b) The CMA must establish an effective date for the individual's transfer that:

(1) is at least 14 calendar days after the date of the notice of intent to transfer described in subsection (a) of this section; and

(2) is agreed to by the CMA and individual or LAR, and, as appropriate, the receiving CMA or receiving DSA.

(c) The receiving CMA or DSA, as applicable, must timely provide documentation, as described in the *CLASS Provider Manual*, to the CMA to allow the CMA to complete forms in accordance with the *CLASS Provider Manual*.

(d) The current CMA must submit the following to DADS before the effective date of the transfer:

(1) the individual's current IPC; and

(2) forms completed in accordance with the *CLASS Provider Manual*.

(e) The IPC period of an enrollment IPC or renewal IPC does not change upon an individual's transfer to another CMA or DSA under this section.

(f) A CMA must, upon receiving notice from an individual or LAR of the individual's intention to transfer to another CDSA, follow the guidelines described in §41.403 of this title (relating to Transfer Process).

§45.402. Denial of a Request for Enrollment into the CLASS Program.

Effective: March 20, 2016

(a) DADS denies an individual's request for enrollment into the CLASS Program if:

(1) the individual does not meet the eligibility criteria described in §45.201 of this chapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); or

(2) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services or CFC services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) If DADS denies an individual's request for enrollment, DADS sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing). DADS sends a copy of the written notice to the individual's DSA, CMA, and if selected, FMSA.

§45.403. Denial of a CLASS Program Service or CFC Service.

Effective: March 20, 2016

(a) DADS denies a CLASS Program service or CFC service on an individual's IPC, based on a review described in §45.216 of this chapter (relating to DADS Review of an Enrollment IPC), §45.223 of this chapter (relating to Renewal and Revision of an IPC), or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the CLASS Program service or CFC service does not meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b) of this chapter (relating to Development of Enrollment IPC).

(b) DADS notifies the CMA selected by the individual, in writing, if DADS denies a CLASS Program service or CFC service on the individual's IPC. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of DADS written notice of

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denial of a CLASS Program service or CFC service, the CMA must:

(1) in accordance with the CLASS Provider Manual, send written notice to the individual or LAR of the denial of the service, copying the individual's DSA and, if selected, FMSA;

(2) include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing); and

(3) coordinate the implementation of the modified IPC described in subsection (b) of this section.

§45.404. Suspension of CLASS Program Services or CFC Services.

Effective: July 1, 2015

(a) DADS suspends an individual's CLASS Program services or CFC services if the individual:

(1) is under a temporary admission to one of the following facilities:

(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;

(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; or

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(2) leaves the state for 180 consecutive calendar days or less.

(b) The period of suspension is the length of the admission to the facility or the time spent in another state.

(c) During a temporary admission to one of the facilities listed in subsection (a)(1) of this section or during an extension of the individual's suspension granted in accordance with subsection (d) of this section, an individual is not considered to be residing in the facility.

(d) DADS may extend an individual's suspension for 30 calendar days if the individual demonstrates that:

(1) the individual will likely be released from a facility listed in subsection (a)(1) of this section within 30 calendar days after:

(A) the temporary admission expires; or

(B) the end of a 30 calendar-day extension previously granted by DADS; or

(2) the individual will likely return to Texas and be available to receive CLASS Program services or CFC services within 30 calendar days after:

(A) the end of the 180 calendar-day time period described in subsection (a)(2) of this section; or

(B) the end of a 30 calendar-day extension previously granted by DADS.

(e) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS suspend CLASS Program services or CFC services for the individual. Within two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(f) DADS notifies the individual's CMA, in writing, of whether it authorizes a suspension of CLASS program services or CFC services.

(g) Upon receipt of a written notice from DADS authorizing the suspension of CLASS Program services or CFC services, the CMA must, in accordance with the CLASS Provider Manual, send written notice to the individual or LAR of the suspension of services, copying the individual's

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DSA and, if selected, FMSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.405. Reduction of a CLASS Program Service or CFC Service.

Effective: March 20, 2016

(a) DADS reduces a CLASS Program service or CFC service on an individual's IPC, based on a review described in §45.223 of this chapter (relating to Renewal and Revision of an IPC) or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the CLASS Program service or CFC service on the IPC does not meet the requirements described in §45.214(a)(1)(B)(iii) or (iv) and (b) of this chapter (relating to Development of Enrollment IPC).

(b) DADS notifies the individual's CMA, in writing, if it proposes to reduce a CLASS Program service or CFC service. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of a written notice from DADS proposing to reduce a CLASS Program service or CFC service, the CMA must, in accordance with the CLASS Provider Manual, send written notice to the individual or LAR of the proposal to reduce the service, copying the individual's DSA and, if selected, FMSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service or CFC service, as specified in the written notice, the modified IPC described in subsection (b) of this section may not be implemented and the DSA must provide the service to the individual in the amount authorized in the prior IPC while the appeal is pending.

§45.406. Termination of CLASS Program Services and CFC Services With Advance Notice Because of Ineligibility or Leave from the State or Because DSAs Cannot Ensure Health and Safety.

Effective: March 20, 2016

(a) DADS terminates an individual's CLASS Program services and CFC services if:

(1) the individual does not meet the eligibility criteria described in §45.201 of this chapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(2) the individual is admitted for more than 180 consecutive calendar days to one of the facilities listed in §45.404(a)(1) of this division (relating to Suspension of CLASS Program Services or CFC Services and DADS has not extended the individual's suspension in accordance with §45.404(d) of this division;

(3) the individual leaves the state for more than 180 consecutive calendar days and DADS has not extended the individual's suspension in accordance with §45.404(d) of this division; or

(4) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services or CFC services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS terminate CLASS Program services and CFC services for the individual. Within two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(c) If the reason for the requested termination of services is subsection (a)(4) of this section, the CMA must include in the written documentation the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(d) Except as provided in subsection (f) of this section, DADS notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS program services and CFC

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services.

(e) Upon receipt of a written notice from DADS authorizing the proposed termination of CLASS Program services, the CMA must, in accordance with the CLASS Provider Manual, send written notice to the individual or LAR of the proposal to terminate CLASS Program services and CFC services, copying the individual's DSA and, if selected, FMSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(f) If the reason for the proposed termination of CLASS Program services and CFC services is based on §45.201(a)(5) of this chapter and DADS authorizes the proposed termination, DADS sends written notice to the individual or LAR of the proposal to terminate CLASS Program services and CFC services and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing). DADS sends a copy of the written notice to the individual's DSA, CMA, and, if selected, FMSA.

(g) If the individual or LAR requests a fair hearing before the effective date of the termination of CLASS Program services and CFC services, as specified in the written notice, the DSA must provide services to the individual in the amounts authorized in the IPC while the appeal is pending.

§45.407. Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements.

Effective: March 20, 2016

(a) DADS may terminate an individual's CLASS Program services and CFC services if the individual refuses to comply with a mandatory participation requirement described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual).

(b) If a CMA becomes aware that an individual has not complied with a mandatory participation requirement described in §45.302 of this chapter, the CMA must immediately attempt to resolve the situation, including facilitating at

least one face-to-face meeting between:

- (1) the individual or LAR;
- (2) a representative from the CMA; and
- (3) a representative from the DSA.

