



TO: Medical Care Advisory Committee
DATE: August 12, 2021
FROM: Dana Williamson, Director of Policy Development Support

SUBJECT: HHSC Waiver Program Interest Lists

Agenda Item No.: 7

Amendments to: §§9.157, 9.158, 9.566, and 9.567 in Title 40 Chapter 9, Subchapter D, Home and Community-Based Services (HCS) Program and Community First Choice (CFC) and Subchapter N, Texas Home Living (TxHmL) Program and Community First Choice (CFC) Services; §§42.202, 42.211, and 42.402, in Title 40 Chapter 42, Deaf Blind with Multiple Disabilities and Community First Choice (CFC) Services; §§45.202 and 45.211, in Title 40 Chapter 45, Community Living Assistance and Support Services and Community First Choice (CFC) Services; and §353.1155 in Title 1, Chapter 353, Medically Dependent Children Program (MDCP).

BACKGROUND: Federal Requirement Legislative Requirement Other: Program Initiative

The purpose of the proposal is to implement Texas Government Code, §531.0601, Long-term Care Services Waiver Program Interest Lists. Section 531.0601 was added to the Texas Government Code by Senate Bill 1207, 86th Legislature, Regular Session, 2019. Section 531.0601 provides, in part, that individuals who are enrolled in but become ineligible for the Medically Dependent Children Program (MDCP) may, under some circumstances, have their names returned to the MDCP interest list or placed on the interest list of the Home and Community-based Services (HCS) Program, the Texas Home Living (TxHmL) Program, the Deaf Blind with Multiple Disabilities (DBMD) Program, or the Community Living Assistance and Support Services (CLASS) Program. The proposed amendments describe the circumstances under which these actions may be taken. The proposed amendments apply to individuals who are determined ineligible for MDCP for not meeting the level of care criteria for medical necessity for nursing facility care or the criteria of being under 21 years of age after November 30, 2019 and before the date Texas Government Code §531.601 expires, which is currently December 1, 2021.

The proposed amendments also clarify HHSC's practices in managing the MDCP, HCS, TxHmL, DBMD, and CLASS interest lists, including when an individual who resides in Texas requests to be added to an interest list or when an individual who is determined diagnostically or functionally ineligible during the enrollment process for one waiver program requests to be added to the interest list of another waiver program.

In addition, the proposed amendment to 1 TAC §353.1155 changes the description

of the settings in which an individual must live to be eligible for MDCP. Currently, the rule provides that to be eligible for MDCP an individual who is under 18 years of age must reside with a family member or in a "foster home that includes no more than four children unrelated to the individual." The proposed amendment provides that, to be eligible for MDCP, an individual of any age must live in the individual's home or an "agency foster home as defined in Texas Human Resources Code §42.002." The term "agency foster home" is used to correctly refer to the type of foster home regulated by HHSC that meets the federal requirements for home and community-based settings in a waiver program. It is defined in §42.002 as "a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets department standards."

The proposed amendment to 40 TAC §42.402 is made to ensure that service provider requirements are consistent with the DBMD Program waiver application approved by the Centers for Medicare & Medicaid Services by requiring a service provider of dental treatment to be licensed to practice dentistry or dental hygiene and prohibit a relative or guardian from being the service provider of an adaptive aid. The proposed amendment to §42.402 also clarifies that an intervener is required to complete a practicum in deafblind-related course work that is at least one semester credit hour at a college or university. The rule currently references a "one-hour practicum."

The proposed amendments make other minor changes to the rules, such as replacing undefined terms with defined terms, replacing references to DADS with "HHSC" or "the HHSC website," and using reformatting and minor editorial changes to clarify some of the current rules.

ISSUES AND ALTERNATIVES:

HHSC anticipates some people whose names are on the CLASS, DBMD, HCS, and TxHmL interest lists may be opposed to having the name of a person who was enrolled in and then determined ineligible for MDCP placed ahead of their names on these interest lists. However, those amendments are required by Texas Government Code, §531.0601.

STAKEHOLDER INVOLVEMENT:

The draft rules were posted on HHSC's website for informal comment from October 7 - October 20, 2020. HHSC considered the comments and did not make any changes to the draft rules in response to the comments. In particular, Disability Rights Texas asked HHSC not to change the list of qualified service providers in §42.402 for the DBMD Program. However, the amendment to §42.402 makes the service provider qualifications consistent with the qualifications described in the DBMD waiver application. Disability Rights Texas also asked HHSC to keep the limit in §353.1155 to no more than four children in a foster home but the amendment is needed to correctly refer to the type of foster home regulated by HHSC that meets the federal regulations governing home and community-based settings for a waiver program.

FISCAL IMPACT:

None

RULE DEVELOPMENT SCHEDULE:

August 12, 2021 Present to the Medical Care Advisory Committee
August 19, 2021 Present to HHSC Executive Council
September 2021 Publish proposed rules in *Texas Register*
January 2022 Publish adopted rules in *Texas Register*
January 2022 Effective date

REQUESTED ACTION:

The MCAC recommends approval of the proposed rules for publication.

