



**TO:** Health and Human Services Commission  
Executive Council

**DATE:** February 22, 2018

**FROM:** Lena Brown-Owens, Procurement and  
Contracting Services - Contract Oversight and  
Support

**AGENDA ITEM: 2.i**

**SUBJECT:** Contracting for Community Services

**BACKGROUND:**  Federal  Legislative  Other: Program Initiative

HHSC proposes amendments to 40 TAC Chapter 49, Contracting for Community Care Services: §49.101 and §49.102 in Subchapter A, Application and Definitions; §§49.202 - 49.211, in Subchapter B, Contractor Enrollment; §49.301, §49.302, §49.304, §49.305, §49.307, §49.308, §49.309, and §49.311 in Subchapter C, Requirements of a Contractor; §49.411, §49.413, and §49.414, in Subchapter D, Division 2, Monitoring and Investigation; §49.511 in Subchapter E, Division 2, Immediate Protection; §49.521, §49.522, and §49.523, in Subchapter E, Division 3, Action; §49.531, §49.532, §49.533, and §49.534 in Subchapter E, Division 4, Sanctions; §49.541 in Subchapter E, Division 5, Appeals; §49.551 in Subchapter E, Division 6, Termination by Contractor; §49.601 in Subchapter F, Review by DADS of Expiring or Terminated Contract; and §49.701 and §49.702 in Subchapter G, Application Denial Period. HHSC proposes the repeal of §49.412, concerning Financial Monitoring of FMSAs, in Subchapter D, Division 2.

Chapter 49, Contracting for Community Services, governs contracting with HHSC to provide the community-based services for which the Department of Aging and Disability Services (DADS) previously contracted. The proposed amendments delete references to the Medically Dependent Children's Program (MDCP), which has been terminated, and delete references to relocation services, which have also been terminated. The amendments change "DADS" to "HHSC," as appropriate, because DADS was abolished effective September 1, 2017. The amendments change "DFPS" to "HHSC," as appropriate, to reflect the transfer of certain regulatory functions of DFPS to HHSC in accordance with Texas Government Code, §531.02013. The amendments also reflect that certain functions of HHSC Consumer Rights and Services, related to the handling of complaints, have transferred to the

HHSC Ombudsman Office. The proposed amendments add a requirement that an unlicensed contractor search the employee misconduct registry and nurse aide registry for an unlicensed employee, contractor, or volunteer. Other proposed amendments and repeal make contracting requirements more specific and consistent with contract provisions; consolidate monitoring provisions; require a contractor to have documentation supporting a claim before submitting the claim; and change the requirements for contract termination when a contractor undergoes a change of ownership or change of legal entity.

The purpose of the proposed amendments and repeal is to help ensure HHSC contracts with qualified and competent contractors and to strengthen compliance monitoring and enforcement, thereby promoting the provision of higher quality services.

None of these changes is anticipated to result in a fiscal impact to HHSC.

## **ISSUES AND ALTERNATIVES:**

HHSC anticipates stakeholders may express concerns about the proposed rule amendments that require unlicensed contractors to conduct annual searches of the Employee Misconduct Registry (EMR) and Nurse Aide Registry (NAR) for unlicensed employees, subcontractors, and volunteers, because the current rule requires these searches only before hiring an employee, contracting with a subcontractor, or accepting a volunteer. This change is to ensure that a contractor will learn that an employee, subcontractor, or volunteer has been added to a registry in a timely manner and take necessary action in response.

HHSC also anticipates stakeholders may express concern regarding the proposed rule amendments about record retention requirements. The current rule bases the retention period on the date the records were created, while the proposed rule amendment bases the retention period on the date the contract expires or terminated. The proposed rule amendment is consistent with the Community Services Contract – Provider Agreement and with direction provided to program and contract staff by HHSC leadership.

## **STAKEHOLDER INVOLVEMENT:**

On August 16, 2017, HHSC posted the proposed rule amendments for informal stakeholder review and comment and received three comments from external stakeholders, one of which related to a concern regarding

proposed amendments to record retention requirements. Comments received from stakeholders were reviewed by HHSC and taken into consideration. HHSC revised one proposed amendment, related to record retention requirements, in response to stakeholder comments. External stakeholders included: Minerva G. Coronado, CEO, Fig Tree Home & Community-Based Services; Chad Wooten, COO, EAK Good Neighbor Home Care Consumer Directed Services; and Ms. Carole Smith, Executive Director, Private Providers Association of Texas.

**FISCAL IMPACT:**

None

**SERVICES IMPACT STATEMENT:**

Persons served will benefit from the proposed amendments that will improve the quality and competence of service providers and increase efforts to protect them from potential abuse, neglect, or exploitation, which will promote higher quality in service delivery.

**RULE DEVELOPMENT SCHEDULE:**

February 15, 2018	Present to Medical Care Advisory Committee
February 22, 2018	Present to HHSC Executive Council
March 2018	Publish proposed rules in <i>Texas Register</i>
July 2018	Publish adopted rules in <i>Texas Register</i>
July 2018	Effective date

## PROPOSED PREAMBLE

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code, §531.0055, requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the executive commissioner of HHSC proposes amendments to §49.101 and §49.102 in Subchapter A, Application and Definitions; §§49.202 - 49.211, in Subchapter B, Contractor Enrollment; Subchapter C, §49.301, §49.302, §49.304, §49.305, §49.307, §49.308, §49.309, and §49.311; Subchapter D, Division 2, §49.411, §49.413, and §49.414; Subchapter E, Division 2, §49.511; Subchapter E, Division 3, §49.521, §49.522, and §49.523; Subchapter E, Division 4, §49.531, §49.532, §49.533, and §49.534; Subchapter E, Division 5, §49.541; Subchapter E, Division 6, §49.551; Subchapter F, §49.601; and Subchapter G, §49.701, and §49.702; and the repeal of §49.412 in Subchapter D; in Title 40, Part 1, Chapter 49, Contracting for Community Care Services.

## BACKGROUND AND PURPOSE

Chapter 49, Contracting for Community Services, governs contracting with HHSC to provide the community-based services for which the Department of Aging and Disability Services (DADS) previously contracted. The proposed amendments delete references to the Medically Dependent Children's Program (MDCP), which has been terminated, and delete references to relocation services, which have also been terminated. The amendments change "DADS" to "HHSC," as appropriate, because DADS was abolished effective September 1, 2017. The amendments change "DFPS" to "HHSC," as appropriate, to reflect the transfer of certain regulatory functions of DFPS to HHSC in accordance with Texas Government Code, §531.02013. The amendments also reflect that certain functions of HHSC Consumer Rights and Services, related to the handling of complaints, have transferred to the HHSC Ombudsman Office. Other amendments and the repeal, as explained in the Section-by-Section Summary, make contracting requirements more specific and consistent with contract provisions; consolidate monitoring provisions; require a contractor to have documentation supporting a claim before submitting the claim; and change the requirements for contract

termination when a contractor undergoes a change of ownership or change of legal entity.

The purpose of the proposed amendments and repeal is to help ensure HHSC contracts with qualified and competent contractors and to strengthen compliance monitoring and enforcement, thereby promoting the provision of higher quality services.

## SECTION-BY-SECTION SUMMARY

The proposed amendments change "DADS" to "HHSC" throughout Chapter 49 to reflect that DADS was abolished effective September 1, 2017, and functions have transferred to HHSC. In §§49.202, 49.211, 49.301, 49.308, 49.311, 49.414, 49.511, and 49.541, the amendments make no other changes and, therefore, are not further summarized below.

The proposed amendment to §49.101 deletes the Medically Dependent Children Program (MDCP) as a program governed by Chapter 49 because the program was terminated effective February 1, 2017, and services that were provided through MDCP are now provided through STAR Kids. The proposed amendment deletes relocation services as services governed by Chapter 49 because those services have been provided through the STAR+PLUS program since September 1, 2017. The proposed amendment also lists primary home care (PHC) and community attendant services (CAS) as separate Medicaid state plan services to accurately reflect that they are different services. The proposed amendment replaces "subchapters" with "sections" in subsection (a) to clarify that, except as provided in subsections (b)-(d), all of the sections in Chapter 49 apply to the identified programs and services.

The proposed amendment to §49.102 amends the definitions of "abuse," "exploitation," and "neglect" to more accurately state that the terms are defined by the statute or rule that governs the investigation of those acts for a particular program or service, rather than Texas Human Resources Code, §48.002, and Texas Family Code, §261.001. The proposed amendment changes the definition of "choice list" to reflect that it is a list of contracts, rather than contractors, under which an individual or legally authorized representative may choose to receive services. In addition, the reference to a contractor on referral hold has been deleted from the definition of "choice list" because the definition of "referral hold" adequately explains the consequences of a referral hold being imposed on a contractor. The proposed amendment deletes the term "DADS debarment list" and its definition because it is being replaced with the term "HHS list of exclusions," which has a similar meaning. The term "MDCP" and its definition are proposed to be deleted because the program has been terminated and the

term is no longer used in Chapter 49. The MDCP services of flexible family support and respite have also been deleted from the definition of "personal attendant" because MDCP has been terminated. The proposed amendment adds and defines the term "signature authority," which is used in §49.302(j) and (q) to refer to the person authorized to negotiate and execute a contract on behalf of a contractor, as identified on the HHSC "Governing Authority Resolution" form, because using a defined term improves the readability of the rule.

The proposed amendment to §49.203 deletes the financial management services agency (FMSA) training requirements because the requirement that an applicant complete training and satisfactorily complete the financial management services test is proposed to be moved to §49.204. In addition, the reference to "all persons with a controlling interest in the applicant" has been corrected to "each controlling person of the applicant" because "controlling person" is the appropriate defined term in this context.

The proposed amendment to §49.204 incorporates the provision on FMSA training and testing that is being deleted from §49.203 and requires an applicant to receive a score of at least 85 percent on the financial management services test. Section 49.203 currently provides that an applicant must receive a "passing score," which is 80 percent. The required score is being increased to 85 percent to be consistent with the score required on the HCS and TxHmL provider competency examinations.

The proposed amendment to §49.205 deletes provisions regarding MDCP and related contract types because MDCP has been terminated. The proposed amendment adds a reference to the United States Department of Education to clarify that the Rehabilitation Administration is part of that department. The proposed amendment also identifies PHC and CAS as separate services. The proposed amendment changes the term "facility" to "home" in describing the licensing requirement for adult foster care to more accurately describe the setting for that service.

The proposed amendment to §49.206 clarifies that the reference in subsection (a) to a "controlling person" is a controlling person of an applicant or a contractor.

The proposed amendments to §49.207 identify the employee misconduct registry and the nurse aide registry as registries maintained by HHSC. The proposed amendment also uses the defined term "HHS list of exclusions" instead of "DADS debarment list." The list has been renamed because DADS has been abolished. The proposed amendment uses the acronym "HHSC" instead of "Texas Health and Human Services Commission" because the acronym is a defined term. In addition, the proposed amendment adds "or

HHSC," instead of changing "DADS" to "HHSC," in subsection (b)(3) and (4) because a prior action or sanction by DADS may be the basis for denying a provisional contract. The proposed amendment also identifies HHSC, in addition to DFPS, in subsection (b)(8) as an agency that may confirm an allegation of abuse, neglect, or exploitation against an applicant or controlling person of an applicant.

The proposed amendment to §49.208 corrects the reference to §49.302 by specifying that it is a section in the same chapter. The proposed amendment also makes a change to reflect that the choice list is a list of contracts, not contractors.

The proposed amendment to §49.209 makes a provisional contract for financial management services subject to subsection (a) and deletes the exception for those contracts in subsection (d). The exception was based on a contract for financial management services being monitored in accordance with §49.412, but §49.412 is proposed for repeal so the exception is no longer applicable. Subsection (f) is amended to remove the reference to HHSC recommending conditions to which a contract may be subject because DADS is abolished and HHSC is a party to the contract, so HHSC determines if a contract is subject to any conditions rather than making a recommendation. Subsection (g) is amended to state that a standard contract is effective the day after a provisional contract ends, rather than expires. This change allows HHSC to enter into a standard contract with a contractor on a date earlier than the date the provisional contract expires (i.e., the last day of the provisional contract term). It also recognizes that §49.208(e) allows HHSC and a contractor to agree to extend the term of a provisional contract. Under any circumstances, if HHSC and the contractor enter into a standard contract, it will be effective the day after the provisional contract ends. The proposed amendment deletes the phrase "at the end of the provisional contract term" in subsections (b)(1) and (c) to be consistent with the proposed amendment to subsection (g). The proposed amendment clarifies that the references in subsections (h) and (i) to a "controlling person" mean a controlling person of a contractor.

The proposed amendment to §49.210 requires a contractor to notify HHSC that it intends to terminate its contract if it also intends to undergo a change of ownership or change of legal entity. Because the contractor must notify HHSC that the contractor intends to terminate the contract under these circumstances, the proposed amendment deletes the requirement for HHSC to terminate the contract when a contractor undergoes a change of ownership or change of legal entity and the requirements of subsection (a)(1)-(4) are met. Because a contractor is the party that decides to change its ownership structure or form a new entity, the contractor is the appropriate party to initiate termination of the original contract. References

to the effective date of the new provisional contract have been deleted to allow flexibility in the effective date, depending on the circumstances of the change of ownership or change of legal entity. The rule referenced in subsection (b)(1), regarding notification of individuals receiving services from a contractor that undergoes a change of ownership or change of legal entity, is changed to be consistent with the requirement for the contractor, rather than HHSC, to terminate the contract.

The proposed amendment to §49.302 deletes references to September 1, 2014, the date Chapter 49, Contracting for Community Care Services, was effective. This date was included to recognize exceptions from qualifications for certain contractors in the Deaf Blind with Multiple Disabilities Program and for adult foster care services that were contracting when the rule was effective. Only contractors that have continuously contracted since September 1, 1999, or January 15, 2009, respectively, remain eligible for those exceptions and the date of September 1, 2014, is no longer relevant. The proposed amendment makes a change to reflect that the choice list is a list of contracts, not contractors. The proposed amendment also requires a contractor to subscribe to receive HHSC information letters and provider alerts by email. This change is to ensure that a contractor receives notice of important requirements related to its contract. The proposed amendment uses the defined term "signature authority" to shorten the text of the rule. The proposed amendment also identifies HHSC, in addition to DFPS, as an agency that may confirm an allegation of abuse, neglect, or exploitation against an applicant or controlling person. The proposed amendment identifies the employee misconduct registry and the nurse aide registry as registries maintained by HHSC. The proposed amendment uses the acronym "HHSC" instead of "Texas Health and Human Services Commission" because the acronym is a defined term. The proposed amendment also specifies that a contractor must send notice to the HHSC contract staff identified on the contractor's approval letter, rather than the DADS Community Services Contracts Section, because that section no longer exists. The proposed amendment clarifies that the reference in subsection (n) to a "controlling person" means a controlling person of a contractor.