(c) If, after making attempts to resolve the situation as required by subsection (b) of this section, the CMA determines that the situation cannot be resolved, the CMA must request, in writing, that DADS terminate CLASS Program services and CFC services for the individual. The request must be sent to DADS within two business days of the CMA's determination that the situation cannot be resolved and be supported by written documentation. The written documentation must include a description of:

(1) the situation that resulted in the request to terminate CLASS Program services and CFC services; and

(2) the attempts by the CMA and DSA to resolve the situation, including face-to-face meetings with the individual or LAR.

(d) DADS notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS program services and CFC services.

(e) Upon receipt of a written notice from DADS authorizing the proposed termination of CLASS Program services and CFC services, the CMA must, in accordance with the CLASS Provider Manual, send written notice to the individual or LAR of the proposal to terminate CLASS Program services and CFC services, copying the individual's DSA and, if selected, FMSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(f) If the individual or LAR requests a fair hearing before the effective date of the termination of CLASS Program services and CFC services, as specified in the written notice, the DSA must provide the services to the individual in the amounts authorized in the IPC while the appeal is pending.

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§45.408. Termination of CLASS Program Services and CFC Services Without Advance Notice.

Effective: March 20, 2016

(a) DADS terminates an individual's CLASS Program services and CFC services if any of the following situations exists:

(1) the CMA or DSA has factual information confirming the death of the individual;

(2) the CMA or DSA receives a clear written statement signed by the individual that the individual no longer wishes CLASS Program services;

(3) the individual's whereabouts are unknown and the post office returns mail directed to him or her by the CMA or DSA, indicating no forwarding address; or

(4) the CMA or DSA establishes that the individual has been accepted for Medicaid services by another state.

(b) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS terminate CLASS Program services and CFC services for the individual. The request must be sent to DADS within two business days after the CMA becomes aware of the situation and be supported by written documentation.

(c) DADS notifies the individual's CMA, in writing, of whether it authorizes the termination of CLASS program services and CFC services.

(d) Upon receipt of a written notice from DADS authorizing the termination of CLASS Program services and CFC services, the CMA must, in accordance with the CLASS Provider Manual, send written notice to the individual or LAR of the termination, copying the individual's DSA and, if selected, FMSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.409. Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy.

Effective: March 20, 2016

(a) DADS may terminate an individual's CLASS Program services and CFC services if an individual or a person in the individual's residence exhibits behavior that places the health and safety of the CMA's case manager or a DSA's service provider in immediate jeopardy.

(b) If a CMA or DSA becomes aware that a situation described in subsection (a) of this section exists, the CMA or DSA must:

(1) immediately file a report with the appropriate law enforcement agency and, if appropriate, make an immediate referral to DFPS; and

(2) notify the CMA or DSA, as appropriate, and DADS by telephone of the situation no later than the business day after the day the CMA or DSA becomes aware of the situation.

(c) The CMA must, working with the DSA, attempt to resolve the situation.

(d) If, after making attempts to resolve the situation as required by subsection (c) of this section, the CMA determines that the situation cannot be resolved, the CMA must request, in writing, that DADS terminate CLASS Program services and CFC services for the individual. The request must be sent to DADS within two business days after DADS was notified of the situation by the CMA or DSA and be supported by written documentation.

(e) The CMA must include in the written documentation required by subsection (d) of this section:

(1) a description of the situation that resulted in the request to terminate the individual's CLASS Program services and CFC services;

(2) a detailed description of the attempts by the CMA to resolve the situation; and

(3) if available, a copy of any report issued by a law enforcement agency or DFPS regarding the situation.

(f) DADS notifies the individual's CMA and

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DSA, in writing, of whether it authorizes the termination of CLASS Program services and CFC services.

(g) Upon receipt of written notice from DADS authorizing the termination of CLASS Program services and CFC services, the CMA must, no later than the date of the termination of services, send written notice to the individual or LAR of such termination, copying the DSA and, if selected, FMSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.410. Requirement to Submit Fair Hearing Request Summary to DADS.

Effective: March 21, 2011

(a) When DADS receives a request for a fair hearing from an individual or LAR, DADS sends a copy of the request to the individual's CMA.

(b) The CMA must, within one business day after receipt of the request of the fair hearing from DADS, submit a completed Fair Hearing Request Summary, as described in the *CLASS Provider Manual*, to DADS.

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Subchapter E – Support Family Services

Division 1, Introduction

§45.501. [Repealed]

§45.503. Contracting Requirements.

Effective: September 1, 2014

A support family agency must meet all provisions described in this chapter and comply with Chapter 49 of this title (relating to Contracting for Community Services).

§45.505. Eligibility.

Effective: March 20, 2016

(a) To receive support family services, an individual must be under 18 years of age.

(b) An individual who receives support family services must not receive:

- (1) CFC PAS/HAB;
- (2) CFC ERS; or
- (3) transportation as a habilitation activity or as an adaptive aid.

Division 2, Support Family Agency

§45.521. Support Family Agency Functions.

Effective: August 31, 2004

The support family agency must provide ongoing recruitment, support, training, and monitoring of its support family services (SFS) including:

- (1) ensuring that support families are available to serve eligible children;
- (2) helping children transition from institutional services to SFS;
- (3) supporting children in support families to prevent placement breakdown or institutionalization;
- (4) providing an alternative support family when the child's placement with a support family is no longer available or appropriate;
- (5) establishing a safe and permanent placement for the child as authorized by the interdisciplinary team (IDT);
- (6) training the support family to complete tasks the IDT assigns and as documented on the individual service plan and the individual

program plan of the individual child; and

(7) monitoring and reporting to the case manager about the child's placement, as often as needed but at least monthly, as outlined in §45.524(5) of this subchapter (relating to Ongoing Support) and §45.525 of this subchapter (relating to Monthly Monitoring).

§45.522. Pre-Placement Activities.

Effective: August 31, 2004

(a) Upon referral from the Community Living Assistance and Support Services (CLASS) case manager for support family services, the support family agency must:

- (1) meet with the child and the child's parents or legally authorized representative;
- (2) identify the activities and supports necessary to meet the child's needs;
- (3) obtain any evaluations, written records, or other necessary information about the child;
- (4) determine the criteria for a support family that will meet the specific needs of the child;
- (5) locate a support family; and
- (6) keep the CLASS case manager informed of placement progress.

(b) Before placement, the support family agency must:

- (1) ensure that the support family obtains the required verification through a child-placing agency licensed by the Texas Department of Family and Protective Services;
- (2) provide orientation, training, or both to the support family in the specific tasks the child needs;
- (3) introduce the child's parents or legally authorized representative, the support family, and the child to each other in person; and
- (4) obtain the child's parents' or legally authorized representative's agreement to the placement.

(c) The support family agency must facilitate written agreements and authorizations between the child's parents or legally authorized representative, the support family, and the support family agency. The written documents must

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include:

(1) designation of who will participate in decisions about services, including any necessary delegation of authority for decisions by the legally responsible party;

(2) documentation of how visits between the child and the child's parents or legally authorized representative will be arranged;

(3) designation of who has the authority to make health care decisions for the child, such as consenting to medical treatment, including any necessary delegation of this authority by the person with the legal responsibility to make health care decisions;

(4) preferences agreed upon for:

(A) religious issues;

(B) cultural practices;

(C) problem resolution processes; and

(D) the type and amount of involvement by the child's parents or legally authorized representative;

(5) plans for routine and emergency communication and information exchange, including both oral and written communication; and

(6) documentation of the financial responsibilities of all parties.

