

Impact of Federal HCBS Rules on DADS 1915(c) Waiver Programs

Waiver Program	CLASS	DBMD	HCS	TxHmL	MDCP
HCBS Rule Sections by Topic and Page	Compliance in the waiver and rule Note: CMS clarified that respite provided outside of the home can be provided in settings that would otherwise be precluded such as nursing facilities and intermediate care facilities.				
1. HCBS settings exclude locations that have qualities of an institutional Setting (pg. 333) Rule Prohibits: <ul style="list-style-type: none"> • Nursing Facility • Institution for mental diseases • ICF for individuals with IDD • Hospitals • Any public or private setting that provides inpatient institutional treatment • Any other locations that have qualities of an institutional setting as determined by the Secretary. Community-based (other than residential) settings 	In accordance with §45.404(a)(1) (related to Suspension of CLASS Program Services With Advance Notice), CLASS is in compliance with the current requirement to exclude the following settings (Nursing facility, ICF/IID, Hospital, ALF), except as noted below.	In accordance with §42.242(a)(1) (related to Suspension of DBMD program services with advance notice), DBMD is in compliance with the current requirement to exclude the following settings (Nursing facility, ICF/IID, ALF, Facility licensed by DSHS), except as noted below.	In accordance with §9.155(a)(5) (related to the Eligibility Criteria) HCS is in compliance with the current requirement to exclude the settings outlined in the HCBS CMS rule. Also §9.174(a) (42) (D) (relating to respite) HCS prohibits the provision of respite in an institutional setting.	In accordance with §9.553 (28) (A)-(H) (related to definitions) TxHmL is in compliance with the current requirement to exclude the settings outlined in the HCBS CMS rule. In accordance with §9.556 (a) (9) (related to Eligibility Criteria) TxHmL has no residential option and requires an individual to reside in their own home/family home excluding institutional settings.	In accordance with §51.203 all individuals served in MDCP live in their own/family home or DFPS foster care home (no more than 4 children). No individual lives in a provider owned or operated residential setting. The proposed §51.419 (a)(1) requires that an individual be suspended from services when temporarily admitted to a hospital, nursing facility, SSLC, ICD/IID; a state mental health

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must also be: (1) non-institutional; (2) integrated; and (3) Person Directed.					facility or rehabilitation center for a purpose other than respite.
	<p>Program settings that may require remediation.</p> <p>Note: Many waivers offer day habilitation services and the HCBS rules require day programs to comply with HCBS settings requirements. CMS has stated that more guidance will be provided to states clarifying how HCBS settings requirements should be implemented in day programs.</p>				
	CLASS offers pre-vocational services. These services are often provided at day habilitation sites.	In accordance with 42.630 (related to residential services) allows the provision of DBMD services in an assisted living (ALF). An ALF setting could have qualities of an institution. <ul style="list-style-type: none"> •DBMD offers day habilitation services. 	HCS offers day habilitation services.	TxHmL offers day habilitation services.	MDCP flexible family support and respite services may be delivered in a daycare setting. The daycare settings could be out of compliance with the HCBS community based settings outlined in the HCBS rule. The daycare could be in a facility where the parent works (i.e. hospital) and the facility may provide day care.