Information Only

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 45 COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES
AND COMMUNITY FIRST CHOICE (CFC) SERVICES
SUBCHAPTER B ELIGIBILITY, ENROLLMENT, AND REVIEW

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 Texas 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 an amendment to §45.202, concerning CLASS Interest List; and §45.211, concerning Enrollment Process.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Government Code, §531.0601, Long-term Care Services Waiver Program Interest Lists. Section 531.0601 was added to the Texas Government Code by Senate Bill 1207, 86th Legislature, Regular Session, 2019. Section 531.0601 provides, in part, that the name of an individual who is enrolled in but becomes ineligible for the Medically Dependent Children Program (MDCP) may, under some circumstances, be added to the interest list of the Community Living Assistance and Support Services (CLASS) Program using a date other than the date of the request as the interest list date. The proposed amendment to §45.202(f), which describes those circumstances, applies to an individual who is determined ineligible for MDCP, for not meeting the level of care criteria for medical necessity for nursing facility care or the criteria of being under 21 years of age, after November 30, 2019 and before the date §531.0601 expires.

The proposed amendment to §45.202 also more clearly describes how HHSC adds an individual's name to the CLASS interest list after the individual makes a request to be added to the interest list, including when the individual is determined diagnostically or functionally ineligible for another waiver program during the enrollment process, or the individual is under 22 years of age and resides in a nursing facility.

The proposed amendment to §45.211 corrects a reference to §45.202 based on the proposed amendment to that section and makes minor editorial changes.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §45.202 replaces subsection (c), with new subsections (c), (d), and (e) to more clearly describe three different circumstances for adding an individual's name to the CLASS interest list in separate subsections. Subsection (c) describes how HHSC adds the name of an individual who resides in Texas; subsection (d) describes how HHSC adds the name of an individual under 22 years of age who resides in a nursing facility; and subsection (e) describes how HHSC adds the name of an individual who is determined to be diagnostically or functionally ineligible for another HHSC waiver program. In addition, the waiver programs—the Deaf Blind with Multiple Disabilities Program, the Home and Community-based Services Program, the Texas Home Living Program, and MDCP—are identified in the proposed amendment.

As proposed, subsection (f) of §45.202 describes how HHSC adds an individual's name to the CLASS interest list, or changes the CLASS interest list date to the MDCP interest list date, if the individual was enrolled in MDCP but was determined ineligible for not meeting the level of care criteria for medical necessity for nursing facility care or the age requirement of being under 21 years of age, after November 30, 2019 and before the date Texas Government Code §531.0601 expires.

The proposed amendment in §45.202 (g) - (j) more accurately describes the actions taken and dates used by HHSC in managing the CLASS interest list.

The proposed amendment to §45.211 corrects a reference to §45.202 based on the proposed amendment to that section and makes minor editorial changes.

The proposed amendments change "DADS" to "HHSC" in each section to reflect that DADS was abolished effective September 1, 2017, and its functions have transferred to HHSC.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state government.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules 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 HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;

- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no requirement for program providers to alter their current business practices. No rural communities contract to provide CLASS Program services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately describe how HHSC maintains an interest list for the CLASS Program.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to those required to comply as the rules apply only to HHSC.

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 Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped on or before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight or hand-delivered by 5:00 p.m. on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R085" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Human Resources Code §32.021, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code, §531.0601, which describes circumstances under which HHSC must add the names of individuals who have become ineligible for the MDCP to the interest list for that program or other similar programs, including the CLASS Program.

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.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-2339.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language (No change.) = No changes are being considered for the designated subdivision

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 42 DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM
 AND COMMUNITY FIRST CHOICE (CFC) SERVICES
SUBCHAPTER B ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 1 ELIGIBILITY

§42.202. DBMD Interest List.

(a) HHSC ~~[DADS]~~ maintains an interest list that contains the names of individuals interested in receiving DBMD Program services.

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

- (1) calling HHSC's ~~[DADS]~~ toll-free number; or
- (2) submitting a written request to HHSC ~~[DADS]~~.

(c) If a request is made in accordance with subsection (b) of this section for an individual who resides in Texas, HHSC adds an individual's name to the DBMD interest list:

- (1) if the individual resides in Texas; and
- (2) using the date HHSC receives the request as the DBMD interest list date.

(d) For an individual determined diagnostically or functionally ineligible during the enrollment process for the Community Living Assistance and Support Services (CLASS) Program, Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, or Medically Dependent Children Program (MDCP):

(1) if the individual's name is not on the DBMD interest list, at the request of the individual or LAR, HHSC adds the individual's name to the DBMD interest list using the individual's interest list date for the program for which the individual was determined ineligible as the DBMD interest list date;

(2) if the individual's name is on the DBMD interest list and the individual's interest list date for the program for which the individual was determined ineligible is earlier than the individual's DBMD interest list date, at the request of the individual or LAR, HHSC changes the individual's DBMD interest list date to the individual's interest list date for the program for which the individual was

determined ineligible; or

(3) if the individual's name is on the DBMD interest list and the individual's DBMD interest list date is earlier than the individual's interest list date for the program for which the individual was determined ineligible, HHSC does not change the individual's DBMD interest list date.