§45.523. Placement.

Effective: August 31, 2004

Upon completion of the authorizations and agreements listed in §45.522(c) of this subchapter (relating to Pre-Placement Activities), the support family, the child's parents or legally authorized representative, and the support family agency must:

(1) participate in the initial interdisciplinary team to develop:

(A) the transition plan;

(B) the individual service plan;

(C) the individual program plan; and

(D) non-waiver resources;

(2) provide copies of the agreements and authorizations listed in §45.522(c) of this subchapter to the Community Living Assistance and Support Services case manager;

(3) provide orientation, training, or both

to the support family in the specific tasks the child needs; and

(4) assume the responsibility for moving the child and his possessions into the support family home.

§45.524. Ongoing Support.

Effective: August 31, 2004

After the child is placed into the support family, the support family agency must:

(1) ensure continued compliance with §45.503 of this subchapter (relating to Contracting Requirements);

(2) provide the support family with information on how to contact support family agency staff at any time;

(3) ensure accurate documentation of service delivery in accordance with the individual service plan;

(4) assist the support family and the child in accessing school and preschool services;

(5) provide monthly progress notes to the Community Living Assistance and Support Services (CLASS) case manager, including monthly summaries of:

(A) habilitation activities;

(B) socialization activities;

(C) use of non-waiver services; and

(D) other services included on the individual program plan;

(6) provide additional training to the support family as identified by the interdisciplinary team (IDT);

(7) participate in the IDT meetings as requested by the CLASS case manager, the child's parents or legally authorized representative, the support family agency, or the direct services agency; and

(8) provide to the CLASS case manager documentation of any changes to the agreements or authorizations listed in §45.522(c) of this subchapter (relating to Pre-Placement Activities) within seven days of when the change occurs.

§45.525. Monthly Monitoring.

Effective: August 31, 2004

(a) The support family agency must visit the

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support family's home at least once a month to verify that:

(1) placement remains beneficial to client;
(2) the environment remains healthy and safe; and

(3) the rights of the child are being protected. In order to ensure that the child's rights are being protected, the support family agency must verify that:

(A) there is no evidence of child abuse or neglect;

(B) the child participates in community functions;

(C) the child has adequate personal belongings; and

(D) there are no restrictions on the child's personal property, including money.

(b) The support family agency must document each monthly visit, including verification of each item listed in subsection (a) of this section, and submit this documentation to the Community Living Assistance and Support Services (CLASS) case manager within seven days of the visit.

(c) The support family agency must inform the CLASS case manager of any changes needed to the individual program plan within five days of the date the agency became aware of the need for change.

Division 3, Support Families

§45.531. Support Family Requirements.

Effective: August 31, 2004

(a) The support family must be:

(1) an independent foster family verified by the Texas Department of Family and Protective Services (DFPS) and contracted with a Community Living Assistance and Support Services direct service agency; or

(2) verified by a child-placing agency licensed by DFPS.

(b) The support family must not provide services to more than three unrelated children at any one time in their home.

(c) The support family must ensure that:

(1) the child participates in age-appropriate community activities; and

(2) the support family home environment is healthy and safe for the child.

(d) The support family must provide service in a residence that the support family owns or leases. The residence must be a typical residence in the neighborhood and meet the needs of the child and the child's parents or legally authorized representative.

§45.533. Support Family Duties.

Effective: August 31, 2004

(a) The support family must provide services to the Community Living Assistance and Support Services client as authorized on the individual service plan (ISP) and defined in the individual program plan, including:

(1) direct personal assistance with activities of daily living (such as grooming, eating, bathing, dressing, and personal hygiene);

(2) assistance with meal planning and preparation;

(3) assistance with housekeeping;

(4) assistance with communication and mobility;

(5) reinforcement of behavioral, educational, and therapeutic activities;

(6) assistance with medications and the performance of tasks delegated by a registered nurse;

(7) supervision for the child's safety;

(8) transportation related to routine family activities;

(9) assistance with participation in community activities; and

(10) habilitation.

(b) The support family must:

(1) allow the client's family members and friends access to the client without arbitrary restrictions, unless exceptional conditions are justified by the client's interdisciplinary team (IDT), documented in the ISP, and approved by the Texas Department of Human Services;

(2) assist a school-age client in receiving educational services in a six-hour-per-day program five days a week provided by the local school district;

(3) ensure that no client receives

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educational services at a state school/state center educational setting, unless contraindications are documented with justification by the IDT;

(4) ensure that a preschool-age client receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities, unless contraindications are documented with justification;

(5) provide clients with age-appropriate activities that enhance self-esteem and maximize functional level; and

(6) ensure the client receives medical care prescribed by a physician, including:

- (A) doctors' appointments;
- (B) medications;
- (C) evaluations, therapies, and treatment; and
- (D) lab work and other medical tests.

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Subchapter F – Adaptive Aids and Minor Home Modifications

Division 1, Adaptive Aids

§45.601. Items and Services Purchasable as an Adaptive Aid.

Effective: March 21, 2011

(a) The only items and services that a DSA may purchase or lease as an adaptive aid are listed in the *CLASS Provider Manual*. The repair and maintenance of an adaptive aid, not covered by a warranty, are also purchasable as an adaptive aid.

(b) A DSA may not purchase or lease, as an adaptive aid, an item or service not listed in the *CLASS Provider Manual*.

(c) An adaptive aid must be the exclusive property of the individual to whom it is provided.

§45.602. Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance.

Effective: July 1, 2015

(a) The maximum amount DADS authorizes as payment to a DSA for all adaptive aids and dental treatment combined for an individual is \$10,000 per IPC period, which includes the cost of repair and maintenance of an adaptive aid.

(b) To request authorization for repair and maintenance of an adaptive aid up to \$300 per IPC period, a DSA is not required to follow the process described in §45.603 of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than \$500) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) A DSA must follow the process for requesting authorization to purchase an adaptive aid as described in §45.603 of this division if:

(1) requesting authorization for repair and maintenance of an adaptive aid in an amount that exceeds the \$300 limit described in subsection (b) of this section; or

(2) requesting authorization for repair and maintenance of an adaptive aid that is not

purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as an adaptive aid listed in the *CLASS Provider Manual*.

§45.603. Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than \$500.

Effective: March 21, 2011

(a) To purchase an adaptive aid costing less than \$500 for an individual, a CMA must:

(1) ensure that the individual's service planning team completes the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*, evidencing its agreement that the adaptive aid recommended by the appropriate licensed professional is necessary;

(2) within 14 calendar days after completing the requirement in paragraph (1) of this subsection, ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the recommended adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) within 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (2)(A) of this subsection, as applicable; and

(C) the individual's IPP as described in paragraph (2)(B) of this subsection.

(b) DADS reviews the documentation described in subsection (a)(3) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and

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(c) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

§45.604. Requirements For Authorization to Purchase an Adaptive Aid Costing \$500 or More.

Effective: July 1, 2015

(a) To purchase an adaptive aid costing \$500 or more for an individual, a CMA must:

(1) ensure that the individual or LAR initiates a request for the adaptive aid by completing Part A of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*;

(2) send the partially completed form to the DSA;

(3) ensure that the individual's service planning team includes the cost of the specifications for the adaptive aid, as described in §45.605 of this division (relating to Requirements for Specifications for an Adaptive Aid) in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(4) within 14 calendar days after completing the requirement described in paragraph (3) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (3)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (3)(B) of this subsection.