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	Compliance in the waiver and rule				
<p>2. Rule requires that each individual's privacy is protected (pg. 332)</p> <p>Rule Requires:</p> <ol style="list-style-type: none"> 1. Lockable doors used by individual in bed room. 2. Choice of roommates 3. Freedom to decorate bedroom 4. Control of their own schedules and activities(including access to food at any time) 5. Visitors of their choosing at any time 6. Physically accessible 	<p>CLASS doesn't offer a residential option except when an individual receives Support Family Services and Continued Family Services.</p>	<p>In accordance with §42.630 (a)(14) and (c)(1)(C), Licensed Home Health Assisted Living Facilities and ALFs must be physically accessible and document that the individual is able to move safely and efficiently within home and community settings.</p>	<p>In accordance with §9.173 (a) and (b)-Rights of individuals.</p> <p>HCS is in compliance with the provisions of individual privacy.</p>	<p>Individuals in TxHmL program live in their own home/family home</p>	<p>Individuals in MDCP program live in their own home/family home. The only exception is the provision of host family services.</p> <p>At this time, no individuals receive services in a host family.</p>
	Program settings that may require remediation				
<p>Note: Modifications to the above must be justified in the PCP</p>	<p>DADS needs to ensure DFPS Foster Care rules support all requirements for HCBS settings.</p>	<p>DBMD waiver and rules do not reflect any of the six requirements.</p>	<p>No compliance issues identified.</p>	<p>No compliance issues identified.</p>	<p>Host family services provided in a DFPS foster care family home.</p>

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	Compliance in the waiver and rule				
<p>3. Barriers(modifications) to individual privacy must be addressed in the following manner (pg. 332)</p> <ul style="list-style-type: none"> • Identify the assessed need • Document positive interventions prior to modifications • Document less intrusive methods that have been tried or unsuccessful • Clear description of the condition that is directly proportionate to the assessed need. • Regular and ongoing monitoring for effectiveness of modification 	<p>CLASS doesn't offer a residential option except when an individual receives Support Family Services and Continued Family Services.</p>	<p>Compliance issues identified below.</p>	<p>In accordance with §9.173. (b) (15) (19) (20) and (21) an individual's rights are protected through the service planning process as the implementation plan for services is modified. §9.190.(e) (8)and (9) requires that a service coordinator must ensure that the individual's person directed plan is revised as needed.</p>	<p>Individuals in TxHmL program live in their own home/family home. This section only applies to HCBS residential settings.</p>	<p>Individuals in MDCP program live in their own home/family home except when receiving host family services.</p> <p>At this time, no individuals receive services in a host family.</p>

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<ul style="list-style-type: none"> • Time limits • Informed consent • Assurance interventions will cause no harm 	Program settings that may require remediation.				
	DADS needs to ensure DFPS Foster Care rules support all requirements for HCBS settings.	DBMD Waiver and Rule do not outline a process for determining right restrictions as outlined in this section of the HCBS rules.			Rules governing host family services need to outline a process for rights restrictions if applicable.
Compliance in waiver and rule					
<p>4. Residential settings to include a private unit option for individuals (pg. 331)</p> <p>Rule Requires:</p> <ul style="list-style-type: none"> • Integrated setting (provides opportunity to access community, employment and services) • Setting selected by the individual from among options 	CLASS doesn't offer a residential option except when an individual receives Support Family Services and Continued Family Services.	In accordance with §42.404(f), which requires the program provider to offer individual choices and opportunities for accessing and participating in community activities, including employment opportunities and experiences available to peers	In accordance with 40 TAC Chapter 9 Subchapter D, HCS is in compliance with the provisions of residential settings.	Individuals in the TxHmL program live in their own home/family home.	Individuals in the MDCP program live in their own home/family home, except when receiving host family services. At this time, no individuals receive services in a host family.

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<ul style="list-style-type: none"> Ensures an individual's rights of privacy, dignity and respect (freedom from coercion and restraint) Optimizes autonomy and independence <p>Residential Settings Owned by Program Provider:</p> <ul style="list-style-type: none"> Individual has same responsibilities and protections from eviction 		without disabilities, and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's IPC and IPP.			
	Program settings that may require remediation				
	DADS needs to ensure DFPS Foster Care rules support all requirements for HCBS settings.	DBMD Waiver and Rule need to be amended to ensure: (1) individuals' rights of privacy, dignity and respect, and freedom from coercion and restraint; and (2) optimizing autonomy and independence.	No compliance issues identified.	No compliance issues identified.	Rules governing host family services need to outline a process to ensure privacy, freedom from eviction and optimize autonomy and independence.