The proposed amendment to §49.304 identifies the employee misconduct registry and the nurse aide registry as registries maintained by HHSC. The proposed amendment also requires a contractor to provide written information to an unlicensed employee, subcontractor, or volunteer that a person listed on the employee misconduct registry is not permitted to be employed by, contract with, or volunteer for the contractor. This change is based on the notification requirement in Texas Health and Safety Code, §253.009 and will put these persons on notice of the consequences of being listed on the employee misconduct registry. The proposed amendment adds a requirement that a contractor search the employee misconduct registry

and nurse aide registry annually for an unlicensed employee, subcontractor, or volunteer. A contractor is currently required to search these registries before an unlicensed employee, subcontractor, or volunteer is initially hired, contracted, or accepted. This change is to ensure that a contractor will learn that an employee, subcontractor, or volunteer has been added to a registry in a timely manner and take necessary action in response. The proposed amendment uses the acronym "HHSC" instead of "Texas Health and Human Services Commission" because the acronym is a defined term. The proposed amendment also reformats subsection (f)(4) for clarity.

The proposed amendment to §49.305 requires a contractor to have records to support a claim for services under its contract before the contractor submits the claim. This change clarifies the existing requirement that a contractor have records supporting a service claim and is prohibited from creating supporting documentation of a service claim after submission of the claim to HHSC. The proposed amendment also adds text inadvertently omitted from subsection (j).

The proposed amendment to §49.307 changes the length of time a contractor is required to retain records. Specifically, subject to two exceptions in subsections (c) and (d), the proposed amendment requires a contractor to retain its contract and related records until the latest of the following: (1) seven years after the contract expires or is terminated, instead of six years after the records were created; (2) seven years after all issues arising from any litigation, claim, negotiation, audit, open records request, administrative review, or other action are resolved, instead of until all litigation, claims, and audit findings are resolved; or (3) the individual about whom the records relate becomes 21 years of age, which is a current requirement. This change is necessary to make the rule consistent with requirements of the Community Services Contract – Provider Agreement and the HHS Guidance Memorandum related to contracts and contract-related records. The exceptions to the proposed retention requirements are: (1) if a longer period of retention is required by applicable law, then the contractor must retain the records for the longer period; and (2) if the contractor was not required to have the records on the effective date of the proposed amendment, then the longer retention period does not apply to those records. This second exception means that if a contractor has a record on the effective date of the amendment that could have been destroyed under the current retention period, the contractor is not required to retain that record under the proposed retention period.

The proposed amendment to §49.309 reflects that the responsibility for handling complaints about programs and services governed by Chapter 49 has transferred from DADS to HHSC. The proposed amendment identifies, by

contract type, which complaints are handled by HHSC Consumer Rights and Services and which ones are handled by the HHSC Office of Ombudsman.

The proposed amendment to §49.411 specifically allows HHSC to conduct contract and fiscal monitoring on site or by desk review so monitoring can be conducted in a manner that allows for the efficient use of state resources. Consistent with this change, the references to “on-site” entrance and exit conferences have also been eliminated, which will allow conferences to be conducted remotely. The amendment also states that a contractor with an FMSA contract will be monitored by evaluating standards in accordance with a consumer directed services tax monitoring tool. This monitoring is currently described in §49.412, which is proposed for repeal, as “financial monitoring.”

The proposed repeal of §49.412 eliminates provisions related to financial monitoring of FMSAs because this monitoring is addressed in the proposed amendment to §49.411.

The proposed amendment to §49.413 deletes a reference to §49.412, which is proposed for repeal.

The proposed amendment to §49.521 corrects wording in subsection (b)(2) for clarity. The proposed amendment adds “or HHSC,” instead of changing “DADS” to “HHSC,” because a prior action or sanction by DADS may be considered by HHSC in determining what action to take against a contractor.

The proposed amendment to §49.522 deletes a reference to §49.412, which is proposed for repeal.

The proposed amendment to §49.523 deletes a reference to §49.412, which is proposed for repeal.

The proposed amendment to §49.531 reformats subsection (a) and corrects wording in subsection (b)(2) for clarity. The proposed amendment also clarifies that HHSC may consider the factors listed in subsection (b) when imposing vendor hold or terminating a contract, but not when recouping funds. Recoupment is based on the amount for which a contractor is liable to HHSC due to erroneous payment of service claims.

The proposed amendment to §49.532 describes the action taken by the HHSC Office of Inspector General described in subsections (a)(2) and (d)(2) as “determine” rather than “notify” because now that vendor hold is imposed by HHSC, notification to a separate entity is unnecessary. The proposed amendment deletes a reference to §49.412, which is proposed for repeal. The proposed amendment deletes the acronym “OIG” to be consistent with

other provisions in Chapter 49. The proposed amendment also changes the citation to §49.203 because of renumbering in that section.

The proposed amendment to §49.533 adds a reference to §49.305 as an example of a contract requirement with which non-compliance results in the contractor being liable to HHSC. This example was added to emphasize the requirement to have documentation to support a service claim before the claim is submitted.

The proposed amendment to §49.534 adds “or HHSC,” instead of changing “DADS” to “HHSC,” because a prior action or sanction by DADS may be the basis for HHSC terminating a contract. The proposed amendment deletes provisions that relate to financial monitoring in accordance with §49.412, because that section is proposed for repeal. The proposed amendment only requires HHSC to terminate a contract when a contractor undergoes a change of ownership and the requirements of §49.210(a)(1)-(4) are not met because, based on the proposed amendment to §49.210, contract termination will be initiated by the contractor when those requirements are met. The proposed amendment identifies the employee misconduct registry and the nurse aide registry as registries maintained by HHSC. The proposed amendment also changes the citation to §49.203 because of renumbering in that section. The proposed amendment also changes “DADS debarment list” to “HHS list of exclusions,” a new defined term with a similar definition. The proposed amendment also identifies HHSC, in addition to DFPS, as an agency that may confirm an allegation of abuse, neglect, or exploitation against a contractor or controlling person of a contractor. The proposed amendment makes a change to reflect that the choice list is a list of contracts, not contractors. Subsection (f), which described the date of termination of a contract when the contractor undergoes a change of ownership or change of legal entity, has been deleted because the contractor initiates termination of the contract under these circumstances and the amendment allows flexibility in the effective date of the termination, depending on the circumstances of the change of ownership or change of legal entity. The proposed amendment clarifies that the reference in the subsection now lettered as subsection (f) to a “controlling person” means a controlling person of a contractor.

The proposed amendment to §49.551 adds a reference to §49.302(q) to emphasize that a notice of contract termination to HHSC from a contractor must be provided in accordance with that subsection, which requires a notice to be in writing, signed by the signature authority, and sent to the appropriate HHSC contract staff. The proposed amendment adds a requirement that a contractor include the reason for the intended termination and, if the reason is for a change of ownership or change of legal entity, the proposed date of that change. The proposed amendment

reflects that the choice list is a list of contracts, not contractors, and clarifies that when HHSC is notified by a contractor that it intends to terminate its contract, only the terminating contract, not all of the contractor's contracts, will be removed from the choice list. The proposed amendment makes the section consistent with the proposed amendment to §49.702, which provides that HHSC does not set an application denial period when a contractor terminates a contract due to a change of ownership or change of legal entity.

The proposed amendment to §49.601 adds a reference to §49.209, regarding qualifying for a standard contract, and deletes the phrase "at the expiration of a provisional contract." This change is proposed because the proposed amendment of §49.209 allows a contractor to qualify for a standard contract before the expiration of its provisional contract.

The proposed amendment to §49.701 deletes the reference to relocation services because those services have been provided through the STAR+PLUS program since September 1, 2017.

The proposed amendment to §49.702 deletes the phrase "at the expiration of a provisional contract" because the proposed amendment of §49.209 allows a contractor to qualify for a standard contract before the expiration of its provisional contract. The proposed amendment also adds an exception to setting an application denial period when HHSC terminates a contract because a contractor has died or a contractor terminates a contract due to a change of ownership or change of legal entity. The proposed amendment clarifies that references to a "controlling person" in this section mean a controlling person of a contractor.

#### FISCAL NOTE

Ms. Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the proposed amended sections and proposed repealed section will be in effect, there are no foreseeable fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;

- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will repeal an existing rule;
- (7) the proposed rules will decrease the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there are no new requirements that require contractors to expend any additional funds or reduce their revenues.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

#### COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these proposed rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and do not impose a cost on regulated persons.

#### PUBLIC BENEFIT

Ron Pigott, Deputy Executive Commissioner, Procurement and Contracting Services, has determined that for each year of the first five years the proposed sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be an increased ability of HHSC to ensure that it contracts with qualified and competent persons, which will promote higher quality in service delivery and more accurate billing.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of

government action and, therefore, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code 1045, Austin, Texas 78714-9030; or 4900 North Lamar Boulevard, Austin, Texas 78751, Mail Code 1045; faxed to (512) 424-6669; or e-mailed to [HHRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHRulesCoordinationOffice@hhsc.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 40R025" in the subject line.

#### STATUTORY AUTHORITY

The amendments and repeal are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER A APPLICATION AND DEFINITIONS

**§49.101. Application.**

(a) Except as provided in subsections (b) - (d) of this section, all of the sections [~~subchapters~~] of this chapter apply to an applicant or contractor for one or more of the following programs and services:

(1) Medicaid waiver programs and services under Title XIX, §1915(c) of the Social Security Act as follows:

(A) Community Living Assistance and Support Services (CLASS) Program:

- (i) CLASS-case management agency (CMA);
- (ii) CLASS-continued family services (CFS);
- (iii) CLASS-direct service agency (DSA); and
- (iv) CLASS-support family services (SFS);

(B) Deaf Blind with Multiple Disabilities (DBMD) Program;

(C) Home and Community Based Services (HCS) Program;

~~[(D) Medically Dependent Children Program (MDCP):]~~

~~[(i) MDCP-adaptive aids (AA):]~~

~~[(ii) MDCP-home and community support services agency (HCSSA):]~~

~~[(iii) MDCP-minor home modifications; and]~~

~~[(iv) MDCP-out of home respite (OHR):]~~

~~[(i) MDCP-OHR-camp:]~~

~~[(H) MDCP-OHR-special care facility:]~~

~~[(III) MDCP-OHR-child care facility;]~~

~~[(IV) MDCP-OHR-nursing facility (NF);]~~

~~[(V) MDCP-OHR-hospital; and]~~

~~[(VI) MDCP-OHR-host family;]~~

(D) ~~[(E)]~~ Texas Home Living (TxHmL) Program; and

(E) ~~[(F)]~~ transition assistance services (TAS);

(2) Medicaid state plan services under Title XIX, §1902(a)(10)(A) of the Social Security Act as follows:

(A) hospice;

(B) primary home care (PHC) ~~[(PHC)/community attendant services (CAS)]~~;

(C) community attendant services (CAS); and

(D) ~~[(E)]~~ day activity and health services (DAHS);

(3) services and programs under Title XX, Subtitle A of the Social Security Act as follows:

(A) adult foster care (AFC);

(B) emergency response services;

(C) home delivered meals (HDM);

(D) residential care (RC);

(E) DAHS;

(F) family care (FC);

(G) consumer managed personal attendant services (CMPAS);

(H) special services to persons with disabilities (SSPD); and

(I) SSPD - 24-hour shared attendant care; and

~~[(4) relocation services; and]~~

(4) ~~[(5)]~~ financial management services under the consumer directed services option authorized under Texas Government Code, §531.051 as follows:

(A) financial management services agency (FMSA)--CLASS;

(B) FMSA-DBMD;

(C) FMSA-HCS;

~~[(D) FMSA-MDCP;]~~

(D) ~~[(E)]~~ FMSA-PHC/CAS/FC; and

(E) ~~[(F)]~~ FMSA-TxHmL.

(b) Subchapter D of this chapter (relating to Monitoring and Investigation of a Contractor) and Subchapter E, Divisions 2 and 3 of this chapter (relating to Immediate Protection; and Actions) do not apply to a contractor that has a contract for:

(1) the HCS Program; or

(2) the TxHmL Program.

(c) Subchapter D of this chapter and §49.523 of this chapter (relating to Referral Hold) do not apply to a contractor that has a contract for hospice.

(d) Sections 49.202 - 49.205 and §§49.207 - 49.211 of this chapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) and Subchapter G of this chapter (relating to Application Denial Period) do not apply to a contractor that has a contract for:

(1) CMPAS;

(2) SSPD; or

(3) SSPD - 24-hour shared attendant care; ~~[; or]~~

~~[(4) relocation services.]~~

### **§49.102. Definitions.**

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

(1) AA--Adaptive aids.

(2) Abuse--"Abuse" [Abuse] as defined by the statute or rule that governs the investigation of alleged abuse of an individual. [in Texas Human Resources Code, §48.002 or, in reference to children, Texas Family Code, §261.001.]

(3) AFC--Adult foster care.

(4) Applicant--A person seeking to obtain a contract.

(5) Application denial period--A period of time during which HHSC [DADS] denies a contract application submitted to HHSC [DADS].

(6) 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).

(7) CAS--Community attendant services.

(8) CFC PAS/HAB--A Medicaid state plan service provided through the Community First Choice (CFC) Option, described in 1 Texas Administrative Code Chapter 354, Subchapter A, Division 27 (relating to Community First Choice), under a contract for:

(A) the HCS Program;

(B) the TxHmL Program;

(C) a DSA in the CLASS Program; or

(D) the DBMD program.

(9) CFS--Continued family services.

(10) Change of legal entity--An event that occurs when a contractor is required to obtain a new federal tax identification number.

(11) Change of ownership--An event that occurs when:

(A) as a result of a transfer or sale, at least 50 percent of the ownership of a contractor is held by one or more persons who owned less than 5 percent of the contractor before the transfer or sale; and

(B) the contractor is not required to obtain a new federal tax identification number.

(12) Choice list--A list of contracts under [~~contractors from~~] which an individual or LAR may choose [~~chooses~~] to receive services [~~unless DADS has imposed a referral hold on the contractor~~].

(13) CLASS Program--Community Living Assistance and Support Services Program.

(14) Clean claim--In accordance with Code of Federal Regulations, Title 42, §447.45(b), a claim for services submitted by a contractor that can be processed without obtaining additional information from the contractor or a party other than HHSC [~~DADS~~], including a claim with errors originating in the Texas claims management system, but not including a claim from a contractor under investigation for fraud or abuse, or a claim under review for medical necessity.

(15) CMA--Case management agency.

(16) CMPAS--Consumer managed personal attendant services.

(17) Contract--A written agreement between HHSC [~~DADS~~] and another person that obligates the other person to provide a service to an individual in exchange for payment from HHSC [~~DADS~~]. The term includes standard and provisional contracts.