(b) The cost of the specifications included on an IPC and IPP as required by subsection (a)(3) of this section may not exceed an amount equal to three units of service of behavioral support, occupational therapy, physical therapy, or speech and language pathology, as applicable.

(c) DADS reviews the documentation described in subsection (a)(4) of this section and determines whether the proposed IPC is authorized

in accordance with §45.216 of this chapter (relating to DADS Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(e) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the adaptive aid in accordance with §45.605 of this division and ensure that Part B of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form is completed; and

(2) within 60 calendar days after obtaining the specifications:

(A) obtain bids from vendors in accordance with §45.606 of this division (relating to Requirements for Bids of an Adaptive Aid);

(B) select a vendor from which to purchase the adaptive aid; and

(C) complete Part C of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form and send the form to the CMA.

(f) A CMA must, within 14 calendar days after receipt of the form described in subsection (e)(2)(C) of this section:

(1) complete Part D of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, evidencing that the criteria described in §45.214(b) of this chapter (relating to Development of Enrollment IPC) are met;

(2) ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the cost of the adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) within 14 calendar days after completing the requirement described in paragraph

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(2) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (2) (A) of this subsection, as applicable;

(C) the individual's IPP as described in paragraph (2) (B) of this subsection; and

(D) documentation regarding bids as required by §45.606 of this division.

(g) DADS reviews the documentation described in subsection (f)(3) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 or §45.223 of this chapter.

(h) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

§45.605. Requirements for Specifications for an Adaptive Aid.

Effective: December 1, 2011

(a) If DADS authorizes payment for specifications for an adaptive aid costing \$500 or more in accordance with §45.604(c) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing \$500 or More), a DSA must:

(1) obtain specifications from a licensed professional required by DADS for that adaptive aid as described in the *CLASS Provider Manual*; and

(2) ensure that the specifications:

(A) include a complete description of the adaptive aid; and

(B) are approved, in writing, by the individual or LAR and the DSA by completing the Specifications for Adaptive Aids/Minor Home Modifications form as described in the *CLASS Provider Manual*.

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

(c) The DSA must provide a copy of the

specifications to the CMA.

§45.606. Requirements for Bids of an Adaptive Aid.

Effective: December 1, 2011

(a) As required by §45.604(e)(2)(A) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing \$500 or More), for a recommended adaptive aid costing \$500 or more, a DSA must obtain comparable bids for the requested adaptive aid from three vendors. Comparable bids describe the adaptive aid and any associated items or modifications identified in the completed Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form required by §45.604 of this division.

(b) A bid obtained in accordance with subsection (a) of this section must include:

(1) the total cost of the requested adaptive aid, which may be from a catalog, website, or brochure price list;

(2) the amount of any additional expenses related to the delivery of the adaptive aid, including shipping and handling, taxes, installation, and other labor charges;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor, who may not be a relative of the individual;

(5) for an adaptive aid other than interpreter service and specialized training for augmentative communication programs, a complete description of the adaptive aid and any associated items or modifications as identified in the completed Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, which may include pictures or other descriptive information from a catalog, website, or brochure; and

(6) for interpreter service and specialized training for augmentative communication programs, the number of hours of the service or training to be provided in-person and the hourly rate of the service.

(c) A DSA may obtain only one bid or two comparable bids for an adaptive aid if the DSA

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has written justification for obtaining less than three bids because the adaptive aid is available from a limited number of vendors.

(d) If a DSA requests to purchase an adaptive aid that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. The following are examples of justifications that support payment of a higher bid:

(1) the higher bid is based on the inclusion of a longer warranty for the adaptive aid; and

(2) the higher bid is from a vendor that is more accessible to the individual than another vendor.

(e) If the requested adaptive aid is a vehicle modification, a DSA must obtain proof that the individual or individual's family member owns the vehicle for which the vehicle modification is requested.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§45.607. Time Frames for Providing Adaptive Aids to Individuals.

Effective: March 21, 2011

(a) Except as provided for a medical supply as described in subsection (c) of this section, for an adaptive aid costing less than \$500 and authorized by DADS, a DSA must ensure that the individual receives the adaptive aid within 14 business days after one of the following dates, whichever is later:

(1) the date DADS authorizes the proposed IPC that includes the recommended adaptive aid; or

(2) the effective date of the individual's IPC as determined by the service planning team.

(b) Except as provided for a medical supply as described in subsection (c) of this section, for an adaptive aid costing \$500 or more and authorized by DADS, a DSA must ensure that the individual receives the adaptive aid within 30 business days after one of the following dates, whichever is later:

(1) the date DADS authorizes the

proposed IPC that includes the recommended adaptive aid; or

(2) the effective date of the individual's IPC as determined by the service planning team.

(c) For an adaptive aid that is a medical supply, as listed in the *CLASS Provider Manual*, a DSA must ensure that the individual receives the medical supply as follows:

(1) for a medical supply that is not immediately needed by the individual, within five business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes the recommended adaptive aid; or

(B) the effective date of the individual's IPC as determined by the service planning team; and

(2) for a medical supply that is immediately needed by the individual, within two business days after the date DADS authorizes the IPC that includes the recommended adaptive aid.

(d) If a DSA cannot provide the adaptive aid in the time frame described in subsections (a), (b), or (c)(1) of this section, the DSA must comply with this subsection.

(1) Other than for a medical supply, for an adaptive aid costing less than \$500, the DSA must notify the individual and the individual's case manager, orally or in writing, before the 14-day time frame described in subsection (a) of this section expires:

(A) that the adaptive aid will not be provided within the 14-day time frame; and

(B) of a new proposed date for provision of the adaptive aid.

(2) Other than for a medical supply, for an adaptive aid costing \$500 or more, the DSA must notify the individual and the individual's case manager, orally or in writing, before the 30-day time frame described in subsection (b) of this section expires:

(A) that the adaptive aid will not be provided within the 30-day time frame; and

(B) of a new proposed date for provision of the adaptive aid.

(3) For an adaptive aid that is a medical

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supply and not immediately needed by the individual, the DSA must notify the individual and the individual's case manager, orally or in writing, before the five-day time frame described in subsection (c)(1) of this section expires:

(A) that the adaptive aid will not be provided within the five-day time frame;

(B) the reasons why the medical supply will not be provided within the five-day time frame; and

(C) of a new proposed date for provision of the medical supply.

§45.608. Cost Effective Delivery of Adaptive Aid.

Effective: March 21, 2011

(a) A DSA must ensure that if an adaptive aid is delivered to an individual by a commercial carrier, such as United Parcel Services or the United States Postal Service, the most cost-effective carrier is used.

(b) A DSA may not use a commercial carrier to provide overnight delivery unless it is necessary to meet the time frame for a medical supply immediately needed by the individual and there is no other more cost-effective means to deliver the adaptive aid within that time frame.

§45.609. Requirements of DSA Following Provision of Adaptive Aid.

