



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

**DATE:** December 6, 2018

**FROM:** Jennifer Chancellor-Hurd, Medicaid & CHIP  
Services

**AGENDA ITEM:** 2.e

**SUBJECT:** Contracting for Community Services

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

Texas Administrative Code, Title 40 (40 TAC), Chapter 49, Contracting for Community Services, governs contracting with the Health and Human Services Commission (HHSC) to provide the community-based services for which the Department of Aging and Disability Services previously contracted. The proposed amendments provide that §49.310, which relates to abuse, neglect, and exploitation allegations, does not apply to a contractor for any of the following services or programs: a direct services agency in the Community Living Assistance and Support Services (CLASS) Program; a case management agency in the CLASS Program; the Deaf-Blind with Multiple Disabilities (DBMD) Program; the Home and Community-based Services (HCS) Program; the Texas Home Living (TxHmL) Program; the Primary Home Care (PHC) Program; the Community Attendant Services (CAS) Program; the Family Care (FC) Program; the Consumer Managed Personal Attendant Services (CMPAS) Program; a financial management services agency (FMSA) for CLASS, DBMD, HCS, or TxHmL; or an FMSA for PHC, CAS, and FC.

HHSC is proposing amendments to 40 TAC Chapters 9, 41, 42, 44, 45, and 47 simultaneously, to add the requirements in §49.310 related to abuse, neglect, and exploitation to the specific rules that govern those programs and services. Those proposed rules will make the application of §49.310 unnecessary for those programs and services.

**ISSUES AND ALTERNATIVES:**

HHSC does not anticipate any major issues or concerns with this agenda item.

**STAKEHOLDER INVOLVEMENT:**

When HHSC published the draft rules related to abuse, neglect, and exploitation in 40 TAC Chapters 9, 41, 42, 44, 45, and 47 for external stakeholder review from December 13, 2017, to January 2, 2018, HHSC received comments from the Texas Association of Home Care & Hospice suggesting that the proposed rules refer to §49.310, Abuse, Neglect, and Exploitation Allegations, rather than duplicate requirements of §49.310. However, a goal of the proposed rules is to include the requirements from §49.310 in the six rule chapters governing the affected programs and the CDS option, using terminology specific to each program and the CDS option. For that reason, the suggestion was not taken. The proposed rules include the requirements currently in §49.310 and add new requirements to help prevent abuse, neglect, and exploitation, and help ensure the health, safety, and welfare of an individual who is abused, neglected, or exploited.

**FISCAL IMPACT:**

None

**SERVICES IMPACT STATEMENT:**

The proposed rules will help protect individuals receiving services from a contractor governed by these rules from abuse, neglect, and exploitation.

**RULE DEVELOPMENT SCHEDULE:**

November 8, 2018	Present to the Medical Care Advisory Committee
December 6, 2018	Present to HHSC Executive Council
December 2018	Publish proposed rules in <i>Texas Register</i>
May 2019	Publish adopted rules in <i>Texas Register</i>
May 2019	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, §49.102, §49.201, §49.205, §49.309, and §49.701; new §49.301; and the repeal of §49.301; in Title 40, Part 1, Chapter 49, Contracting for Community Services.

## BACKGROUND AND PURPOSE

Chapter 49, Contracting for Community Services, governs contracting with HHSC to provide community-based services. The proposed amendments provide that §49.310, which relates to abuse, neglect, and exploitation allegations, does not apply to a contractor for any of the following services or programs: a direct services agency in the Community Living Assistance and Support Services (CLASS) Program; a case management agency in the CLASS Program; the Deaf-Blind with Multiple Disabilities (DBMD) Program; the Home and Community-based Services (HCS) Program; the Texas Home Living (TxHmL) Program; the Primary Home Care (PHC) Program; the Community Attendant Services (CAS) Program; the Family Care (FC) Program; the Consumer Managed Personal Attendant Services (CMPAS) Program; a financial management services agency (FMSA) for CLASS, DBMD, HCS, or TxHmL; or an FMSA for PHC, CAS, and FC.

HHSC is proposing amendments to Title 40, Chapters 9, 41, 42, 44, 45, and 47, in this issue of the *Texas Register* to add the requirements in §49.310 related to abuse, neglect, and exploitation to the specific rules that govern those programs and services. Those proposed rules will make the application of §49.310 unnecessary for those programs and services.

## SECTION-BY-SECTION SUMMARY

The proposed amendment to §49.101, Application, provides that §49.310, which relates to abuse, neglect, and exploitation allegations, does not apply to a contractor for any of the programs and services listed in subsections (b) and (e) of the section because HHSC has proposed rules related to abuse, neglect, and exploitation in the specific chapters governing those programs and services. The proposed amendment changes "home delivered meals" to "Home-Delivered Meals (HDM) Program" to reflect the term used in Title 40, Chapter 55, governing this program. The proposed amendment changes "primary home care (PHC)" to "Primary Home Care (PHC) Program," "community attendant services (CAS)" to "Community Attendant Services (CAS) Program; and "family care (FC)" to "Family Care (FC) Program," to reflect the terms used for those programs in amendments related to abuse, neglect, and exploitation allegations that have been proposed in Title 40, Chapters 41 and 47. The proposed amendment changes "consumer managed personal attendant services (CMPAS)" to "Consumer Managed Personal Attendant Services (CMPAS) Program" to reflect the term used in Title 40, Chapter 44, governing this program. The proposed amendment makes non-substantive editorial changes.