(18) Contractor--The person other than HHSC [~~DADS~~] who is a party to a contract.

(19) Contractual agreement--A written, legally binding agreement that is not a contract as defined in this section.

(20) Controlling ownership interest--A direct ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests, of 5 percent or more in an applicant or contractor.

(21) Controlling person--A person who:

(A) has a controlling ownership interest;

(B) is a managing employee;

(C) has been delegated the authority to obligate or act on behalf of an applicant or contractor;

(D) is an officer or director of a corporation that is an applicant or contractor;

(E) is a partner in a partnership that is an applicant or contractor;

(F) is a member or manager in a limited liability company that is an applicant or contractor;

(G) is a trustee or trust manager of a trust that is an applicant or contractor;

(H) is a spouse of a person who is an applicant or contractor; or

(I) because of a personal, familial, or other relationship with an applicant or contractor, is in a position of actual control or authority with respect to the applicant or contractor, regardless of the person's title.

(22) Conviction--A determination of being found or proved guilty that:

(A) is any of the following:

(i) a judgment of conviction that has been entered by a federal, state or local court, regardless of whether:

(I) there is a post-trial motion or an appeal pending; or

(II) the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;

(ii) a finding of guilt made by a federal, state, or local court; or

(iii) an acceptance of a plea of guilty or nolo contendere by a federal, state, or local court; and

(B) does not include successful completion of a period of deferred adjudication community supervision and receipt of a dismissal and discharge in accordance with Texas Code of Criminal Procedure, Article 42.12, Section 5(c).

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

~~[(24) DADS debarment list--A list, made before the effective date of this chapter, of persons and entities prohibited by DADS from conducting business with DADS in any capacity for a specified period.]~~

(24) ~~[(25)]~~ DAHS--Day activity and health services.

(25) ~~[(26)]~~ Day--A calendar day, including weekends and holidays.

(26) ~~[(27)]~~ DBMD Program--Deaf Blind with Multiple Disabilities Program.

(27) ~~[(28)]~~ Desk review--A review by HHSC ~~[DADS]~~ of a contractor's service delivery or business operation that takes place away from the contractor's administrative and service delivery sites, using records provided to HHSC ~~[DADS]~~ by the contractor. The scope of the review is at the discretion of HHSC ~~[DADS]~~.

(28) ~~[(29)]~~ DFPS--The Department of Family and Protective Services.

(29) ~~[(30)]~~ Direct ownership interest--An interest in the ownership of an applicant or contractor as described in subparagraphs (A) and (B) of this paragraph.

(A) Direct ownership interest is:

(i) ownership of equity in the capital, stock, or profits of an applicant or contractor; or

(ii) ownership in a mortgage, deed of trust, note, or other obligation secured by property of an applicant or contractor.

(B) The percentage of direct ownership interest of an applicant or contractor, based on ownership of a mortgage, deed of trust, note, or other obligation, is determined by multiplying the percentage of ownership in the obligation by the percentage of the applicant's or contractor's assets used to

secure the obligation. For example, ownership of 10 percent of a note secured by 60 percent of a contractor's or applicant's assets equals 6 percent direct ownership interest in the applicant or contractor (that is,  $0.1 \times 0.6 = 0.06$ ).

(30) [(31)] DSA--Direct service agency.

(31) [(32)] Electronic record--Information that is stored in a medium having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, and is retrievable in perceivable form.

(32) [(33)] Emergency response plan--A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency such as a fire or other man-made or natural disaster.

(33) [(34)] Exploitation--"Exploitation" [~~Exploitation~~] as defined by the statute or rule that governs the investigation of alleged exploitation of an individual. [~~in Texas Human Resources Code, §48.002.~~]

(34) [(35)] FC--Family care.

(35) [(36)] FMSA--Financial management services agency. An entity that contracts with HHSC [~~DADS~~] to provide financial management services, as defined in §41.103 of this title (relating to Definitions).

(36) [(37)] Governmental entity--An agency or other entity of federal, state, or local government.

(37) [(38)] HCS Program--Home and Community-based Services Program.

(38) [(39)] HCSSA--Home and community support services agency.

(39) [(40)] HDM--Home delivered meals.

(40) HHS list of exclusions--A list made before September 1, 2014, of individuals and entities prohibited from conducting business with DADS in any capacity for a specified period.

(41) HHSC--The Texas Health and Human Services Commission.

(42) Indirect ownership interest--An interest in the ownership of an applicant or contractor as described in subparagraphs (A) and (B) of this paragraph.

(A) Indirect ownership interest is an ownership interest in a person that has a direct or indirect ownership interest in an applicant or contractor.

(B) The percentage of indirect ownership interest is determined by multiplying the percentage of ownership interest in the person that has a direct ownership interest in the applicant or contractor by the percentage of direct ownership that the person has in the applicant or contractor. For example:

(i) ownership of 10 percent of the stock of a corporation that owns 80 percent of the stock of an applicant or contractor equals 8 percent indirect ownership of the applicant or contractor (that is,  $0.1 \times 0.8 = 0.08$ ); and

(ii) ownership of 50 percent of the stock of a corporation that owns 10 percent of the stock of a corporation that owns 80 percent of the stock of an applicant or contractor equals 4 percent indirect ownership of the applicant or contractor (that is,  $0.5 \times 0.1 \times 0.8 = 0.04$ ).

(43) Individual--A person who is enrolled in a program or service described in §49.101(a) of this subchapter.

(44) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a particular matter. The term may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(45) LEIE--List of excluded individuals and entities. In this context, "individual" does not have the meaning as defined in this section.

(46) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC in accordance with Texas Health and Safety Code, §533A.035.

(47) Managing employee--A person who exercises operational or managerial control over, or who conducts the day-to-day operation of, an applicant or contractor.

~~[(48) MDCP--Medically Dependent Children Program.]~~

(48) [~~(49)~~] Neglect--“Neglect” [~~Neglect~~] as defined by the statute or rule that governs the investigation of alleged neglect of an individual. [~~in Texas Human Resources Code, §48.002 or, in reference to children, Texas Family Code, §261.001.~~]

(49) [~~(50)~~] OHR--Out of home respite.

(50) [~~(51)~~] Paper record--Information that is stored on paper.

(51) [~~(52)~~] Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(52) [~~(53)~~] Personal attendant--An employee or subcontractor of a contractor or an employee of a CDS employer who provides:

(A) PHC;

(B) FC;

(C) CAS;

(D) DAHS;

(E) RC;

[~~(F) flexible family support in MDCP;~~]

[~~(G) respite services in MDCP;~~]

(F) [~~(H)~~] personal attendant services in the CMPAS Program;

(G) [~~(I)~~] habilitation or CFC PAS/HAB in the CLASS Program;

(H) [~~(J)~~] residential habilitation or CFC PAS/HAB in the DBMD Program;

(I) [~~(K)~~] chore services in the DBMD Program;

(J) [~~(L)~~] day habilitation in the DBMD Program;

(K) [~~(M)~~] supported home living or CFC PAS/HAB in the HCS Program;

or

(L) [~~(N)~~] community support or CFC PAS/HAB in the TxHmL Program.

(53) [~~(54)~~] PHC--Primary home care.

(54) [~~(55)~~] Provisional contract--An initial contract that HHSC [~~DADS~~] enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date.

(55) [~~(56)~~] RC--Residential care.

(56) [~~(57)~~] Records--Paper records and electronic records.

(57) [~~(58)~~] Recoup--To reduce payments that are due to a contractor under a contract to satisfy a debt the contractor owes to HHSC [~~DADS~~] but does not include making routine adjustments for prior overpayments to the contractor.

(58) [~~(59)~~] Referral hold--An action in which HHSC [~~DADS~~] prohibits a contractor from, for a period of time determined by HHSC [~~DADS~~], providing services to an individual not receiving services from the contractor at the time the referral hold was imposed.

(59) [~~(60)~~] SFS--Support family services.

(60) Signature authority--A person authorized to negotiate and execute a contract on behalf of a contractor as identified on the HHSC "Governing Authority Resolution" form.

(61) SSPD--Special Services to Persons with Disabilities (SSPD) Program.

(62) Standard contract--A contract that HHSC [~~DADS~~] enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(63) Subcontract--An agreement, other than a contract, between a contractor and another person that obligates the other person to provide all or part of the goods, services, work, or materials required of the contractor in a contract.

(64) Subcontractor--The person other than a contractor who is a party to a subcontract.

(65) TAS--Transition assistance services.

(66) TxHmL Program--Texas Home Living Program.

(67) Vendor hold--A temporary suspension of payments that are due to a contractor under a contract.

(68) Volunteer--A person who works for a contractor without compensation, other than reimbursement for actual expenses.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER B CONTRACTOR ENROLLMENT

**§49.202. Provisional Contract.**

(a) To obtain a contract for a service or program for which a person does not have a contract, or a contract in a service or catchment area in which the person does not have a contract, the person must apply for a provisional contract in accordance with §49.203 of this subchapter (relating to Provisional Contract Application Process) and §49.204 of this subchapter (relating to Additional Provisional Contract Application Requirements).

(b) HHSC [~~DADS~~] may require that a contract be limited to a single facility or single service or catchment area.

**§49.203. Provisional Contract Application Process.**

(a) To apply for a provisional contract, an applicant must:

(1) if required by HHSC [~~DADS~~] as stated on the HHSC [~~DADS~~] website, complete HHSC [~~DADS~~] pre-application orientation (PAO) and training in accordance with the instructions on the HHSC [~~DADS~~] website before submitting an application packet to HHSC [~~DADS~~] as described in paragraph (3) [~~(4)~~] of this subsection;

(2) if applying for a Title XX HDM contract, obtain written approval from HHSC [~~DADS~~]-staff in the region in which the applicant is seeking to provide services regarding budgetary issues and health inspections before submitting an application packet to HHSC [~~DADS~~] as described in paragraph (3) [~~(4)~~] of this subsection; and

~~[(3) if applying for an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), complete DADS training in accordance with the instructions on the DADS website and receive a passing score on DADS financial management services test before submitting an application packet to DADS as described in paragraph (4) of this subsection; and]~~

(3) [~~(4)~~] submit an application packet that contains:

(A) an HHSC [~~a DADS~~] provisional contract application completed in accordance with the application instructions;

(B) other documents required by the application instructions including:

(i) if required to complete PAO or training, a certificate of completion of the PAO or training issued by HHSC [~~DADS~~];

(ii) if the applicant is applying not because of a change of ownership as described in §49.210 of this subchapter (relating to Contractor Change of Ownership or Legal Entity), a copy of any document required to be a contractor as described in §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements);

(iii) if the applicant is applying because of a change of ownership or because of a change of legal entity as described in §49.210 of this subchapter, a copy of the application for change of ownership of any license required to be a contractor as described in §49.205 of this subchapter; and

(iv) if the applicant is not required to have a license issued by HHSC [~~DADS~~] under §49.205 of this subchapter, a written acknowledgement from the Texas Department of Public Safety that the applicant has requested, in accordance with the application instructions, a criminal history record be sent to HHSC [~~DADS~~] for each controlling person of [~~all persons with a controlling interest in~~] the applicant.

(b) An applicant must submit the completed application packet to HHSC [~~DADS~~] in a timely manner as described in this subsection.

(1) An application packet must be delivered to HHSC [~~DADS~~], in accordance with the application instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 60 days after the applicant completed the PAO;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 60 days after the applicant completed the PAO; or

(C) hand delivery, no later than 60 days after the applicant completed the PAO.

(2) For purposes of paragraph (1)(B) and (C) of this subsection, if the 60th day is a day on which the HHSC [~~DADS~~] office receiving the application packet is closed, the period extends through the end of the next day the office is open.

(c) If the applicant timely submits an incomplete or incorrect application packet, including failing to submit a required document, HHSC [~~DADS~~]:

- (1) requests, in writing, that the applicant submit a missing document; or
- (2) returns a document to the applicant for correction or completion.

(d) HHSC [~~DADS~~] gives an applicant only one opportunity to submit a missing document or to complete or correct a document in accordance with this subsection. An applicant must submit a missing, completed, or corrected document to HHSC [~~DADS~~] in a timely manner as described in this subsection.

(1) A missing document must be delivered to HHSC [~~DADS~~], in accordance with HHSC [~~DADS~~] instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 30 days after the date of HHSC's [~~DADS~~] written request for a missing document;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 30 days after the date of HHSC's [~~DADS~~] written request for a missing document; or

(C) hand delivery, fax, or e-mail no later than 30 days after HHSC's [~~DADS~~] written request for a missing document.

(2) A properly completed or corrected document must be delivered to HHSC [~~DADS~~], in accordance with HHSC [~~DADS~~] instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 30 days after the date of the letter from HHSC [~~DADS~~] returning the incomplete or incorrect document;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 30 days after the date of the letter from HHSC [~~DADS~~] returning the incomplete or incorrect document; or

(C) hand delivery, fax, or e-mail no later than 30 days after the date of the letter from HHSC [~~DADS~~] returning the incomplete or incorrect document.

(3) For purposes of paragraphs (1)(B) and (C) and (2)(B) and (C) of this subsection, if the 30th day is a day on which the HHSC [~~DADS~~] office receiving the missing, completed, or corrected document is closed, the period extends through the end of the next day the office is open.

#### **§49.204. Additional Provisional Contract Application Requirements.**

(a) An applicant that is licensed as an assisted living facility, applies for a Title XX RC contract, and otherwise meets application requirements must meet the requirements in §46.13 of this title (relating to Housing Options), as determined by HHSC [~~DADS~~] based on an on-site visit.

(b) An applicant that applies for a Title XX AFC contract and otherwise meets application requirements must meet the requirements in Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care).

(c) Except as provided in subsections (d) and (e) of this section, an applicant that applies for an HCS or TxHmL contract and otherwise meets application requirements must complete provider applicant training and receive a score of at least 85 percent on the provider competency examination.

(d) An applicant that applies for an HCS contract does not have to complete provider applicant training or take the provider competency examination if the applicant otherwise meets application requirements and has a standard contract for the HCS Program in another service area.

(e) An applicant that applies for a TxHmL contract does not have to complete provider applicant training or take the provider competency examination if the applicant otherwise meets application requirements and has a standard contract for the HCS Program or TxHmL Program in another service area.

(f) An applicant that applies for an FMSA contract and otherwise meets application requirements must complete HHSC training in accordance with the instructions on the HHSC website and receive a score of at least 85 percent on the HHSC financial management services test.