Effective: September 1, 2014

(a) Within 10 business days after an individual has received an adaptive aid, a DSA must ensure that:

(1) the adaptive aid meets the specifications required by §45.604(e)(1) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing \$500 or More); and

(2) a staff person involved in purchasing the adaptive aid for the individual:

(A) contacts the individual to determine whether the adaptive aid meets the needs of the individual; and

(B) documents the results of that visit on the Documentation of Completion of Purchase form as described in the *CLASS Provider Manual*.

(b) If the DSA determines that the adaptive aid does not meet the specifications required by §45.604(e)(1) of this division, the DSA must work with the vendor to ensure that the adaptive aid meets the specifications within 30 calendar days after the DSA's determination.

(c) If the staff person or individual or LAR determines that the adaptive aid does not adequately meet the individual's needs because the individual needs training or other assistance, or the adaptive aid requires repair or adjustment, the DSA must ensure that, within 14 business days after the determination, a person who is qualified to perform such training, assistance, repair, or adjustment visits the individual in person and performs the necessary functions.

(d) If the individual or LAR has concerns about the adaptive aid that are not addressed by the DSA's compliance with subsections (b) and (c) of this section, the DSA must process the individual's or LAR's concerns as a complaint in accordance with §49.309 of this title (relating to Complaint Process).

Division 2, Minor Home Modifications

§45.611. Items or Services Purchasable as a Minor Home Modification.

Effective: March 21, 2011

(a) The only items or services that a DSA may purchase as a minor home modification are listed in the *CLASS Provider Manual*. Except as provided by §45.618(c) of this division (relating to Repair or Replacement of Minor Home Modification), the repair and maintenance of a minor home modification purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete and that are not covered by a warranty are also purchasable as a minor home modification.

(b) A DSA may not purchase, as a minor home modification, an item or service not listed in the *CLASS Provider Manual*.

(c) The following are examples of items and services that may not be purchased as a minor home modification:

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(1) general repair or maintenance of a residence (for example, repairing a leaking roof, a rotten porch, or termite damage; removing mold; or leveling a floor);

(2) general remodeling of a residence that does not address an individual's specific needs; and

(3) an adaptation that adds square footage to a residence.

§45.612. Authorization Limit for Minor Home Modifications and Amount for Repair and Maintenance.

Effective: July 1, 2015

(a) Except as provided in subsection (b) of this section, the maximum amount DADS authorizes as payment to a DSA for all minor home modifications provided to an individual is \$10,000 during the time period the individual is enrolled in the CLASS Program.

(b) After reaching the \$10,000 authorization limit described in subsection (a) of this section, DADS may authorize up to \$300 per IPC period for repair and maintenance of minor home modifications purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete.

(c) To request authorization for repair and maintenance of a minor home modification as described in subsection (b) of this section, a DSA is not required to follow the process set forth in §45.613 of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) A DSA must follow the process for requesting authorization to purchase a minor home modification as described in §45.613 of this division if:

(1) requesting authorization for repair and maintenance of a minor home modification in an amount that exceeds \$300; or

(2) requesting authorization for repair and maintenance of a minor home modification that is

not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as a minor home modification listed in the *CLASS Provider Manual*.

(e) A request described under subsection (d) of this section and authorized by DADS is counted toward the authorization limit described in subsection (a) of this section.

§45.613. Requirements for Authorization to Purchase a Minor Home Modification.

Effective: December 1, 2011

(a) To purchase a minor home modification for an individual a CMA must:

(1) ensure that the individual or LAR initiates a request for the minor home modification by completing Part A of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*;

(2) send the partially completed form to the DSA;

(3) ensure that the individual's service planning team includes the cost of the specifications for the requested minor home modification, as described in §45.614 of this division (relating to Requirements for Specifications for a Minor Home Modification), not to exceed \$200, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(4) within 14 calendar days after completing the requirement described in paragraph (3) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as described in paragraph (3)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (3)(B) of this subsection.

(b) DADS reviews the documentation described in subsection (a)(4) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS Review of an Enrollment IPC)

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or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(d) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the minor home modification in accordance with §45.614 of this division (relating to Requirements for Specifications for a Minor Home Modification) and ensure that Part B of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form is completed; and

(2) within 60 calendar days after obtaining the specifications:

(A) if the minor home modification costs more than \$1,000, obtain bids from vendors in accordance with §45.615 of this division (relating to Bid Requirements for a Minor Home Modification);

(B) select a vendor to complete construction of the minor home modification; and

(C) complete Part C of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form and send the form to the CMA; and

(3) before construction of the minor home modification:

(A) obtain written approval for construction of the modification from the owner of the property in question, unless such approval is granted in an applicable lease agreement; and

(B) ensure that the selected vendor obtains any required building permits.

(e) A CMA must, within 14 calendar days after receipt of the form described in subsection (d)(2)(C) of this section:

(1) complete Part D of the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, evidencing that the criteria described in §45.214(b) of this chapter (relating to Development of Enrollment IPC) are met;

(2) ensure that the individual's service

planning team includes the cost of the minor home modification and the cost of the inspection of the minor home modification, not to exceed \$150, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) within 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (2) (A) of this subsection, as applicable;

(C) the individual's IPP described paragraph (2) (B) of this subsection; and

(D) documentation regarding bids as required by §45.615 of this division.

(f) DADS reviews the documentation described in subsection (e)(3) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 or 45.223 of this chapter.

(g) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(h) The DSA must direct the vendor to begin construction of the minor home modification within seven calendar days after one of the following, whichever is later:

(1) the date DADS authorizes the proposed IPC; or

(2) the effective date of the IPC as determined by the service planning team.

(i) A DSA must, within seven business days after it receives information that the minor home modification is completed, conduct an in-person inspection of the minor home modification in accordance with §45.616 of this division (relating to Inspection of a Minor Home Modification).

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§45.614. Requirements for Specifications for a Minor Home Modification.

Effective: December 1, 2011

(a) If DADS authorizes payment for specifications for a minor home modification in accordance with §45.613(b) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification), a DSA must:

(1) obtain specifications from a person who has experience in constructing home modifications; and

(2) ensure that the specifications:

(A) include a complete description of the minor home modification and any associated installations identified in the specifications;

(B) include a drawing or picture of both the existing room, structure, or other area and the proposed modification made to scale;

(C) comply with the Texas Accessibility Standards promulgated by the Texas Department of Licensing and Regulation unless:

(i) the DSA determines that it is not structurally feasible to do so and the DSA documents, in writing, the basis for its determination; or

(ii) the individual or LAR requests, in writing, that the specifications not be in compliance with the Texas Accessibility Standards; and

(D) are approved, in writing, by each member of the service planning team by completing the Specifications for Adaptive Aids/Minor Home Modifications form as described in the *CLASS Provider Manual*.

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

§45.615. Bid Requirements for a Minor Home Modification.

Effective: December 1, 2011

(a) As required by §45.613(d)(2)(A) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification), for a minor home modification costing more than \$1,000, a DSA must obtain

comparable bids for the minor home modification from three vendors. Comparable bids describe the minor home modification and any associated installations identified in the specifications required by §45.613(d)(1) of this division.

(b) A bid obtained in accordance with subsection (a) of this section must be based on the specifications and include:

(1) an itemized list of materials and labor necessary to construct the modification;

(2) the cost of each material and labor listed;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor;

(5) a detailed explanation of the vendor's warranty for the modification, if any; and

(6) a statement that the minor home modification will be made in accordance with all applicable state and local building codes.