The proposed amendment to §49.102, Definitions, replaces "CAS," "FC," and "PHC" with "CAS Program," "FC Program," and "PHC Program" to reflect the terms used for those programs in amendments that have been proposed in Title 40, Chapters 41 and 47, which relate to abuse, neglect, and exploitation allegations. The proposed amendment replaces "CMPAS" and "HDM" with "CMPAS Program" and "HDM Program" to reflect the terms used in the specific chapters governing those programs. The proposed amendment amends the definition of "personal attendant" to reflect that a personal attendant provides "personal attendant services" in the PHC Program, FC Program, and CAS Program. The proposed amendment amends the definition of "CFC PAS/HAB" to make a minor editorial change.

The proposed amendment to §49.201, Contractors Not Subject to Certain Portions of Subchapter B, changes the term for the CMPAS Program for consistency with the proposed amendment to §49.102. The proposed amendment also deletes relocation services as services governed by Chapter 49 because those services have been provided through the STAR+PLUS program since September 1, 2017 and have been deleted in other parts of Chapter 49.

The proposed amendment to §49.205, License, Certification, Accreditation, and Other Requirements, changes "DBMD" to "the DBMD Program" for consistency with the defined term in §49.102 and changes the terms used

for the PHC Program, the CAS Program, and the FC Program, consistent with the proposed amendment to §49.102.

Proposed new §49.301, Contractors Not Subject to Certain Portions of Subchapter C, provides that §49.310, which relates to abuse, neglect, and exploitation allegations, does not apply to a contractor for any of the programs and services listed in the section because rules related to abuse, neglect, and exploitation have been proposed in the specific chapters governing those programs and services.

The proposed repeal of §49.301, Purpose, deletes an unnecessary statement of the purpose of Subchapter C.

The proposed amendment of §49.309, Complaint Process, changes the terms used for the PHC Program, the CAS Program, the CMPAS Program, the FC Program, and the HDM Program consistent with the proposed amendment to §49.102.

The proposed amendment of §49.701, Contractors Not Subject to Subchapter G, changes the term used for the CMPAS Program consistent with the proposed amendment to §49.102.

#### FISCAL NOTE

Ms. Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there is no anticipated impact to costs and revenues of 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 create a new rule;
- (6) the proposed rules will not expand an existing rule;

- (7) the proposed rules will not change 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. Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### 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 this rule because the rules do not impose a cost on regulated persons.

#### PUBLIC BENEFIT

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from not having duplicate contracting requirements related to abuse, neglect, and exploitation allegations for contractors in these programs and services.

#### 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 4102, Austin, Texas 78714-9030, or

street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSRulesCoordinationOffice@hpsc.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*. The last day to submit comments falls on a Sunday. Therefore, 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) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 40R012" in the subject line.

#### STATUTORY AUTHORITY

The amendments, new section, and repeal are authorized by Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code, §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 amendments, new section, and repeal affect 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) - (e) [~~(d)~~] of this section, all of the sections 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) the 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) the Deaf Blind with Multiple Disabilities (DBMD) Program;

(C) the Home and Community-based [~~Community Based~~] Services (HCS) Program;

(D) the Texas Home Living (TxHmL) Program; and

(E) transition assistance services (TAS);

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

(A) hospice;

(B) the Primary Home Care [~~primary home care~~] (PHC) Program;

(C) the Community Attendant Services [~~community attendant services~~] (CAS) Program; and

(D) 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) the Home-Delivered Meals [~~home-delivered-meals~~] (HDM) Program;

(D) residential care (RC);

(E) DAHS;

(F) the Family Care [~~family-care~~] (FC) Program;

(G) the Consumer Managed Personal Attendant Services [~~consumer managed personal attendant services~~] (CMPAS) Program;

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

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

(4) 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-PHC/CAS/FC; and

(E) FMSA-TxHmL.

(b) Section 49.310 of this chapter (relating to Abuse, Neglect, and Exploitation Allegations), 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) the CMPAS Program;

(2) SSPD; or

(3) SSPD - 24-hour shared attendant care.

(e) Section 49.310 of this chapter does not apply to a contractor that has a contract for one or more of the following programs or services:

(1) a CLASS-CMA;

(2) a CLASS-DSA;

(3) the CMPAS Program;

(4) the DBMD Program;

(5) an FMSA-CLASS;

(6) an FMSA-DBMD;

(7) an FMSA-HCS;

(8) an FMSA-PHC/CAS/FC;

(9) an FMSA-TxHmL;

(10) the PHC Program;

(11) the CAS Program; and

(12) the FC Program.

**§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" as defined by the statute or rule that governs the investigation of alleged abuse of an individual.

(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 denies a contract application submitted to HHSC.