#### **§49.205. License, Certification, Accreditation, and Other Requirements.**

(a) To be a contractor, an applicant must have a license, certification, accreditation, or other document as follows:

(1) CLASS-CFS and CLASS-SFS require:

(A) a permit to operate a child-placing agency issued by HHSC [~~DFPS~~] in accordance with Chapter 745 of this title (relating to Licensing); or

(B) a HCSSA license issued by HHSC [~~DADS~~] in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) with:

(i) the licensed home health services (LHHS) category; or

(ii) the licensed and certified home health services (L&CHHS) category;

(2) CLASS-DSA requires a HCSSA license issued by HHSC [~~DADS~~] in accordance with Chapter 97 of this title with:

(A) the LHHS category; or

(B) the L&CHHS category;

(3) DBMD requires:

(A) a HCSSA license issued by HHSC [~~DADS~~] in accordance with Chapter 97 of this title with:

(i) the LHHS category; or

(ii) the L&CHHS category; and

(B) for a contractor that provides residential services to four to six individuals, an assisted living facility license Type A or Type B issued by HHSC [~~DADS~~] in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities);

~~[(4) MDGP-AA requires, for a contractor that provides vehicle modification services, a copy of a current contractual agreement with the Department of Assistive and Rehabilitative Services (DARS) to provide vehicle modification services;]~~

~~[(5) MDGP-HCSSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:]~~

~~[(A) the personal assistance services (PAS) category;]~~

~~[(B) the LHHS category; or]~~

~~[(C) the L&CHHS category;]~~

~~[(6) MDCP-OHR camp requires written accreditation by the American Camping Association for providing summer camp services;]~~

~~[(7) MDCP-OHR special care facility requires a special care facility license issued by the Department of State Health Services (DSHS) in accordance with 25 TAC Chapter 125 (relating to Special Care Facilities);]~~

~~[(8) MDCP-OHR child care facility requires a child care center license issued by DFPS in accordance with Chapter 745 of this title;]~~

~~[(9) MDCP-OHR NF requires a nursing facility license issued by DADS in accordance with Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification);]~~

~~[(10) MDCP-OHR hospital requires a hospital license issued by DSHS in accordance with 25 TAC Chapter 133 (relating to Hospital Licensing);]~~

~~[(11) MDCP-OHR host family requires a foster family home license issued by DFPS in accordance with Chapter 745 of this title or verification as a child placing agency foster family home issued by a child placing agency in accordance with Chapter 749 of this title (relating to Minimum Standards for Child Placing Agencies);]~~

(4) ~~[(12)]~~ TAS requires:

(A) written documentation from HHSC ~~[DARS]~~ or the Rehabilitation Services Administration of the United States Department of Education that the applicant is a center for independent living, as defined by 29 United States Code §796a;

(B) a contract other than the TAS contract; or

(C) written designation by HHSC ~~[DADS]~~ as an area agency on aging;

(5) ~~[(13)]~~ Medicaid hospice requires:

(A) a HCSSA license for hospice issued by HHSC ~~[DADS]~~ in accordance with Chapter 97 of this title; and

(B) a written notification from the Centers for Medicare & ~~[and]~~ Medicaid Services that the applicant is certified to participate as a hospice agency in the Medicare Program;

(6) ~~(14)~~ PHC, CAS ~~[PHC/CAS]~~, and FC require a HCSSA license issued by HHSC ~~[DADS]~~ in accordance with Chapter 97 of this title with:

(A) the LHHS category;

(B) the L&CHHS category; or

(C) the PAS category;

(7) ~~(15)~~ DAHS requires a DAHS facility license issued by HHSC ~~[DADS]~~ in accordance with Chapter 98 of this title (relating to Day Activity and Health Services Requirements);

(8) ~~(16)~~ Title XX AFC requires for an AFC home ~~[facility]~~ serving four to eight individuals, an assisted living facility license Type A or Type B issued by HHSC ~~[DADS]~~ in accordance with Chapter 92 of this title; and

(9) ~~(17)~~ Title XX RC requires an assisted living facility license Type A or Type B issued by HHSC ~~[DADS]~~ in accordance with Chapter 92 of this title.

(b) The license, certification, accreditation, or other document required by subsection (a) of this section must be valid in the service or catchment area:

(1) in which the applicant is seeking to provide services; or

(2) covered under the contractor's contract.

#### **§49.206. Ineligibility Due to Criminal History.**

(a) HHSC ~~[DADS]~~ may determine an applicant or contractor is ineligible to contract with HHSC ~~[DADS]~~ if the applicant, contractor, or a controlling person of the applicant or contractor has a conviction of any of the following misdemeanor or felony offenses, regardless of the date of conviction:

(1) an offense listed in §99.2(a) of this title (relating to Convictions Barring Licensure);

(2) an offense related to the person's involvement in any program under Medicare, Medicaid, or Title XX, Subtitle A of the Social Security Act;

(3) an offense described in Texas Occupations Code, §102.001 or §102.006 (relating to Solicitation, Offense; and Failure to Disclose, Offense); or

(4) an offense of aiding, abetting, or conspiring to commit an offense described in paragraphs (1) - (3) of this subsection.

(b) HHSC [~~DADS~~] considers a conviction of an offense under the laws of another state, federal law, or the Uniform Code of Military Justice containing elements that are substantially similar to the elements of an offense listed in subsection (a) of this section as if it is a conviction of one of the listed offenses.

(c) If an applicant, contractor or a controlling person of an applicant or contractor has a conviction of an offense listed in subsection (a) or (b) of this section, HHSC [~~DADS~~] considers the following information when determining if the applicant or contractor is eligible to contract with HHSC [~~DADS~~]:

(1) the nature and seriousness of the offense;

(2) the relationship of the offense to the applicant's, contractor's, or controlling person's duties under the contract;

(3) the extent to which a contract might offer an opportunity for the applicant, contractor, or controlling person to engage in activity similar to the offense;

(4) the age of the applicant, contractor, or controlling person at the time of the offense;

(5) the amount of time since the offense;

(6) whether the applicant, contractor, or controlling person has been convicted of other offenses; and

(7) any other information provided by the applicant, contractor, or controlling person to explain the circumstances of the offense or to evidence the applicant's, contractor's, or controlling person's conduct since the offense.

#### **§49.207. Provisional Contract Application Denial.**

(a) HHSC [~~DADS~~] denies a provisional contract application if:

(1) HHSC has not approved the applicant or contractor for enrollment in accordance with 1 TAC Chapter 352 (relating to Medicaid and Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening);

(2) HHSC has denied the enrollment application of the applicant or contractor, or has disenrolled the applicant or contractor, in accordance with 1 TAC Chapter 352 or Chapter 371, Subchapter E;

(3) the applicant or a controlling person of the applicant is under an application denial period as described in §49.702 of this chapter (relating to Application Denial Period);

(4) the applicant or a controlling person of the applicant is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;

(5) the applicant or a controlling person of the applicant is listed on:

(A) the HHSC [~~DADS~~] employee misconduct registry as unemployable;

(B) the HHSC nurse aide registry as revoked or suspended;

(C) the United States System for Award Management maintained by the General Services Administration;

(D) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(E) the LEIE maintained by the HHSC [~~Texas Health and Human Services Commission,~~]-Office of Inspector General;

(F) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or

(G) the HHS [~~DADS debarment~~] list of exclusions;

(6) the applicant has not submitted a completed application packet as required by §49.203 of this subchapter (relating to Provisional Contract Application Process);

(7) the applicant does not have a license, certification, accreditation, or other document required by §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements);

(8) the applicant is applying because of a change of ownership or a change of legal entity and HHSC [~~DADS~~] has denied the application for change of ownership of any license required to be a contractor as described in §49.205 of this subchapter;

(9) the applicant or a controlling person of the applicant is ineligible to contract with HHSC [~~DADS~~] in accordance with §49.206 of this subchapter (relating to Ineligibility Due to Criminal History);

(10) the applicant or a controlling person of the applicant is prohibited from contracting with HHSC [~~DADS~~] in accordance with Chapter 79, Subchapter S<sub>2</sub> of this title (relating to Contracting Ethics);

(11) the applicant does not meet a requirement described in §49.204 of this subchapter (relating to Additional Provisional Contract Application Requirements);

(12) a DSA in the CLASS Program is applying to be a CMA in the CLASS Program in the same catchment area in which the applicant is a DSA;

(13) a CMA in the CLASS Program is applying to be a DSA in the CLASS Program in the same catchment area in which the applicant is a CMA;

(14) the applicant is applying to be a DSA and CMA in the CLASS Program in the same catchment area;

(15) the applicant is required to register with the Texas Secretary of State and the applicant's status with the Texas Secretary of State is not "in existence"; or

(16) the applicant is required to pay Texas franchise tax and the applicant's right to transact business status with the Texas Comptroller of Public Accounts is not "active."

(b) HHSC [~~DADS~~] may deny a provisional contract application for good cause, including that:

(1) the application packet contains incorrect information;

(2) the applicant or a controlling person of the applicant terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;

(3) the applicant or a controlling person of the applicant terminated a contract while an action or sanction by DADS or HHSC, as described in §49.521 or §49.531 of this chapter (relating to Action by HHSC [~~DADS~~]; Sanction by HHSC [~~DADS~~]) was proposed or in effect;

(4) DADS or HHSC proposed or imposed an action or sanction, as described in §49.521 or §49.531 of this chapter, against:

(A) a contract of the applicant, contractor or a controlling person of the applicant; or

(B) a contract of a person for whom the applicant or a controlling person of the applicant was a controlling person;

(5) HHSC [~~DADS~~], another governmental entity, or a managed care organization contracting with a governmental entity, proposed or imposed a termination, suspension, recoupment, or penalty against:

(A) a contractual agreement of the applicant or a controlling person of the applicant; or

(B) a contract of a person for whom the applicant or a controlling person of the applicant was a controlling person;

(6) HHSC [~~DADS~~] or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, or registration held by the applicant or a controlling person of the applicant;

(7) the applicant or a controlling person of the applicant has an unresolved financial liability with HHSC [~~DADS~~] or another governmental entity; or

(8) the applicant or a controlling person of the applicant has been confirmed by DFPS or HHSC as having committed abuse, neglect, or exploitation.

(c) If HHSC [~~DADS~~] denies a provisional contract application, HHSC [~~DADS~~] provides written notification to the applicant. If the applicant wants to be a

contractor, the applicant must repeat the application process described in §49.203 and §49.204 of this subchapter.

#### **§49.208. Provisional Contract Application Approval.**

(a) HHSC [~~DADS~~] approves a provisional contract application if it is not denied in accordance with §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(b) If HHSC [~~DADS~~] approves a provisional contract application, HHSC [~~DADS~~]:

(1) provides written notification to the applicant;

(2) enters into a provisional contract with the applicant; and

(3) except as provided in §49.302(b) of this chapter (relating to General Requirements), places the contract [~~contractor's name~~] on the choice list for the program or service covered by the provisional contract.

(c) A provisional contract may be subject to conditions recommended by HHSC in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(d) The effective date of a provisional contract is as follows:

(1) if the applicant applied for the contract in accordance with §49.210(a)(2) of this subchapter (relating to Contractor Change of Ownership or Legal Entity), the effective date is the effective date of the change of ownership or legal entity of the contractor; or

(2) for an applicant other than one described in paragraph (1) of this subsection, the effective date is determined by HHSC [~~DADS~~].

(e) HHSC [~~DADS~~] and a contractor may agree to extend the term of a provisional contract. The extension of a provisional contract is not a determination by HHSC [~~DADS~~] that the contractor qualifies for a standard contract.

#### **§49.209. Standard Contract.**

(a) Except as provided in subsection (e) [~~(f)~~] of this section, a contractor that has a provisional contract, other than a provisional contract for the HCS

Program, TxHmL Program, or hospice, [~~or financial management services,~~] qualifies for a standard contract if, based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), HHSC [~~DADS~~] determines that the overall compliance score for the [~~expiring~~] provisional contract is 90 percent or greater.

(b) Except as provided in subsection (e) [~~(f)~~] of this section, a contractor that has a provisional contract for the HCS or TxHmL Program qualifies for a standard contract if:

(1) [~~at the end of the provisional contract term,~~] the contractor is certified by HHSC [~~DADS~~] in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action) or §9.577 of this title (relating to Program Provider Compliance and Corrective Action); and

(2) during the term of the provisional contract, HHSC [~~DADS~~] has not imposed a vendor hold on the contractor in accordance with §9.185 or §9.577 of this title.

(c) Except as provided in subsection (e) [~~(f)~~] of this section, a contractor that has a provisional contract for hospice qualifies for a standard contract if [~~at the end of the provisional contract term,~~] the contractor has the license and written notification required by §49.205(a)(5) [~~§49.205(a)(13)~~] of this subchapter (relating to License, Certification, Accreditation, and Other Requirements).

~~[(d) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for financial management services qualifies for a standard contract if:]~~

~~[(1) based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), DADS determines that the overall compliance score for the expiring provisional contract is 90 percent or greater; and]~~

~~[(2) based on financial monitoring described in §49.412 of this chapter (relating to Financial Monitoring of FMSAs), DADS determines that the contractor's overall compliance score for the expiring provisional contract is 90 percent.]~~

(d) [~~(e)~~] A standard contract issued by HHSC [~~DADS~~] in accordance with subsections (a) - (c) [~~(d)~~] of this section is for the same program, service, or facility in the same service, catchment, or waiver contract area as the provisional contract.

(e) ~~[(f)]~~ A contractor may not qualify for a standard contract for any reason for which HHSC ~~[DADS]~~ may deny a provisional contract application, as described in §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(f) ~~[(g)]~~ HHSC may subject a ~~[A]~~ standard contract ~~[may be subject]~~ to conditions ~~[recommended by HHSC]~~ in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(g) ~~[(h)]~~ A standard contract is effective the day after the provisional contract ends ~~[expires]~~.

(h) ~~[(i)]~~ If HHSC ~~[DADS]~~ determines a contractor does not qualify for a standard contract, HHSC ~~[DADS]~~ notifies:

(1) the contractor of the determination, in writing, and includes in the notification the application denial period set in accordance with §49.702(a) of this chapter (relating to Application Denial Period); and

(2) any controlling person of the contractor, in writing, of the application denial period.

(i) ~~[(j)]~~ If a contractor refuses a standard contract, HHSC ~~[DADS]~~ notifies the contractor and any controlling person of the contractor, in writing, of the application denial period set in accordance with §49.702(b) of this chapter.

#### **§49.210. Contractor Change of Ownership or Legal Entity.**

(a) If a contractor intends to undergo a change of ownership or change of legal entity, the following action must be taken to obtain a new provisional contract ~~[with an effective date that is the same as the date of the change of ownership or change of legal entity]~~:

(1) at least 60 days before the proposed date of the change of ownership or change of legal entity, the contractor must notify HHSC in accordance with §49.551(a) of this chapter (relating to Termination of Contract by Contractor) that it intends to terminate the contract ~~[DADS of the planned change and the proposed date of the change]~~;

(2) the contractor (for a change of ownership) or new legal entity (for a change of legal entity) must apply for a provisional contract in accordance

with §49.203 of this subchapter (relating to Provisional Contract Application Process) at least 60 days before the proposed date of the change of ownership or change of legal entity;

(3) the contractor or new legal entity must receive approval from HHSC [~~DADS~~] of the provisional contract application before the date of the change of ownership or change of legal entity in accordance with §49.208 of this subchapter (relating to Provisional Contract Application Approval); and

(4) if required to have a license under §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements) to be a contractor, the contractor or new legal entity must ensure that the date of the change of ownership or change of legal entity is the same as the date of the change of ownership or change of legal entity for the new license.