(c) A DSA may obtain only one bid or two comparable bids for a minor home modification if the DSA has written justification for obtaining less than three bids because the minor home modification is available from a limited number of vendors.

(d) If a DSA requests to purchase a minor home modification that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. An example of a justification that supports payment of a higher bid is that the higher bid is based on the inclusion of a longer warranty for the minor home modification.

(e) The person who developed the specifications required by §45.613(d)(1) of this division may be one of the bidders required by this section.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§45.616. Inspection of a Minor Home Modification.

Effective: December 1, 2011

(a) A DSA must conduct an in-person inspection of the minor home modification to

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determine if:

(1) the minor home modification has been completed;

(2) the minor home modification has been made in accordance with the specifications required by §45.613(d)(1) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification); and

(3) the quality of workmanship of the minor home modification is adequate.

(b) The inspection required by subsection (a) of this section may be performed by the person who developed the specifications unless that person is affiliated with the vendor who completed the minor home modification.

(c) The DSA must obtain an invoice from the person who conducted the inspection, substantiating the cost of the inspection.

(d) If, based on the inspection, the DSA determines that the minor home modification meets the conditions listed in subsection (a) of this section, the DSA must send a completed Documentation of Completion of Purchase form as described in the *CLASS Provider Manual* to the individual's CMA within seven business days after completion of the inspection.

(e) If, based on the inspection, the DSA determines that the minor home modification does not meet the conditions listed in subsection (a) of this section, the DSA must ensure that the vendor meets the conditions within 30 calendar days after the DSA's determination.

(f) A DSA may not submit a claim for payment of the minor home modification until the DSA determines that the minor home modification meets the conditions listed in subsection (a) of this section.

§45.617. Time Frames for Completion of Minor Home Modification.

Effective: December 1, 2011

(a) A DSA must ensure that a minor home modification is completed within 60 calendar days after one of the following dates, whichever is later:

(1) the date DADS authorizes the proposed IPC that includes the cost of the minor home modification and inspection as described in

§45.613(e)(2) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification); or

(2) the effective date of the IPC as determined by the service planning team.

(b) If the DSA determines that the minor home modification will not be completed within the time frame required by subsection (a) of this section, the DSA must notify the individual or LAR, and the case manager, in writing, of a new proposed date of completion. The proposed date may not exceed 30 calendar days after the date required by subsection (a) of this section.

§45.618. Repair or Replacement of Minor Home Modification.

Effective: March 21, 2011

(a) The repair or replacement of a minor home modification needed within one year after the date the minor home modification is complete is not purchasable as a minor home modification.

(b) If a minor home modification requires repair or replacement within one year after the date of completion, the DSA must repair or replace the minor home modification at its own expense, except as provided in subsection (c) of this section.

(c) If a minor home modification requires repair or replacement because the minor home modification was intentionally damaged, the repair or replacement must be done at the expense of the individual or LAR.

§45.619. Satisfaction of Minor Home Modification.

Effective: September 1, 2014

(a) A DSA must ensure that a staff person involved in purchasing the minor home modification for the individual:

(1) visits the individual to determine whether the individual and LAR is satisfied with the minor home modification; and

(2) documents the result of that visit on a Documentation of Completion of Purchase form as described in *CLASS Provider Manual*.

(b) If the individual or LAR is not satisfied with the minor home modification, the DSA must

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process the individual's or LAR's dissatisfaction as a complaint in accordance with §49.309 of this title (relating to Complaint Process).

§45.621. CFC ERS.

Effective: March 20, 2016

(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.

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(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:

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(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.

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Subchapter G – Additional CMA Requirements

§45.701. CMA Compliance with Rules.

Effective: July 1, 2015

A CMA must comply with:

- (1) this chapter;
- (2) Chapter 49 of this title (relating to Contracting for Community Services); and
- (3) Chapter 41 of this title (relating to Consumer Directed Services Option).

§45.702. Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services.

Effective: March 20, 2016

(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

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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.

§45.703. Qualifications of CMA Staff Persons.

Effective: September 1, 2014

(a) A CMA must have a full-time or part-time program director who:

(1) manages and oversees the CMA's operations, including the provision of case management services to individuals enrolled with the CMA;

(2) is at least 18 years of age;

(3) has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and

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four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; and

(4) is an employee of the CMA.

(b) A CMA must ensure that a case manager working for the CMA:

(1) has:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is an employee of the CMA;

(3) is not employed by or contracting with a DSA to provide a direct service to an individual served by the CMA; and

(4) is not a relative of the individual to whom the case manager is providing case management.

§45.704. Training of CMA Staff Persons.

Effective: March 20, 2016

A CMA must ensure that:

(1) a CMA staff person completes training as described in the CLASS Provider Manual;

(2) a case manager 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) a CMA staff person who is responsible

for completing the IPP 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.

§45.705. CMA Service Delivery.

Effective: March 20, 2016

(a) A CMA must ensure that:

(1) a full-time case manager is assigned to provide case management to no more than 50 individuals at one time;

(2) a part-time case manager is assigned to provide case management to no more than 25 individuals at one time; and

(3) for a month in which a case manager does not meet with an individual or LAR as required by §45.223(a) of this chapter (relating to Renewal and Revision of an IPC), 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.

(b) In determining the number of individuals to which a case manager will be assigned, the CMA must take into consideration the intensity of an individual's needs, the frequency and duration of contacts the case manager will need to make with the individual, and the amount of travel time involved in making such contacts.

(c) A CMA must have:

(1) an adequate number of case managers available to ensure the provision of case management to an individual at all times; and

(2) a written process that ensures that case managers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide case management.

(d) A CMA must ensure that a case manager participates as a member of an individual's service planning team in accordance with this chapter and the CLASS Provider Manual.

(e) A CMA must ensure that case management is provided to an individual in accordance with the

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individual's IPC.

(f) A CMA must submit an IPC to DADS within the time periods required by §45.214 of this chapter (relating to Development of Enrollment IPC) and §45.223(f)(2) of this chapter (relating to Renewal and Revision of an IPC) to ensure that a DSA receives reimbursement for the provision of CLASS Program services and CFC services.

(g) A CMA must follow the process for requesting authorization to purchase dental treatment as described in the CLASS Provider Manual.

(h) If an individual may need cognitive rehabilitation therapy, a case manager must assist 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-CLASS Program service.

§45.706. CMA Recordkeeping.

Effective: July 1, 2015

(a) A CMA must maintain a separate record for each individual receiving case management from the CMA. The individual's record must include:

- (1) the individual's current IPC;
- (2) the individual's current IPP;
- (3) the individual's current ID/RC Assessment; and
- (4) any other relevant documentation concerning the individual.

(b) A CMA must ensure that case management activities are documented in the individual's record, including:

- (1) the date of contact;
- (2) the description of the case management provided;
- (3) 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;
- (4) the person with whom the contact occurred; and
- (5) the case manager who provided the contact.

§45.707. CMA: Quality Management Process.

Effective: September 1, 2014

(a) A CMA must, at least annually, conduct a survey of all individuals, LARs, and persons actively involved with the individual to determine their satisfaction with the provision of case management.

(b) A CMA must develop a written quality assurance process to evaluate and improve the quality of case management provided by the CMA based, at least in part, on the results of the survey required by subsection (a) of this section.