(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 Program--Community Attendant Services Program [~~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 [~~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 which an individual or LAR may choose to receive services.

(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, 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 Program--Consumer Managed Personal Attendant Services Program [~~managed personal attendant services~~].

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

(18) Contractor--The person other than HHSC 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) DAHS--Day activity and health services.

(25) Day--A calendar day, including weekends and holidays.

(26) DBMD Program--Deaf Blind with Multiple Disabilities Program.

(27) Desk review--A review by HHSC 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 by the contractor. The scope of the review is at the discretion of HHSC.

(28) DFPS--The Department of Family and Protective Services.

(29) 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) DSA--Direct service agency.

(31) 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) 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) Exploitation--"Exploitation" as defined by the statute or rule that governs the investigation of alleged exploitation of an individual.

(34) FC Program--Family Care Program [~~care~~].

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

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

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

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

(39) HDM Program--Home-Delivered Meals (HDM) Program [~~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) Neglect--"Neglect" as defined by the statute or rule that governs the investigation of alleged neglect of an individual.

(49) OHR--Out of home respite.

(50) Paper record--Information that is stored on paper.

(51) 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) Personal attendant--An employee or subcontractor of a contractor or an employee of a CDS employer who provides:

(A) personal attendant services in the PHC Program;

(B) personal attendant services in the FC Program;

(C) personal attendant services in the CAS Program;

- (D) DAHS;
- (E) RC;
- (F) personal attendant services in the CMPAS Program;
- (G) habilitation or CFC PAS/HAB in the CLASS Program;
- (H) residential habilitation or CFC PAS/HAB in the DBMD Program;
- (I) chore services in the DBMD Program;
- (J) day habilitation in the DBMD Program;
- (K) supported home living or CFC PAS/HAB in the HCS Program; or
- (L) community support or CFC PAS/HAB in the TxHmL Program.

(53) PHC Program--Primary Home Care Program [~~home care~~].

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

(55) RC--Residential care.

(56) Records--Paper records and electronic records.

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

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

(59) 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 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

**§49.201. Contractors Not Subject to Certain Portions of Subchapter B.**

Sections 49.202 - 49.205 and §§49.207 - 49.211 of this subchapter (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) do not apply to a contractor that has a contract for:

- (1) the CMPAS Program;
- (2) SSPD; or
- (3) SSPD - 24-hour shared attendant care; ~~[; or]~~
- ~~[(4) relocation services.]~~

**§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 in accordance with Chapter 745 of this title (relating to Licensing); or

(B) a HCSSA license issued by HHSC 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 in accordance with Chapter 97 of this title with:

(A) the LHHS category; or

(B) the L&CHHS category;

(3) the DBMD Program requires:

(A) a HCSSA license issued by HHSC 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 in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities);

(4) TAS requires:

(A) written documentation from HHSC or the Administration for Community Living of the United States Department of Health and Human Services 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 as an area agency on aging;

(5) Medicaid hospice requires:

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

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

(6) the PHC Program, CAS Program, and FC Program require a HCSSA license issued by HHSC in accordance with Chapter 97 of this title with:

(A) the LHHS category;

(B) the L&CHHS category; or

(C) the PAS category;

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

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

(9) Title XX RC requires an assisted living facility license Type A or Type B issued by HHSC 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.

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. Contractors Not Subject to Certain Portions of Subchapter C.**

Section 49.310 of this subchapter (relating to Abuse, Neglect, and Exploitation Allegations) does not apply to a contractor for one or more of the following programs and services:

- (1) CLASS-CMA;
- (2) CLASS-DSA;
- (3) the CMPAS Program;
- (4) the DBMD Program;
- (5) FMSA-CLASS;
- (6) FMSA-DBMD;
- (7) FMSA-HCS;
- (8) FMSA-PHC/CAS/FC;
- (9) FMSA-TxHmL;
- (10) the HCS Program;
- (11) the PHC Program;
- (12) the CAS Program;
- (13) the FC Program; and
- (14) the TxHmL Program.

**~~§49.301. Purpose:~~**

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

## **§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:

(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-) the PHC Program;
- (-i-) the CAS Program;
- (-j-) DAHS;

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

- (-l-) Title XX RC;
- (-m-) the CMPAS Program;
- (-n-) the FC Program;
- (-o-) SSPD and services are provided in a DAHS facility; or
- (-p-) SSPD-24-hour shared attendant care; or

(II) the HHSC Office of the Ombudsman (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-) the HDM Program;
- (-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 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:

(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) the PHC Program;
- (ix) the CAS Program;
- (x) DAHS;

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

- (xii) Title XX RC;
- (xiii) the CMPAS Program;
- (xiv) the FC Program;
- (xv) SSPD and services are provided in a DAHS facility; or
- (xvi) SSPD-24-hour shared attendant care; or

(B) the HHSC Office of the Ombudsman (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) the HDM Program;

(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 may be used to file a complaint with HHSC.

(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.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
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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) the CMPAS Program;
- (2) SSPD; or
- (3) SSPD - 24-hour shared attendant care.