(b) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1) - (4) of this section are met, HHSC [~~DADS~~]:

~~[(1) proposes to terminate the contractor's contract in accordance with §49.534(a)(2)(C) of this chapter (relating to Termination of Contract by DADS);]~~

(1) [~~(2)~~] notifies individuals receiving services or LARs in accordance with §49.551(c)(1) [~~§49.534(c)(1) and (2)~~] of this chapter; and

(2) [~~(3)~~] enters into a new provisional contract with the contractor or new legal entity [~~with an effective date the same as the date of the change of ownership or change of legal entity~~].

(c) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1) - (4) of this section are not met, HHSC [~~DADS~~]:

(1) proposes to terminate the contractor's contract in accordance with §49.534(a)(2)(C) of this chapter;

(2) notifies individuals receiving services or LARs in accordance with §49.534(c)(1) and (2) of this chapter; and

(3) does not enter into a new provisional contract with the contractor or new legal entity with an effective date the same as the date of the change.

(d) If a contractor or new legal entity does not receive approval in accordance with subsection (a)(3) of this section, HHSC [~~DADS~~] does not enter into a contract with the contractor or new legal entity.

**§49.211. Religious Organization Applicants.**

(a) The provisions in this section are based on Code of Federal Regulations, Title 45, Part 87.

(b) An applicant that is a religious organization is eligible to become a contractor on the same basis as any other applicant.

(c) HHSC [~~DADS~~] does not discriminate against an applicant based on the applicant's religious character or affiliation, in approving or denying an applicant's application.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER C REQUIREMENTS OF A CONTRACTOR

**§49.301. Purpose.**

This subchapter describes the requirements a contractor must meet to maintain a contract with HHSC [~~DADS~~].

**§49.302. General Requirements.**

(a) A contractor must have and maintain a license, certification, accreditation, or other documentation required of an applicant in §49.205 of this chapter (relating to License, Certification, Accreditation, and Other Requirements), except:

(1) a contractor that has had a contract for the DBMD Program continuously since [~~from~~] September 1, 1999, [until September 1, 2014] and that does not provide home health or personal assistance services is not required to have a HCSSA license issued in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) for a contract in effect on September 1, 2014; and

(2) a contractor that has had a contract for AFC services in a four-bed home [~~facility~~] continuously since [~~from~~] January 15, 2009 [until September 1, 2014], and that has an assisted living facility Type C license issued in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) is not required to have an assisted living facility Type A or Type B license issued in accordance with Chapter 92 of this title.

(b) A contractor must complete any training required by HHSC [~~DADS~~] as stated on the HHSC [~~DADS~~] website before HHSC [~~DADS~~] places a contract of the contractor on a choice list.

(c) A contractor must ensure that an employee, subcontractor, or volunteer can effectively communicate with an individual or LAR concerning service planning and the provision of services, which may require the contractor to provide an interpreter for the individual.

(d) Except as provided in HHSC [~~DADS~~] rules governing services provided under the contract, a contractor must not allow an individual to perform

services under the contract or perform other work that benefits the contractor.

(e) A contractor must comply with the terms of its contract, which requires compliance with applicable federal and state laws, rules, and regulations, including this chapter, rules governing services provided under the contract, and applicable reimbursement rules in 1 TAC Chapter 355 (relating to Reimbursement Rates).

(f) A contractor:

(1) must accept the reimbursement rate for a service in effect at the time the service is provided as payment in full for performance under the contract; and

(2) must not make an additional charge to the individual, any member of the individual's family, or any other source for supplementation for performance under the contract, unless specifically allowed by federal or state law, rule, or regulation.

(g) A contractor must:

(1) subscribe to receive HHSC [DADS] e-mail updates, using the link provided at the HHSC [DADS] website and, for its contract, select the following categories:

(A) information letters; and

(B) provider alerts; and

(2) be informed of the content of the e-mail updates.

(h) A contractor must notify HHSC [DADS] of a change of ownership or change in legal entity in accordance with §49.210(a)(1) of this chapter (relating to Contractor Change of Ownership or Legal Entity).

(i) If there is a change to a contractor's physical, mailing, or e-mail address, as stated on the contractor's contract application packet or on a prior written notice of change to the information, the contractor must notify HHSC [DADS] of the change and provide the new physical, mailing, or e-mail address:

(1) at least 30 days before the address changes; or

(2) if a natural or unforeseen disaster prevents compliance with paragraph (1) of this subsection, within three days after the change.

(j) If there is a change to the name of the signature authority, [~~person authorized to negotiate and execute a contract on behalf of a contractor, as stated on the DADS form, "Governing Authority Resolution,"~~] the contractor must notify HHSC [~~DADS~~] of the change within 30 days after the change by submitting a new, fully executed HHSC [~~DADS form,~~] "Governing Authority Resolution[-]" form.

(k) If there is a change to the information regarding the applicant or a controlling person of the applicant being confirmed by DFPS or HHSC as having committed abuse, neglect, or exploitation, as stated on the contractor's contract application packet or on a prior written notice of change to the information, the contractor must notify HHSC [~~DADS~~] of the change within three business days after the contractor or controlling person becomes aware of the change.

(l) If a controlling person of a contractor is convicted of any crime listed in §49.206 of this chapter (relating to Ineligibility Due to Criminal History), the contractor must notify HHSC [~~DADS~~] within three business days after the contractor or controlling person becomes aware of the conviction.

(m) If a contractor files for bankruptcy, the contractor must notify HHSC [~~DADS~~] within 14 days after filing.

(n) If a contractor or controlling person of a contractor is excluded in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act, the contractor must notify HHSC [~~DADS~~] of the exclusion change within three business days after the contractor or controlling person becomes aware of the exclusion.

(o) If a contractor or a controlling person of a contractor becomes aware the contractor or controlling person is listed on any of the following, the contractor must notify HHSC [~~DADS~~] within three business days after the contractor becomes aware of the listing:

(1) the HHSC employee misconduct registry [~~DADS Employee Misconduct Registry~~] as unemployable;

(2) the HHSC nurse aide registry [~~DADS Nurse Aide Registry~~] as revoked or suspended;

(3) the United States System for Award Management maintained by the General Services Administration;

(4) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(5) the LEIE maintained by the HHSC [~~Texas Health and Human Services Commission,~~] Office of Inspector General; or

(6) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts.

(p) If there is a change to any of the information on the contractor's contract application packet or on a prior written notice of change to the information, other than the information referenced in subsections (i) - (o) of this section, a contractor must notify HHSC [~~DADS~~] of the change and provide the new information within 14 days after the information changes.

(q) For a notice that a contractor is required to send to HHSC [~~DADS~~] in accordance with this chapter, the contractor must ensure that the notice is:

(1) in writing;

(2) signed by the signature authority [~~person authorized to negotiate and execute a contract on behalf of a contractor, as stated on the DADS form, "Governing Authority Resolution"~~]; and

(3) sent to the HHSC contract staff identified on the form "Contract Approval Letter" issued to the contractor when the contract was awarded. [~~DADS Community Service Contracts Section.~~]

(r) A contractor must allow HHSC [~~DADS~~] and any authorized federal or state agency access to:

(1) individuals;

(2) employees, subcontractors, or volunteers of the contractor; and

(3) any premises controlled by the contractor.

(s) A contractor must not pay for any item or service furnished, ordered, or prescribed by an individual listed on either LEIE described in §49.304(f)(1) of this subchapter (relating to Background Checks).

#### **§49.304. Background Checks.**

(a) A contractor that is required to have a license, as described in §49.302(a) of this subchapter (relating to General Requirements), must comply with licensure requirements regarding criminal history record checks, the HHSC employee misconduct registry and the HHSC nurse aide registry for employees, subcontractors, and volunteers.

(b) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:

(1) before offering employment to an unlicensed applicant for employment or contracting with an unlicensed potential subcontractor, obtain directly or through a private agency the criminal history record of the applicant or potential subcontractor from the Department of Public Safety (DPS);

(2) before accepting an unlicensed volunteer applicant for a volunteer position that directly interacts with an individual, obtain directly or through a private agency the criminal history record of the applicant from DPS;

(3) review the criminal history record of the unlicensed applicant or potential subcontractor;

(4) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position, for the time periods set forth in Texas Health and Safety Code, §250.006, if the applicant or potential subcontractor has been convicted of an offense listed in Texas Health and Safety Code, §250.006; and

(5) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position if the applicant or potential subcontractor has been convicted of an offense that the contractor determines is a contraindication to the applicant's employment, contracting, or volunteering.

(c) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:

(1) before offering employment to an unlicensed applicant for employment or contracting with an unlicensed potential subcontractor, search the HHSC employee misconduct registry [~~DADS Employee Misconduct~~

~~Registry]~~ and the HHSC nurse aide registry [~~Nurse Aide Registry~~] for the name of the applicant or potential subcontractor;

(2) before accepting an unlicensed volunteer applicant for a volunteer position that directly interacts with an individual, search the HHSC employee misconduct registry [~~DADS Employee Misconduct Registry~~] and the HHSC nurse aide registry [~~Nurse Aide Registry~~] for the name of the applicant; [~~and~~]

(3) not employ an unlicensed applicant for employment, contract with a unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position that directly interacts with an individual if the applicant or potential subcontractor is listed on:

(A) the HHSC employee misconduct registry [~~DADS Employee Misconduct Registry~~] as unemployable; or

(B) the HHSC nurse aide registry [~~Nurse Aide Registry~~] as revoked or suspended; [-]

(4) within five business days after hiring an unlicensed employee, contracting with an unlicensed subcontractor, or accepting an unlicensed volunteer for a position that directly interacts with an individual, provide written information to the employee, subcontractor, or volunteer that a person listed on the HHSC employee misconduct registry is not permitted to be employed by, contract with, or volunteer for the contractor;

(5) at least once every twelve months after hiring an unlicensed employee, contracting with an unlicensed subcontractor, or accepting an unlicensed volunteer for a position that directly interacts with an individual, search the HHSC employment misconduct registry and the HHSC nurse aide registry for the name of the employee, subcontractor, or volunteer; and

(6) not continue to employ an unlicensed employee, contract with an unlicensed subcontractor, or use an unlicensed volunteer for a position that directly interacts with an individual if the employee, subcontractor, or volunteer is listed on:

(A) the HHSC employee misconduct registry as unemployable; or

(B) the HHSC nurse aide registry as revoked or suspended.

(d) A contractor must:

(1) before contracting with a potential subcontractor or offering employment to an applicant for employment, search the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts; and

(2) not contract with the potential subcontractor or employ the applicant if the potential subcontractor or applicant is listed on the Debarred Vendor List and the period of debarment has not expired.

(e) A contractor must develop and implement a policy that requires an employee, volunteer, or subcontractor to report to the contractor if any of the information obtained in accordance with subsection (b)(1), (c)(1), or (d)(1) of this section has changed. If a contractor becomes aware that information the contractor obtained in accordance with subsection (b)(1), (c)(1), or (d)(1) of this section was erroneous or has subsequently changed so the contractor would not be allowed to employ the person, contract with the person, or accept the person for volunteer status in accordance with subsection (b)(3) or (4), (c)(2), or (d)(2) of this section, the contractor must terminate the person's employment, volunteer status, or contract.

(f) A contractor must:

(1) review the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General, and the LEIE maintained by the HHSC [~~Texas Health and Human Services Commission,~~] Office of Inspector General:

(A) before hiring an applicant for employment or contracting with a potential subcontractor; and

(B) at least monthly, for each employee and subcontractor;

(2) not employ an applicant for employment or contract with a potential subcontractor to perform any duties that may be paid for directly or indirectly through a contract if the applicant or potential subcontractor is listed on either LEIE described in paragraph (1) of this subsection;

(3) prohibit an employee or subcontractor listed on either LEIE described in paragraph (1) of this subsection from performing any duties that may be paid for directly or indirectly through a contract; and

(4) if an employee or subcontractor is listed on either LEIE described in paragraph (1) of this subsection, immediately report to the HHSC [·] Office of Inspector General, in accordance with the self-reporting protocol of the HHSC Office of Inspector General:

(A) the identity of an excluded employee or subcontractor; and

(B) the amount paid by the contractor to the employee or subcontractor for services provided under a contract [~~in accordance with the self-reporting protocol of HHSC, Office of] Inspector General].~~

#### **§49.305. Records.**

(a) A contractor must develop and maintain records in accordance with its contract, this subchapter, and HHSC [~~DADS~~] rules governing services provided under the contract.

(b) A contractor must:

(1) use forms required by HHSC [~~DADS~~] or, if a specific form is not required by HHSC [~~DADS~~], develop records that include elements required by HHSC [~~DADS~~]; and

(2) ensure that:

(A) a beginning time for a service is not documented until after the service being documented has been initiated; and

(B) an ending time or a time period for a service is not documented until after the service has been provided.

(c) Before a contractor submits a claim for services under its contract, the [A] contractor's records must support the [a] claim [~~for services submitted under its contract~~].

(d) A contractor's records must be maintained in accordance with generally accepted accounting principles, referred to as GAAP, established by the Financial Accounting Standards Board.

(e) A contractor must develop and maintain records that:

(1) document the extent of services provided;

(2) document compliance with this chapter; and

(3) include records required by rules governing services provided under its contract.

(f) A contractor must develop and maintain records for an employee, subcontractor, or volunteer that include:

(1) a description of the employee, subcontractor, or volunteer's responsibilities;

(2) the employee's completed application;

(3) records that the employee, subcontractor, or volunteer is qualified for the position for which the person is employed, contracting, or volunteering, in accordance with rules governing services provided under the contract;

(4) records that the contractor conducted the reviews described in §49.304 of this subchapter (relating to Background Checks);

(5) records that the employee, subcontractor, or volunteer received any training required by rules governing services provided under the contract; and

(6) records of any disciplinary action.

(g) For purposes of subsection (f)(4) of this section, records maintained to show compliance with §49.304(f) of this subchapter must include:

(1) documentation of the first and last name, date of birth, and social security or employer identification number of an employee or subcontractor required to be the subject of a review described in §49.304(f)(1) of this subchapter;

(2) the printed first and last name and signature of the person conducting the review;

(3) documentation of the date the review was conducted;

(4) documentation of whether the employee and subcontractor who was the subject of the review was listed on either of the LEIEs described in §49.304(f)(1) of this subchapter; and

(5) a copy of the report made in accordance with §49.304(f)(4) of this subchapter.