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Subchapter H – Additional DSA Requirements

§45.801. DSA Compliance with Rules.

Effective: September 1, 2014

A DSA must comply with:

- (1) this chapter;
- (2) Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies); and
- (3) Chapter 49 of this title (relating to Contracting for Community Services).

§45.802. DSA: Protection of Individuals.

Effective: March 21, 2011

A DSA must have and implement written human resource policies and procedures that safeguard an individual against:

- (1) infectious and communicable diseases;
- (2) conflicts of interest with DSA staff persons;
- (3) acts of financial impropriety;
- (4) abuse, neglect, and exploitation; and
- (5) deliberate damage of personal possessions.

§45.803. Qualifications of DSA Staff Persons.

Effective: March 20, 2016

(a) A DSA must ensure that a staff person meets the requirements of this section.

(b) A service provider for a direct service must meet the qualifications in this subsection and in subsection (d) of this section.

(1) A service provider for a direct service:

(A) must be at least 18 years of age; and

(B) except as provided by paragraphs (2) and (3) of this subsection, may not be a relative or guardian of the individual to whom the service provider is providing the direct service.

(2) A service provider of habilitation, prevocational services, respite, employment assistance, supported employment, or CFC PAS/HAB may be a relative or guardian of the individual unless prohibited by subsection (d)(2) of this section.

(3) A service provider of minor home

modifications may be a relative or guardian of the individual.

(c) A DSA must have a full-time or part-time program director who:

(1) manages and oversees the DSA's operations including the provision of CLASS Program services and CFC services to individuals enrolled with the DSA and has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is at least 18 years of age;

(3) is an employee of the DSA; and

(4) is not a relative of an individual being served by the DSA.

(d) A DSA must ensure that CLASS Program services and CFC services are provided by qualified service providers in accordance with this subsection.

(1) A service provider of registered nursing and of specialized registered nursing must be a registered nurse.

(2) A service provider of licensed vocational nursing and of specialized licensed vocational nursing must be a licensed vocational nurse.

(3) A service provider of occupational therapy must be an occupational therapist or an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454.

(4) A service provider of physical therapy must be a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

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(5) A service provider of speech and language pathology must be a speech-language pathologist or a licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401.

(6) A service provider of auditory integration training/auditory enhancement training must be an audiologist or a licensed assistant in audiology licensed in accordance with Texas Occupations Code, Chapter 401.

(7) A service provider of dental treatment must be a person licensed to practice dentistry, dental surgery, or dental hygiene in accordance with Texas Occupations Code, Chapter 256.

(8) A service provider of dietary services must be a dietician licensed in accordance with Texas Occupations Code, Chapter 701.

(9) A service provider of massage therapy must be a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455.

(10) A service provider of therapeutic horseback riding must be a person certified by the Professional Association of Therapeutic Horsemanship International as a therapeutic riding instructor.

(11) Hippotherapy must be provided by the following two service providers:

(A) a service provider who is certified by the Professional Association of Therapeutic Horsemanship International as a therapeutic riding instructor; and

(B) a service provider who is:

(i) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454;

(ii) an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(iii) a physical therapist licensed in accordance with Texas Occupations Code, Chapter 453; or

(iv) a physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(12) A service provider of recreational therapy must be a person:

(A) who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; or

(B) who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc.

(13) A service provider of music therapy is a person who holds a credential as a board certified music therapist awarded by the Certification Board for Music Therapists.

(14) A service provider of aquatic therapy must:

(A) be:

(i) a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455;

(ii) a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; or

(iii) a person who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc.; and

(B) hold a certificate of completion of the "Basic Water Rescue" course from the American Red Cross or be certified by the American Red Cross as a lifeguard.

(15) A service provider of behavioral support must:

(A) be one of the following:

(i) a psychologist licensed in accordance with the Texas Occupations Code, Chapter 501;

(ii) a provisional license holder licensed in accordance with the Texas Occupations Code, Chapter 501;

(iii) a psychological associate licensed in accordance with the Texas Occupations Code, Chapter 501;

(iv) a clinical social worker licensed in accordance with the Texas Occupations Code, Chapter 505;

(v) a licensed professional counselor licensed in accordance with the Texas

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Occupations Code, Chapter 503; or

(vi) a behavior analyst certified by the Behavior Analyst Certification Board, Inc.; and

(B) have received training in behavioral support or have experience in providing behavioral support.

(16) A service provider of cognitive rehabilitation therapy must be:

(A) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(B) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(C) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(17) A service provider of prevocational services must have:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities.

(18) A service provider of employment assistance and a service provider of supported employment must have:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field with 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 with 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, with two years of paid or unpaid experience providing services to people with disabilities.

(19) Documentation of the experience required by paragraph (18) of this subsection must include:

(A) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(B) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(20) A service provider of habilitation or respite who is hired on or after July 1, 2015 must have:

(A) a high school diploma;

(B) a certificate recognized by a state as the equivalent of a high school diploma; or

(C) both of the following:

(i) a successfully completed written competency-based assessment demonstrating the service provider's ability to assist with ADLs and IADLs required for the individual to whom the service provider will provide habilitation or respite; and

(ii) 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.

(21) A service provider of habilitation, prevocational services, respite, employment assistance, supported employment, or CFC PAS/HAB may not be:

(A) the parent of the individual if the individual is under 18 years of age; or

(B) the spouse of the individual.

(22) A service provider of support family services or continued family services must meet the requirements described in §45.531(a) of this chapter (relating to Support Family Requirements).

(23) A service provider of CFC PAS/HAB must:

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- (A) have:
- (i) a high school diploma;
 - (ii) a certificate recognized by a state as the equivalent of a high school diploma; or
 - (iii) both of the following:
 - (I) a successfully completed written competency-based assessment demonstrating the service provider's ability to perform CFC PAS/HAB tasks, including an ability to perform CFC PAS/HAB tasks required for the individual to whom the service provider will provide CFC PAS/HAB; and
 - (II) at least three written personal references from persons not related by blood that evidence the service provider's ability to provide a safe and healthy environment for the individual; and
- (B) meet any other qualifications requested by the individual or LAR based on the individual's needs and preferences.

(e) A DSA may not contract with or employ a service provider who is employed by or contracting with a CMA to provide case management to an individual served by the DSA.

(f) A DSA must ensure that a staff person who transports an individual in a vehicle has:

- (1) a current Texas driver's license; and
- (2) vehicle liability insurance in accordance with state law.

§45.804. Training of DSA Staff Persons.

Effective: March 20, 2016

- (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

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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.

§45.805. DSA: Service Delivery.

Effective: March 20, 2016

(a) A DSA must ensure that:

(1) CLASS Program services and CFC services, other than CFC support management, are provided to an individual in accordance with:

(A) the individual's IPC;

(B) the individual's IPP for that service; and

(C) for CLASS Program services, Appendix C of the CLASS waiver application approved by CMS and found at www.dads.state.tx.us;

(2) an adaptive aid, minor home modification, and CFC ERS meets the requirements described in Subchapter F of this chapter (relating to Adaptive Aids, Minor Home Modifications, and CFC ERS);

(3) transportation as a habilitation activity or as an adaptive aid is provided in accordance with the individual's transportation plan;

(4) if the individual obtains a plan of care as described in §45.705(h) of this chapter (relating to CMA Service Delivery), a qualified professional as described in §45.803(d)(16) of this chapter (relating to Qualifications of DSA Staff Persons) provides and monitors the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care; and

(5) CFC support management is provided to an individual or LAR as described in the CLASS Provider Manual if:

(A) the individual is receiving CFC

PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management.