(h) A contractor must develop and implement written procedures to:

(1) prevent falsification or unauthorized access, disclosure, modification, or destruction of records and data;

(2) ensure the availability, integrity, authenticity, completeness, and confidentiality of records and data; and

(3) ensure that appropriate audit trails and sufficiently complete transaction histories are maintained to identify the person or position that makes an entry, modification, or correction to records or data that supports a claim for services under its contract.

(i) If a contractor uses paper records described in this section, the contractor must:

(1) ensure records are completed in ink;

(2) retain the original records;

(3) except as provided in HHSC [DADS] rules governing services provided under the contract, ensure records are signed and dated by the person making the entry;

(4) ensure a stamped signature is used only by a person with a disability as an accommodation for the disability; and

(5) ensure that if a correction to records is necessary, the correction is made by:

(A) marking a single line through the error;

(B) adding the date the correction was made and the initials of the person who made the correction; and

(C) not using correction fluid or tape or otherwise obliterating the original entry.

(j) If a contractor uses electronic records described in this section, the contractor must:

(1) develop and implement written procedures, which must include maintaining current virus protection software, to prevent the loss or corruption of data due to malicious code;

(2) develop and implement written procedures governing the use of electronic signatures that:

(A) ensure authenticity of an electronic signature;

(B) describe the method of authentication used, such as password, personal identification number, digital signature, or other unique identifier, by document type;

(C) identify the person or position who is authorized to sign electronically by document type; and

(D) describe security measures used to prevent unauthorized use of electronic signatures; and

(3) use an electronic record system that:

(A) documents any change in content that was made to the electronic record;

(B) documents the date the change was made;

(C) documents the name and employee number or other unique identifier of the person who made the change; and

(D) allows a record to be retrievable as a paper record.

(k) A contractor must:

(1) ensure records are available for review in accordance with the contract; and

(2) as requested by HHSC [~~DADS~~] or any federal or state agency authorized to have access to records:

(A) provide, at no charge, a copy of any records to HHSC [~~DADS~~] and the federal or state agency in the form requested by HHSC [~~DADS~~] or the federal or state agency; or

(B) allow HHSC [~~DADS~~] and the federal or state agency to make a copy of any records, at no charge.

### **§49.307. Record Retention and Disposition.**

(a) Except as provided in subsections (c) and (d), [Unless a contractor is required to retain records for a longer period by the contract or rules governing services provided under the contract,] a contractor must retain its contract and records developed and maintained in accordance with §49.305 of this subchapter (relating to Records) in the form in which they were created until the latest of the following [occurs]:

(1) seven [six] years after the contract expires or is terminated [elapse from the date the records were created];

(2) seven years after all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action [all litigation, claims, and audit findings] involving the contract or records are resolved; or

(3) the individual about whom the records relate becomes 21 years of age.

(b) If a contractor destroys records containing confidential information, the records must be destroyed in a manner that makes the confidential information unusable, as follows:

(1) for paper, film, and other hard copy records, shredding, pulping, or burning; and

(2) for electronic records, disintegration, degaussing, digital shredding, or using specialized software to copy over the data.

(c) If applicable law, the contract, or rules governing services provided under the contract require a contractor to retain records for a longer period than described in subsection (a) of this section, the contractor must retain the records for the longer period.

(d) A contractor is not required to comply with subsection (a) of this section for a record not required by applicable law, rule, or the contract to be in the contractor's possession on July 29, 2018.

### **§49.308. Subcontracts.**

If a contractor uses a subcontractor to provide a service to an individual, the contractor must:

(1) have a written agreement with the subcontractor that requires the subcontractor and any of its subcontractors to comply with applicable provisions of the contract, this subchapter, and HHSC [~~DADS~~] rules governing services provided under the contract, as if the subcontractor and its subcontractors were the contractor;

(2) monitor the subcontractor to ensure that the subcontractor is in compliance with the written agreement referenced in paragraph (1) of this section; and

(3) maintain records of its monitoring of the subcontractor.

### **§49.309. Complaint Process.**

(a) A contractor must develop and implement written procedures for investigating and resolving a complaint about services provided under a contract, other than an allegation of abuse, neglect, or exploitation, that:

(1) allow a complaint to be submitted to the contractor:

(A) either orally or in writing; and

(B) anonymously; and

(2) require the contractor to:

(A) request, but not require disclosure of, the name, mailing address, and telephone number of a complainant;

(B) investigate and resolve a complaint within 30 days after the complaint is received by the contractor;

(C) document the name of the person who conducted the investigation;

(D) document the name of persons contacted during an investigation;

(E) obtain written statements from persons contacted during an investigation or document conversations with those persons; and

(F) provide the following information to the complainant within 30 days after a complaint is received by the contractor, unless the complainant did not provide a mailing address or phone number:

(i) the findings of the investigation;

(ii) the contractor's resolution of the complaint;

(iii) the telephone number of: [~~the DADS Consumer Rights and Services hotline (1-800-458-9858); and~~]

(I) HHSC Consumer Rights and Services (1-800-458-9858), if the contractor has a contract for:

(-a-) CLASS-CFS;

(-b-) CLASS-DSA;

(-c-) CLASS-SFS;

(-d-) the DBMD Program;

(-e-) the HCS Program;

(-f-) the TxHmL Program;

(-g-) hospice;

(-h-) PHC;

(-i-) CAS;

(-j-) DAHS;

(-k-) Title XX AFC and services are provided in an AFC home serving four to eight people;

(-l-) Title XX RC;

(-m-) CMPAS;

(-n-) FC;

(-o-) SSPD and services are provided in a DAHS facility; or

(-p-) SSPD-24-hour shared attendant care; or

(II) the HHSC Ombudsman Office (1-877-787-8999), if the

contractor has a contract for:

(-a-) CLASS-CMA;

(-b-) TAS;

(-c-) Title XX AFC and services are provided in an AFC home serving fewer than four people;

(-d-) emergency response services;

(-e-) HDM;

(-f-) SSPD and services are not provided in a DAHS facility;

(-g-) FMSA-CLASS;

(-h-) FMSA-DBMD;

(-i-) FMSA-HCS;

(-j-) FMSA-PHC/CAS/FC; or

(-k-) FMSA-TxHmL; and

(iv) an explanation that the telephone number [~~DADS hotline~~] may be used if the complainant is not satisfied with the contractor's resolution of the complaint.

(b) The contractor must give the information described in subsection (a)(2)(F) of this section as follows:

(1) in person, if the complainant is the individual receiving services; or

(2) if the complainant is not the individual receiving services:

(A) by mail, if the contractor knows the complainant's mailing address;  
or

(B) by telephone, if the contractor does not know the complainant's mailing address, but knows the complainant's telephone number.

(c) A contractor must maintain a written log that contains the following information:

- (1) the date the contractor received a complaint;
  - (2) a description of the complaint;
  - (3) the findings of the investigation;
  - (4) the contractor's resolution of the complaint and the date of resolution;
- and
- (5) the date the contractor provided information to the complainant in accordance with subsection (b) of this section.

(d) A contractor must provide the following information to an individual and LAR:

- (1) a description of the contractor's complaint process;
- (2) the telephone number of: [~~the DADS Consumer Rights and Services hotline (1-800-458-9858); and~~]

(A) HHSC Consumer Rights and Services (1-800-458-9858), if the contractor has a contract for:

- (i) CLASS-CFS;
- (ii) CLASS-DSA;
- (iii) CLASS-SFS;
- (iv) the DBMD Program;
- (v) the HCS Program;
- (vi) the TxHmL Program;
- (vii) hospice;
- (viii) PHC;
- (ix) CAS;
- (x) DAHS;

(xi) Title XX AFC and services are provided in an AFC home serving four to eight people;

(xii) Title XX RC;

(xiii) CMPAS;

(xiv) FC;

(xv) SSPD and services are provided in a DAHS facility; or

(xvi) SSPD-24-hour shared attendant care; or

(B) the HHSC Ombudsman Office (1-877-787-8999), if the contractor has a contract for:

(i) CLASS-CMA;

(ii) TAS;

(iii) Title XX AFC and services are provided in an AFC home serving fewer than four people;

(iv) emergency response services;

(v) HDM;

(vi) SSPD and services are not provided in a DAHS facility;

(vii) FMSA-CLASS;

(viii) FMSA-DBMD;

(ix) FMSA-HCS;

(x) FMSA-PHC/CAS/FC; or

(xi) FMSA-TxHmL; and

(3) an explanation that the telephone number [~~DADS hotline~~] may be used to file a complaint with HHSC [~~DADS~~].

(e) A contractor must provide the information described in subsection (d) of

this section orally and in writing, as follows:

(1) before or at the time the individual begins receiving program services from the contractor; and

(2) at least once every 12 months thereafter.

**§49.311. Claims Payment.**

(a) HHSC [~~DADS~~] pays a contractor for a claim for services that meets the requirements described in subsection (b) of this section.

(b) A contractor must ensure a claim for services is:

(1) for a service that has been provided by a contractor;

(2) a clean claim;

(3) complete and accurate;

(4) submitted within 12 months after one of the following, whichever is later:

(A) the last day of the month in which the service was provided, the adaptive aid or medical supply delivered, or the minor home modification completed; or

(B) the date the individual's eligibility for the service was determined;

(5) for a type and amount of service that is authorized by HHSC [~~DADS~~];

(6) for a service provided to an individual who is eligible for the service;

(7) except as provided in HHSC [~~DADS~~] rules governing services provided under the contract, for a service provided to an individual whose authorization for services has not been suspended or terminated by HHSC [~~DADS~~];

(8) for a service provided during a time period authorized by HHSC [~~DADS~~];

(9) for a service provided during the term of, and in accordance with, the contract, this subchapter, and HHSC [~~DADS~~] rules governing services provided under the contract;

(10) supported by records required by the contract and HHSC [~~DADS~~] rules governing services provided under the contract;

(11) for a service provided by a qualified service provider in accordance with HHSC [~~DADS~~] rules governing services provided under the contract;

(12) for a service ordered by a qualified practitioner, if required by the contract or HHSC [~~DADS~~] rules governing services provided under the contract;

(13) submitted in accordance with procedures required by HHSC [~~DADS~~] rules governing services provided under the contract and by the claims administrator; and

(14) not for a service that a source other than HHSC [~~DADS~~] would have paid for if the contractor had submitted a proper, complete, and timely request for payment to the other source.

(c) As used in subsection (b)(11) and (12) of this section, the terms "qualified service provider" and "qualified practitioner" do not include a person whose health-related license has been suspended or revoked or who has been excluded from participation in a program administered under Title V, XVIII, XIX, or XX of the Social Security Act.

(d) HHSC [~~DADS~~] denies a claim for services that does not meet the requirements in subsection (b) of this section and HHSC [~~DADS~~] rules governing services provided under the contract. If HHSC [~~DADS~~] denies a claim for services, a contractor may request and receive an administrative hearing.

(e) If a contractor or HHSC [~~DADS~~] determines that the contractor received payment for a claim for services that does not meet the requirements in subsection (b) of this section and HHSC [~~DADS~~] rules governing services provided under the contract:

(1) the contractor may submit a corrected claim for services to allow HHSC [~~DADS~~] to adjust amounts paid to a contractor, even if it is after the 12-month period described in subsection (b)(4) of this section; or

(2) HHSC [~~DADS~~] recoups funds paid to the contractor in accordance with §49.533 of this chapter (relating to Recoupment).

(f) If a claim for services is denied by HHSC [~~DADS~~], the contractor that submitted the claim may submit a corrected claim within the 12-month period described in subsection (b)(4) of this section.

(g) HHSC [~~DADS~~] may adjust amounts paid to a contractor after the 12-month period described in subsection (b)(4) of this section.

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49	CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER D	MONITORING AND INVESTIGATION OF A CONTRACTOR
DIVISION 2	MONITORING AND INVESTIGATION

**§49.411. Contract and Fiscal Monitoring.**

(a) HHSC [~~DADS~~] conducts contract and fiscal monitoring on site or by desk review:

(1) to determine if:

(A) a contractor is in compliance with its contract, which requires compliance with applicable federal and state laws, rules, and regulations, provider manuals and handbooks, billing guidelines, and communications promulgated by HHSC [~~DADS~~], including information letters; or

(B) a contractor is in compliance with a corrective action plan as described in §49.522 of this chapter (relating to Corrective Action Plan) or an immediate protection plan as described in §49.511 of this chapter (relating to Immediate Protection and Immediate Protection Plan);

(2) for purposes described in paragraph (1)(A) of this subsection, at least once during the term of a provisional contract and periodically after the effective date of a standard contract, on a schedule determined by HHSC [~~DADS~~];

(3) by evaluating standards in accordance with:

(A) for all contractors, a program-specific HHSC [~~DADS~~] contract and fiscal compliance monitoring tool; and

(B) for contractors that have an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), a CDS tax monitoring tool; and

(4) at a location identified by HHSC [~~DADS~~], which may include a location where the contractor conducts business or provides contracted services.

(b) To conduct contract and fiscal monitoring, HHSC [~~DADS~~]:

(1) sends a written notice to a contractor that includes the date the monitoring will begin and lists the records the contractor must provide at the entrance conference described in paragraph (2) of this subsection;

(2) conducts an [~~on-site~~] entrance conference with the contractor;

(3) performs other activities, which may include:

(A) reviewing the contractor's records;

(B) reviewing the contractor's policies and procedures;

(C) reviewing consumer satisfaction surveys;

(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor's employee; and

(E) observing an individual receiving services;

(4) conducts an [~~on-site~~] exit conference with the contractor, at which HHSC [~~DADS~~] reports the compliance score for each standard reviewed and an overall compliance score; and

(5) notifies the contractor, in writing, of the results of the monitoring.

(c) A contractor must provide records listed in the notice described in subsection (b)(1) of this section to HHSC [~~DADS~~] at the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, HHSC [~~DADS~~] conducts contract monitoring with any records provided.

(d) If HHSC [~~DADS~~] determines that a contractor's compliance score for a standard on a monitoring tool described in subsection (a)(3) of this section is less than 90 percent, HHSC [~~DADS~~] requires the contractor to submit an acceptable corrective action plan to HHSC [~~DADS~~] in accordance with §49.522 of this chapter.

(e) If HHSC [~~DADS~~] determines that a contractor's overall compliance score on a monitoring tool described in subsection (a)(3) of this section is less than 90 percent, HHSC [~~DADS~~] considers the contractor out of substantial compliance with the contract and may:

(1) determine that a contractor does not qualify for a standard contract;

(2) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by HHSC [~~DADS~~] and Termination by Contractor);

(3) conduct additional monitoring in accordance with this section; or

(4) take a combination of the actions described in paragraphs (1) - (3) of this subsection.

(f) If, during a contract and fiscal monitoring, HHSC [~~DADS~~] determines that the contractor is not protecting an individual's health and safety, HHSC [~~DADS~~] may require the contractor to:

(1) immediately protect the individual's health and safety; and

(2) submit an immediate protection plan in accordance with §49.511 of this chapter.

**~~§49.412. Financial Monitoring of FMSAs.~~**

~~(a) In addition to the contract and fiscal monitoring described in §49.411 of this division (relating to Contract and Fiscal Monitoring), DADS conducts financial monitoring of contractors that have an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application):~~

~~(1) to determine if:~~

~~(A) an FMSA contractor is in compliance with its contract, which requires compliance with applicable federal and state laws, rules, and regulations, provider manuals and handbooks, billing guidelines, and communications promulgated by DADS, including information letters; or~~

~~(B) an FMSA contractor is in compliance with a corrective action plan as described in §49.522 of this chapter (relating to Corrective Action Plan);~~

~~(2) for purposes described in paragraph (1)(A) of this subsection, at least once during the term of a provisional contract and periodically after the effective date of a standard contract, on a schedule determined by DADS;~~

~~(3) by evaluating standards in accordance with a program-specific DADS financial compliance monitoring tool; and~~

~~(4) at a location identified by DADS, which may include a location where the FMSA contractor conducts business or provides contracted services.~~

~~(b) To conduct financial monitoring, DADS:~~

~~(1) sends a written notice to an FMSA contractor that includes the date the monitoring will begin and lists the records the contractor must provide at the entrance conference described in paragraph (2) of this subsection;~~

~~(2) conducts an on-site entrance conference with the FMSA contractor;~~

~~(3) performs other activities, which may include:~~

~~(A) reviewing the FMSA contractor's records;~~

~~(B) reviewing the FMSA contractor's policies and procedures;~~

~~(C) reviewing consumer satisfaction surveys; and~~

~~(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor's employee;~~

~~(4) conducts an [on-site] exit conference with the FMSA contractor, at which DADS reports the compliance score for each standard reviewed and an overall compliance score; and~~

~~(5) notifies the FMSA contractor, in writing, of the results of the monitoring.~~

~~(c) An FMSA contractor must provide the records listed in the notice described in subsection (b)(1) of this section to DADS at the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, DADS conducts financial monitoring with any records provided.~~

~~(d) If DADS determines that an FMSA contractor's overall compliance score is less than 90 percent, DADS considers the contractor out of substantial compliance with the contract and may:~~

~~(1) determine that a contractor does not qualify for a standard contract;~~

~~(2) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);~~

~~(3) conduct additional monitoring in accordance with this section; or~~

~~(4) take a combination of the actions described in paragraphs (1) — (3) of this subsection.]~~

### **§49.413. Investigation.**

(a) If HHSC [~~DADS~~] receives an oral or written allegation that indicates a contractor may have violated a contract or program requirement, HHSC [~~DADS~~] conducts an unannounced investigation of the contractor. The investigation is conducted on-site or by a desk review.

(b) To conduct an investigation, HHSC [~~DADS~~]:

(1) conducts an entrance conference with the contractor if the investigation is conducted on-site;

(2) performs other activities, which may include:

(A) reviewing the contractor's records;

(B) reviewing the contractor's policies and procedures;

(C) reviewing consumer satisfaction surveys;

(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor's employee; and

(E) observing an individual receiving services.

(c) A contractor must provide records requested by HHSC [~~DADS~~] as follows:

(1) for an investigation conducted on-site, the contractor must provide the records to HHSC [~~DADS~~] within one hour after the entrance conference described in subsection (b)(1) of this section, unless another time period is agreed to by HHSC [~~DADS~~] in writing for an EVV report; and

(2) for an investigation conducted by a desk review, the contractor must provide the records to HHSC [~~DADS~~] within one business day after HHSC's [~~DADS~~] request.

(d) HHSC [~~DADS~~] notifies the contractor, in writing, of the results of the investigation.

(e) If, based on an investigation, HHSC [~~DADS~~] determines that the contractor is out of compliance with the contract, HHSC [~~DADS~~] may:

(1) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by HHSC [~~DADS~~] and Termination by Contractor);

(2) conduct additional monitoring in accordance with §49.411 of this division (relating to Contract and Fiscal Monitoring) [~~or §49.412 of this division (relating to Financial Monitoring of FMSAs)~~]; or

(3) take a combination of the actions described in paragraphs (1) and (2) of this subsection.

(f) If, during an investigation, HHSC [~~DADS~~] determines that the contractor is not protecting an individual's health and safety, HHSC [~~DADS~~] may require the contractor to:

(1) immediately protect the individual's health and safety; and

(2) submit an immediate protection plan in accordance with §49.511 of this chapter (relating to Immediate Protection and Immediate Protection Plan).

#### **§49.414. Financial Review.**

(a) HHSC [~~DADS~~] may conduct a financial review, including an audit, of a contractor at any time. The review is conducted on-site or by a desk review.

(b) To conduct a financial review, HHSC [~~DADS~~]:

(1) conducts an entrance conference with the contractor; and

(2) performs other activities, which may include:

(A) reviewing the contractor's records;

(B) reviewing the contractor's policies and procedures; or

(C) interviewing a person with knowledge relevant to the contract.

(c) If, based on a financial review, HHSC [~~DADS~~] determines that the contractor is out of compliance with the contract, HHSC [~~DADS~~] may impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by HHSC [~~DADS~~] and Termination by Contractor).

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PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER E ENFORCEMENT BY HHSC [~~DADS~~] AND TERMINATION BY  
CONTRACTOR  
DIVISION 2 IMMEDIATE PROTECTION

**§49.511. Immediate Protection and Immediate Protection Plan.**

(a) HHSC [~~DADS~~] requires a contractor to immediately protect an individual's health and safety if HHSC [~~DADS~~] determines that:

(1) the contractor is not complying with its contract; and

(2) the contractor's failure to comply with its contract jeopardizes the health and safety of the individual.

(b) If HHSC [~~DADS~~] requires immediate protection in accordance with subsection (a) of this section, HHSC [~~DADS~~] notifies the contractor:

(1) orally or in writing, that the contractor must immediately protect the individual's health and safety; and

(2) in writing, that the contractor must submit and implement a written immediate protection plan.

(c) If HHSC [~~DADS~~] notifies the contractor in accordance with subsection (b) of this section, the contractor must:

(1) immediately protect the individual's health and safety; and

(2) submit a written immediate protection plan to HHSC [~~DADS~~] within three business days after the date of the notice from HHSC [~~DADS~~].

(d) An immediate protection plan submitted in accordance with subsection (c)(2) of this section must:

(1) describe the non-compliance that jeopardized the health and safety of the individual;

(2) describe the immediate protection taken by the contractor;

(3) describe the activities the contractor will perform to prevent the non-

compliance described in paragraph (1) of this subsection from reoccurring;

(4) include a schedule for performing the activities described in paragraph (3) of this subsection; and

(5) include:

(A) the title of the person who ensured completion of the immediate protection; and

(B) the title of the person responsible for completion of the activities described in paragraph (3) of this subsection.

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DIVISION 3 ACTIONS

**§49.521. Action by HHSC [~~DADS~~].**

(a) HHSC [~~DADS~~] may take one or more of the following actions against a contractor in accordance with §49.522 and §49.523 of this division (relating to Corrective Action Plan and Referral Hold):

(1) require the development of and compliance with a corrective action plan; and

(2) impose a referral hold.

(b) HHSC [~~DADS~~] may consider the following factors in determining the action to be taken:

(1) the extent and seriousness of the contractor's non-compliance with the contract that is the subject of the action;

(2) the contractor's history of previous non-compliance with:

(A) the contract that is the subject of the action;

(B) a contract other than the one that is the subject of the action;

(C) a [~~another~~] contractual agreement with HHSC [~~DADS~~]; and

(D) a contractual agreement with a governmental entity other than HHSC;

(3) previous action taken or sanctions imposed against the contractor by DADS or HHSC; and

(4) the contractor's written response to HHSC's [~~DADS~~] finding that the contractor is not in compliance with the contract.

## **§49.522. Corrective Action Plan.**

(a) HHSC [~~DADS~~] requires corrective action if the contractor's compliance score for a standard is less than 90 percent as described in §49.411(d) of this chapter (relating to Contract and Fiscal Monitoring).

(b) HHSC [~~DADS~~] may require corrective action if HHSC [~~DADS~~] determines the contractor has not complied with its contract, including a determination of non-compliance described in §49.411(e) of this chapter [~~§49.412(d) of this chapter (relating to Financial Monitoring of FMSAs),~~] or §49.413(e) of this chapter (relating to Investigation). Corrective action may include the contractor paying or ensuring payment to a personal attendant who was not paid the wage required by §49.312 of this chapter (relating to Personal Attendants) the difference between the amount required and the amount paid to the personal attendant.

(c) If HHSC [~~DADS~~] requires corrective action in accordance with subsection (a) or (b) of this section, HHSC [~~DADS~~] notifies the contractor in writing that the contractor must submit and implement a written corrective action plan.

(d) If HHSC [~~DADS~~] notifies the contractor in accordance with subsection (c) of this section, the contractor must submit a written corrective action plan to HHSC [~~DADS~~] within 10 business days after the date of the notice from HHSC [~~DADS~~].

(e) A corrective action plan submitted in accordance with subsection (c) of this section must:

(1) describe the non-compliance that HHSC [~~DADS~~] identified from the monitoring or investigation resulting in the corrective action plan;

(2) describe the activities the contractor will perform to correct or prevent the non-compliance described in paragraph (1) of this subsection from reoccurring;

(3) include the title of the person responsible for performing the activities described in paragraph (2) of this subsection; and

(4) include a schedule for performing the activities described in paragraph (2) of this subsection.

### **§49.523. Referral Hold.**

(a) HHSC [~~DADS~~] may place a contractor on a referral hold if:

(1) HHSC [~~DADS~~] has proposed to terminate the contract;

(2) HHSC [~~DADS~~] determines the contractor has not complied with the contract, including a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring) [~~;~~ ~~§49.412(d) of this chapter (relating to Financial Monitoring of FMSAs);~~] or §49.413(e) of this chapter (relating to Investigation);

(3) the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(4) the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this division (relating to Corrective Action Plan); or

(5) the contractor's application packet:

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified HHSC [~~DADS~~] in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements).

(b) If HHSC [~~DADS~~] places a contractor on a referral hold in accordance with subsection (a) of this section, HHSC [~~DADS~~] notifies the contractor of the referral hold in writing.

(c) A contractor may request that HHSC [~~DADS~~] conduct an informal review of a referral hold. The request must be in writing and received by HHSC [~~DADS~~] within 20 days after the date of the notice of the referral hold from HHSC [~~DADS~~]. The contractor must include in the written request:

(1) the reasons the contractor believes the referral hold was improper;

(2) documentation to support the reasons; and

(3) a copy of the notice from HHSC [~~DADS~~] of the referral hold.

(d) HHSC [~~DADS~~] releases a referral hold:

(1) imposed in accordance with subsection (a)(1) of this section if:

(A) HHSC [~~DADS~~] withdraws the proposed contract termination;

(B) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor;  
or

(C) the contractor requests an informal review in accordance with subsection (c) of this section and, as a result of the review, HHSC [~~DADS~~] determines that the referral hold was improper;

(2) imposed in accordance with subsection (a)(2) - (5) of this section if:

(A) a period of time determined by HHSC [~~DADS~~] has elapsed; or

(B) the contractor requests an informal review in accordance with subsection (c) of this section and, as a result of the review, HHSC [~~DADS~~] determines that the referral hold was improper.

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CONTRACTOR  
DIVISION 4 SANCTIONS

**§49.531. Sanction by HHSC [~~DADS~~].**

(a) HHSC [~~DADS~~] may take one or more of the following sanctions against a contractor [~~in accordance with §§49.532 – 49.534 of this division (relating to Vendor Hold, Recoupment, and Termination of Contract by DADS)~~]:

(1) impose a vendor hold in accordance with §49.532 of this division (relating to Vendor Hold);

(2) recoup funds in accordance with §49.533 of this division (relating to Recoupment); and

(3) terminate the contract in accordance with §49.534 of this division (relating to Termination of Contract by HHSC).

(b) For a vendor hold or contract termination, the factors HHSC [~~DADS~~] may consider [~~factors~~] in determining whether to take the sanction include [~~to be taken including the following~~]:

(1) the extent and seriousness of the contractor's non-compliance with the contract that is the subject of the sanction;

(2) the contractor's history of previous non-compliance with:

(A) the contract that is the subject of the sanction;

(B) a contract other than the one that is the subject of the sanction;

(C) a [~~another~~] contractual agreement with HHSC [~~DADS~~]; and

(D) a contractual agreement with a governmental entity other than HHSC;

(3) previous action taken or sanctions imposed against the contractor by DADS or HHSC; and

(4) the contractor's written response to HHSC's [~~DADS~~] finding that the contractor is not in compliance with the contract.

**§49.532. Vendor Hold.**

(a) HHSC [~~DADS~~] imposes a vendor hold on a contractor if:

(1) HHSC [~~DADS~~] has proposed to terminate the contract and the contractor participates in attendant compensation rate enhancement as described in 1 TAC §355.112 (relating to Attendant Compensation Rate Enhancement); or

(2) The [~~DADS is notified by~~] HHSC Office of Inspector General determines [~~(OIG)~~] that a vendor hold must be imposed in accordance with 42 CFR §455.23(a) due to a credible allegation of fraud for which an investigation is pending under the Medicaid Program.

(b) HHSC [~~DADS~~] may impose a vendor hold on a contractor:

(1) if HHSC [~~DADS~~] has proposed to terminate the contract and the contractor does not participate in attendant compensation rate enhancement as described in 1 TAC §355.112;

(2) if the contractor does not qualify for a standard contract at the expiration of a provisional contract;

(3) if the contractor qualifies for a standard contract at the expiration of a provisional contract but refuses a standard contract;

(4) if the contractor terminates the contract;

(5) if HHSC [~~DADS~~] determines the contractor has not complied with the contract, including a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring) [~~7~~ ~~§49.412(d) of this chapter (relating to Financial Monitoring of FMSAs),~~] or §49.413(e) of this chapter (relating to Investigation);

(6) if the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(7) if the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan); or

(8) if the contractor's application packet described in §49.203(a)(3) [~~§49.203(a)(4)~~] of this chapter (relating to Provisional Contract Application Process):

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified HHSC [~~DADS~~] in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(9) for a contractor that has a contract for the HCS Program, in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action); or

(10) for a contractor that has a contract for the TxHmL Program, in accordance with §9.577 of this title (relating to Program Provider Compliance and Corrective Action).