(b) A DSA must provide licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, habilitation, respite, an adaptive aid, dental treatment, or CFC PAS/HAB to an individual, even if not included on the individual's IPC, if a registered nurse determines that the service is necessary to prevent the individual's health and safety from being placed in immediate jeopardy. If a DSA provides a service under this subsection, the DSA must submit documentation to the CMA as required by §45.224(a) of this chapter (relating to Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy).

(c) A DSA must have a written process that ensures that staff persons are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide a CLASS Program service or CFC service.

(d) A DSA must ensure that a DSA staff person participates as a member of an individual's service planning team in accordance with this chapter and the CLASS Provider Manual.

(e) A DSA must inform the individual's case manager of changes needed to the individual's IPC or IPPs.

(f) Except as provided in subsection (i) of this section, a DSA may accept or decline the request of an individual or LAR for the DSA to 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 to the individual while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas.

(g) If the DSA accepts the request of an individual or LAR as described in subsection (f) of this section, the DSA:

(1) may provide habilitation, out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter, adaptive aids, nursing, or CFC

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PAS/HAB to the individual outside the catchment area during a period of no more than 60 consecutive days;

(2) must, within three business days after the DSA begins providing services outside the catchment area, notify the individual's case manager in writing of the following:

(A) that the individual is receiving services outside the catchment area in which the individual resides;

(B) the location where the individual is receiving the services;

(C) the estimated length of time the individual is expected to be outside the catchment area; and

(D) contact information for the individual or LAR; and

(3) must notify the individual's case manager in writing that the individual has returned to the catchment area in which the individual resides within three business days after becoming aware of the individual's return.

(h) If the DSA declines the request of an individual or LAR as described in subsection (f) of this section, the DSA must:

(1) inform the individual or LAR:

(A) of the reasons for declining the request; and

(B) that the individual or LAR may request that the case manager convene a meeting of the service planning team to discuss the reasons for declining the request; and

(2) within three business days after declining the request, inform the individual's case manager, in writing, that the request was declined and the reasons for declining the request.

(i) If a DSA has provided 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 to an individual during a period of 60 consecutive days while the individual is temporarily staying at a location outside the catchment area in which the individual resides, the DSA may accept another request from the individual or LAR that the DSA provide services outside the catchment area only if the individual has returned to the catchment area in

which the individual resides and received services in that catchment area.

§45.806. Respite and Dental Treatment.

Effective: July 1, 2015

(a) An individual may receive a maximum of 30 days of in-home and out-of-home respite combined, during an IPC period.

(b) A DSA must ensure that:

(1) in-home respite is provided in the individual's residence or the residence of a relative or friend that is not one of the settings listed in paragraph (2) of this subsection;

(2) out-of-home respite is provided in one of the following settings:

(A) an adult foster care home licensed by DADS in accordance with Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care);

(B) a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an ICF/IID;

(D) an approved outdoor camp accredited by the American Camping Association;

(E) the residence of another person receiving a Medicaid waiver service; or

(F) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247; and

(3) the setting in which out-of-home respite is provided is:

(A) acceptable to the individual or LAR; and

(B) an accessible, safe, and comfortable environment for the individual and promotes the individual's health and welfare.

(c) If a DSA provides out-of-home respite in a residence described in subsection (b)(2)(E) of this section, the DSA must:

(1) obtain written approval from each person residing in the residence who is receiving a Medicaid waiver service, or LAR, for the provision of respite in the residence; and

(2) ensure that no more than four persons receiving a Medicaid waiver service are residing in the residence.

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(d) The maximum amount DADS authorizes as payment to a DSA for all dental treatment and adaptive aids combined for an individual is \$10,000 per IPC period.

(e) A DSA must follow the process for requesting authorization to purchase dental treatment as described in the *CLASS Provider Manual*.

§45.807. DSA: Systems and Recordkeeping.

Effective: March 20, 2016

(a) A DSA must maintain a separate record for each individual receiving CLASS Program services and CFC services from the DSA. The individual's record must include:

- (1) a copy of the individual's current IPC;
- (2) a copy of the individual's current IPP;
- (3) a copy of the individual's current PAS/HAB plan;
- (4) if transportation is included on the IPC as a habilitation activity or as an adaptive aid, a copy of the individual's transportation plan;
- (5) a copy of the individual's current ID/RC Assessment;
- (6) a copy of the current adaptive behavior screening assessment;
- (7) a copy of the current DADS CLASS/DBMD Nursing Assessment form;
- (8) a copy of the current Related Conditions Eligibility Screening Instrument;
- (9) 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;
- (10) any new or revised DADS Provider Agency Model Service Backup Plan form for the current IPC period;
- (11) the documentation required by subsection (b) of this section; and
- (12) any other relevant documentation concerning the individual.

(b) A DSA must ensure a service provider documents in the individual's record:

- (1) the type of CLASS Program service and CFC service provided;
- (2) the date and the time the service begins and ends;

(3) the type of contact (phone or face-to-face);

(4) the name of the person with whom the contact occurred;

(5) a description of the activities performed, unless the activity performed is a non-delegated task that is provided by an unlicensed service provider and is documented on the IPP; and

(6) the signature and title of the service provider.

§45.808. Employment Assistance and Supported Employment.

Effective: March 20, 2016

(a) A DSA must ensure that a service provider of employment assistance or a service provider of supported employment meet the qualifications described in §45.803(d)(18) of this subchapter (relating Qualifications of DSA Staff Persons).

(b) Before including employment assistance on an individual's IPC, a DSA 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) A DSA must ensure that employment assistance:

(1) consists of an employment assistance 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

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(E) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, habilitation, prevocational services, supported employment, or CFC PAS/HAB is provided; and

(3) does not include using Medicaid funds paid by DADS to the DSA 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 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 DSA 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 DSA must ensure that supported employment:

(1) consists of a supported employment 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 not provided to an individual with the individual present at the same time that respite, habilitation, prevocational services, employment

assistance, or CFC PAS/HAB is provided; and

(3) 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 DSA 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.

§45.809. Prohibition of Seclusion.

Effective: July 1, 2015

A DSA must not use seclusion.

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SUBCHAPTER I – FISCAL MONITORING**

Subchapter I – Fiscal Monitoring

§45.901. *[Repealed]*

§45.902. Financial Errors.

Effective: March 20, 2016

(a) If DADS reimburses the program provider for a claim for service, other than the initial administrative fee, delivered prior to the eligibility effective date on the IPC form, DADS applies the error to the total number of units reimbursed for such services that were delivered before the effective date on the form.

(b) If DADS reimburses the program provider for more than four hours of nursing used to decide whether to delegate to the CFC PAS/HAB service provider, DADS applies the error to the total number of units reimbursed for such services in excess of the four hour maximum for such services.

(c) If DADS reimburses the program provider for more than 10 hours during the individual's IPC year for nursing services being performed by a nurse to prevent service breaks caused by the CFC PAS/HAB service provider not being available to provide delegated nursing tasks, DADS applies the error to the total number of units reimbursed in excess of the 10 hour maximum for such services.