(c) If HHSC [~~DADS~~] imposes a vendor hold on a contractor in accordance with subsection (a) or

(b) of this section, HHSC [~~DADS~~] notifies the contractor of the vendor hold in writing. HHSC [~~DADS~~] may impose a vendor hold pending an administrative hearing appealing the vendor hold.

(d) HHSC [~~DADS~~] releases a vendor hold less any amounts being recouped by HHSC [~~DADS~~]:

(1) imposed in accordance with subsections (a)(1) and (b)(1) - (4) of this section if:

(A) the contract has been terminated or expires and any amounts owed to individuals and LARs have been paid by the contractor;

(B) HHSC [~~DADS~~] withdraws the proposed contract termination; or

(C) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor;

(2) imposed in accordance with subsection (a)(2) of this section, if the HHSC Office of Inspector General determines [~~OIG notifies DADS~~] that HHSC [~~it~~] must resume payment under the contract;

(3) imposed in accordance with subsection (b)(5) - (8) of this section, if HHSC [~~DADS~~] determines the contractor has resolved the reason for the vendor hold; or

(4) imposed in accordance with subsection (b)(9) - (10) of this section if HHSC [~~DADS~~] determines it may be released as described in §9.185 or §9.577 of this title.

**§49.533. Recoupment.**

(a) A contractor is liable to HHSC [~~DADS~~] for amounts paid to the contractor for a service if the contractor has not complied with contract requirements regarding a service claim or payment for a service, including §49.305 of this chapter (relating to Records), §49.311 of this chapter (relating to Claims Payment), and other HHSC [~~DADS~~] rules governing services provided under the contract.

(b) If a contractor is liable to HHSC [~~DADS~~] in accordance with subsection (a) of this section, HHSC [~~DADS~~] may propose to recoup funds for the amount due to HHSC [~~DADS~~].

(c) If HHSC [~~DADS~~] proposes to recoup funds paid to a contractor in accordance with subsection (b) of this section, HHSC [~~DADS~~] notifies the contractor of the proposed recoupment in writing before the effective date of recoupment.

(d) HHSC [~~DADS~~] recoups funds paid to contractor on the date given in HHSC's [~~DADS~~] notice of proposed recoupment if:

(1) the contractor does not appeal the proposed recoupment; or

(2) the contractor appeals the proposed recoupment and the final decision from the administrative hearing is favorable to HHSC [~~DADS~~].

**§49.534. Termination of Contract by HHSC [~~DADS~~].**

(a) HHSC [~~DADS~~] may propose to terminate a contract:

(1) without cause by giving at least 60 days written notice to the contractor as provided by the contract; or

(2) for good cause as determined by HHSC [~~DADS~~], including if:

(A) the contractor has not provided any services under the contract during a period of 12 consecutive months;

(B) the contractor has not complied with the terms of the contract, including:

(i) the contractor's overall compliance score from a contract monitoring is less than 90 percent, as described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring);

(ii) the contractor has not submitted or complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan);

(iii) the contractor has not submitted or complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan); or

(iv) DADS or HHSC has imposed repeated actions or sanctions against the contractor that, when considered cumulatively, constitute significant non-compliance with the contract; ~~[or]~~

~~[(v) for a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), the contractor's overall compliance score from a financial monitoring is less than 90 percent, as described in §49.412(d) of this chapter (relating to Financial Monitoring for FMSAs);]~~

(C) the contractor undergoes a change of ownership or change of legal entity and the requirements in §49.210 (a)(1) - (4) of this chapter (relating to Contractor Change of Ownership or Legal Entity) are not met, as described in §49.210(c)(1) of this chapter; ~~[§49.210(b)(1) or (e)(1) of this chapter (relating to Contractor Change of Ownership or Legal Entity);]~~

(D) the contractor's application packet described in §49.203(a)(3) ~~[§49.203(a)(4)]~~ of this chapter (relating to Provisional Contract Application Process):

(i) contained incorrect information; or

(ii) contains information that has become incorrect and the contractor has not notified HHSC ~~[DADS]~~ in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(E) the contractor or a controlling person of the contractor is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;

(F) the contractor or a controlling person of the contractor is ineligible to contract with HHSC [~~DADS~~] in accordance with §49.206 of this chapter (relating to Ineligibility Due to Criminal History);

(G) the contractor or a controlling person of the contractor is prohibited from contracting with HHSC [~~DADS~~] in accordance with Chapter 79, Subchapter S of this title (relating to Contracting Ethics);

(H) the contractor is required to register with the Texas Secretary of State and contractor's status with the Texas Secretary of State is not "in existence";

(I) the contractor is required to pay Texas franchise tax and the contractor's right to transact business status with the Texas Comptroller of Public Accounts is not "active";

(J) HHSC [~~DADS~~] or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, or registration held by the contractor;

(K) the contractor no longer has a license, certification, accreditation or other document required by §49.302(a) of this chapter;

(L) the contractor or a controlling person of the contractor is listed on:

(i) the HHSC employee misconduct registry [~~DADS Employee Misconduct Registry~~] as unemployable;

(ii) the HHSC nurse aide registry [~~Nurse Aide Registry~~] as revoked or suspended;

(iii) the United States System for Award Management maintained by the General Services Administration;

(iv) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(v) the LEIE maintained by the HHSC [~~7~~] Office of Inspector General;

(vi) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or

(vii) the HHS [~~DADS~~ debarment] list of exclusions;

(M) the contractor or a controlling person of the contractor has been confirmed by DFPS or HHSC as having committed abuse, neglect, or exploitation;

(N) HHSC [~~DADS~~] proposed or imposed an action or sanction against:

(i) another contract of the contractor or a controlling person of the contractor; or

(ii) a contract of a person for whom the contractor or a controlling person of the contractor was a controlling person;

(O) a governmental entity other than HHSC [~~DADS~~] or a managed care organization contracting with a governmental entity proposed or imposed an action or sanction against:

(i) a contractual agreement of the contractor or a controlling person of the contractor; or

(ii) a contractual agreement of a person for whom the contractor or a controlling person of the contractor was a controlling person;

(P) the contractor or a controlling person of the contractor terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;

(Q) the contractor or a controlling person of the contractor terminated another contract while an action or sanction was proposed or in effect;

(R) the contractor or a controlling person of the contractor has an unresolved financial liability with HHSC [~~DADS~~] or another governmental entity;

(S) HHSC [~~DADS~~] denies or terminates certification of a contractor that has a contract for the HCS or TxHmL Program, in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action) or §9.577 of this title (relating to Program Provider Compliance and Corrective Action);

(T) HHSC [~~DADS~~] does not certify a contractor that has a contract for the HCS or TxHmL Program for a new certification period as described in §9.185(c) and §9.577(c) of this title; or

(U) for a contractor that has a contract for Title XIX DAHS, Title XX AFC, RC, or DAHS, the contractor does not have a legal right to occupy the facility under the contract.

(b) If HHSC [~~DADS~~] proposes to terminate a contract:

(1) in accordance with subsection (a)(1) of this section, HHSC [~~DADS~~] notifies the contractor of the proposed termination in writing at least 60 days before the effective date of termination; or

(2) in accordance with subsection (a)(2) of this section, HHSC [~~DADS~~] notifies the contractor of the proposed termination in writing, which may be less than 60 days before the effective date of termination.

(c) If HHSC [~~DADS~~] proposes to terminate a contract, HHSC [~~DADS~~] notifies individuals receiving services from the contractor and the individual's LARs that:

(1) HHSC [~~DADS~~] has proposed to terminate the contract and has placed the contractor's payments on a vendor hold; and

(2) an individual or LAR may choose to receive services under a contract [~~from a contractor~~] listed on the choice list, subject to program-specific requirements.

(d) HHSC [~~DADS~~] terminates a contract on the date given in HHSC's [~~DADS~~] notice of proposed termination if:

(1) the contractor does not appeal the proposed contract termination; or

(2) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to HHSC [~~DADS~~].

(e) HHSC [~~DADS~~] does not pay a contractor for services provided after the effective date of contract termination.

~~[(f) If a contractor undergoes a change of ownership or change of legal entity and complies with §49.210(a) of this chapter, the date given in DADS notice of proposed termination, as described in subsection (d) of this section, is the day before the date of the change of ownership or change of~~

~~legal entity. If a contractor undergoes a change of ownership or change of legal entity and does not comply with §49.210(a) of this chapter, the date given in DADS notice of proposed termination, as described in subsection (d) of this section, is the date of the change of ownership or change of legal entity.]~~

(f) ~~[(g)]~~ If HHSC ~~[DADS]~~ terminates a contract, HHSC ~~[DADS]~~ notifies the contractor and any controlling person of the contractor, in writing, of the application denial period set in accordance with §49.702(c) or (d) of this chapter (relating to Application Denial Period).

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER E ENFORCEMENT BY HHSC [~~DADS~~] AND TERMINATION BY  
CONTRACTOR  
DIVISION 5 APPEALS

**§49.541. Contractor's Right to Appeal.**

(a) A contractor may appeal a sanction, as described in §49.531(a) of this subchapter (relating to Sanction by HHSC [~~DADS~~]), proposed or imposed by HHSC [~~DADS~~].

(b) To appeal a sanction proposed or imposed by HHSC [~~DADS~~], a contractor must request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing).

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER E ENFORCEMENT BY HHSC [~~DADS~~] AND TERMINATION BY  
CONTRACTOR  
DIVISION 6 TERMINATION BY CONTRACTOR

**§49.551. Termination of Contract by Contractor.**

(a) If a contractor intends to terminate a contract, the contractor must notify HHSC [~~DADS~~] of the intended termination in accordance with §49.302(q) of this chapter (relating to General Requirements). The notification must:

(1) include:

(A) the contract number;

(B) the type of program or service; [~~and~~]

(C) the proposed [~~effective~~] date of the termination; [~~and~~]

(D) the reason for the termination; and

(E) if the reason is for a change of ownership or change of legal entity, the proposed date of the change; and

(2) be received by HHSC [~~DADS~~] at least 60 days before the proposed [~~effective~~] date of the termination.

(b) If a contractor notifies HHSC [~~DADS~~] that it intends to terminate a contract, the contractor must:

(1) cooperate fully with HHSC [~~DADS~~], the LIDDA if applicable, and other contractors to transfer individuals receiving services from the contractor; and

(2) submit documentation or take other action as directed by HHSC [~~DADS~~].

(c) If HHSC [~~DADS~~] receives notification that a contractor intends to terminate a contract, HHSC [~~DADS~~]:

(1) notifies individuals receiving services from the contractor or LARs that:

(A) the contractor is terminating the contract and that HHSC [~~DADS~~] has placed or will place the contractor's payments on a vendor hold; and

(B) that the individuals or LARs may choose to receive services under a contract [~~from a contractor~~] listed on the choice list, subject to program-specific requirements; and

(2) removes the contract to be terminated [~~contractor's name~~] from the appropriate choice list.

(d) If a contractor terminates a contract, for a reason other than a change of ownership or change of legal entity, HHSC [~~DADS~~] notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(e) or (f) of this chapter (relating to Application Denial Period).

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER F REVIEW BY HHSC [~~DADS~~] OF EXPIRING OR TERMINATED CONTRACT

**§49.601. HHSC [~~DADS~~] Review and Contractor Requirements Related to Expiring or Terminated Contract.**

(a) HHSC [~~DADS~~] may review a contractor's records to evaluate billing standards in accordance with program-specific requirements if:

(1) HHSC [~~DADS~~] proposes to terminate a contract;

(2) a contractor does not qualify for a standard contract, as described in §49.209 of this chapter (relating to Standard Contract) [~~at the expiration of a provisional contract~~];

(3) a contractor qualifies for a standard contract, as described in §49.209 of this chapter, [~~at the expiration of a provisional contract~~] but refuses a standard contract; or

(4) a contractor terminates the contract.

(b) If one of the events described in subsection (a)(1) - (4) of this section occurs, a contractor must provide the following information to HHSC [~~DADS~~]:

(1) the location of records related to the contract expiring or being terminated; and

(2) the name, address, phone number, and e-mail address of a person HHSC [~~DADS~~] may contact to arrange access to records.

(c) HHSC [~~DADS~~] may recoup funds in accordance with §49.533 of this chapter (relating to Recoupment) based on the results of a review described in subsection (a) of this section.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES  
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES  
SUBCHAPTER G APPLICATION DENIAL PERIOD

**§49.701 Contractors Not Subject to Subchapter G**

This subchapter does not apply to a contractor that has a contract for:

- (1) CMPAS;
- (2) SSPD; or
- (3) SSPD - 24-hour shared attendant care; ~~[; or]~~
- ~~[(4) relocation services.]~~

**§49.702. Application Denial Period.**

(a) If a contractor does not qualify for a standard contract ~~[at the expiration of a provisional contract]~~, as described in §49.209 of this chapter (relating to Standard Contract), HHSC ~~[DADS]~~ sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to all programs and services; and

(2) for 24 months after the date the provisional contract ends ~~[of expiration]~~.

(b) If a contractor qualifies for a standard contract ~~[at the expiration of a provisional contract]~~, as described in §49.209 of this chapter, but the contractor refuses a standard contract at that time, HHSC ~~[DADS]~~ sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to the same program or service as the provisional contract; and

(2) for 12 months after the date the provisional contract ends ~~[of expiration]~~.

(c) If HHSC ~~[DADS]~~ terminates a provisional or standard contract for the contractor's failure to provide services for 12 consecutive months, as required by §49.534(a)(2)(A) of this chapter (relating to Termination of

Contract by HHSC [~~DADS~~]), HHSC [~~DADS~~] sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to the same program or service as the provisional or standard contract; and

(2) for 12 months after the date of termination.

(d) If HHSC [~~DADS~~] terminates a provisional or standard contract for a reason other than the death of the contractor or other than the reason [~~one~~] described in subsection (c) of this section, HHSC [~~DADS~~] sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to all programs and services; and

(2) for a period of time determined by HHSC [~~DADS~~], but no less than 12 months after the date of termination.

(e) If a contractor terminates a provisional or standard contract in accordance with the contract, including §49.551 of this chapter (relating to Termination of Contract by Contractor), for a reason other than a change of ownership or change of legal entity, HHSC [~~DADS~~] sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to the same service or program as the provisional or standard contract; and

(2) for a period of time determined by HHSC [~~DADS~~], but no less than 12 months after the date of termination.

(f) If a contractor terminates a provisional or standard contract not in accordance with the contract, including §49.551 of this chapter, HHSC [~~DADS~~] sets an application denial period for the contractor or controlling person of the contractor that applies:

(1) to all programs and services; and

(2) for a period of time determined by HHSC [~~DADS~~], but no less than 12 months after the date of termination.

(g) If a contractor submits a contract application to HHSC [~~DADS~~] after the expiration of an application denial period described in subsections (a) - (f) of this section, HHSC [~~DADS~~] may deny the contract application for a reason

described in §49.207 of this chapter (relating to Provisional Contract Application Denial).