~~[(c) DADS adds an individual's name to the DBMD interest list:]~~

~~[(1) if the individual resides in Texas; and]~~

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

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

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

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

~~[(ii) an existing request date for the DBMD Program for the individual.]~~

(e) This subsection applies to an individual who was enrolled in MDCP and, because the individual did not meet the level of care criteria for medical necessity for nursing facility care or did not meet the age requirement of being under 21 years of age, was determined ineligible for MDCP after November 30, 2019 and before the date Texas Government Code §531.0601 expires.

(1) At the request of the individual or LAR, HHSC adds the individual's name to the DBMD interest list:

(A) using the MDCP interest list date as the DBMD interest list date, if the individual's name is not on the DBMD interest list but it was previously on the DBMD interest list; or

(B) using the date HHSC receives the request as the DBMD interest list date, if the individual's name is not on the DBMD interest list and it never has been on the DBMD interest list.

(2) At the request of the individual or LAR, HHSC changes the DBMD interest list date to the MDCP interest list date if the individual's MDCP interest list date is earlier than the individual's DBMD interest list date.

~~(f)[d] HHSC [DADS] removes an individual's name from the DBMD interest list if:~~

~~(1) the individual or LAR requests in writing that the individual's name be~~

removed from the DBMD interest list;

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

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

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

(3) the individual or LAR declines the offer of enrollment in the DBMD Program [services], or, as described in §42.211(e) of this subchapter (relating to Written Offer of DBMD Program Services), HHSC [DADS] withdraws an offer of enrollment in the [a] DBMD Program [Services as described in §42.211(e) of this subchapter (relating to Written Offer of DBMD Program Services)], unless the individual is a military family member living outside of Texas:

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

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

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

(5) the individual is deceased; or

(6) HHSC [DADS] has denied the individual enrollment in the DBMD Program and the individual or LAR has had an opportunity to exercise the individual's right to appeal the decision in accordance with §42.251 of this subchapter (relating to Individual's Right to a Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

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

(1) adds [reinstates] the individual's name to the DBMD interest list using the DBMD interest list [based on the original request] date that was in effect at the time the individual's name was removed from the DBMD interest list [described in subsection (c)(2)(A) or (B) of this section]; and

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

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

(1) adds the individual's name to the DBMD interest list using as the DBMD interest list date ~~[based on]~~:

(A) the date HHSC ~~[DADS]~~ receives the oral or written request; or

(B) because of extenuating circumstances as determined by HHSC ~~[DADS]~~, the DBMD interest list ~~[original request]~~ date that was in effect at the time the individual's name was removed from the DBMD interest list ~~[described in subsection (e)(2)(A) or (B) of this section]~~; and

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

(i) ~~(g)~~ If HHSC ~~[DADS]~~ removes an individual's name from the DBMD interest list in accordance with subsection ~~(f)(6)~~ ~~[(d)(6)]~~ of this section and HHSC ~~[DADS]~~ subsequently receives an oral or written request from a person to add ~~[reinstate]~~ the individual's ~~[applicant's]~~ name to ~~[on]~~ the DBMD interest list, HHSC ~~[DADS]~~:

(1) adds the individual's name to the DBMD interest list using ~~[based on]~~ the date HHSC ~~[DADS]~~ receives the oral or written request as the DBMD interest list date; and

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

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 42 DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM
AND COMMUNITY FIRST CHOICE (CFC) SERVICES
SUBCHAPTER B ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 2 ENROLLMENT PROCESS

§42.211. Written Offer of Enrollment in the DBMD Program.

(a) HHSC sends a written offer of enrollment in the DBMD Program to:

(1) the individual whose DBMD interest list [~~request~~] date, assigned in accordance with §42.202 [~~§42.202(c)(2)~~] of this subchapter (relating to DBMD Interest List), is earliest [~~on the DBMD interest list~~], unless the individual is a military family member living outside of Texas; or

(2) an individual who is residing in a nursing facility and requesting enrollment in the DBMD Program.

(b) HHSC encloses with the written offer:

(1) a list of DBMD program providers;

(2) a Documentation of Provider Choice form;

(3) in accordance with 1 TAC §351.15 (relating to Information Regarding Community-based Services), a document explaining other currently available community-based long-term support options that might be appropriate to the individual's needs; and

(4) an Applicant Acknowledgement form.

(c) An [~~The~~] individual or LAR accepts the offer of enrollment in the DBMD Program by:

(1) selecting a program provider from the enclosed list and designating the selection on the Documentation of Provider Choice form; and

(2) ensuring the completed Documentation of Provider Choice form and Applicant Acknowledgement form are submitted to HHSC and postmarked or faxed no later than 60 calendar days after the date on the offer letter.

(d) Upon timely receipt of a Documentation of Provider Choice form and Applicant Acknowledgement form completed by the individual or LAR, HHSC notifies the program provider designated by the individual or LAR.

(e) HHSC withdraws an offer of enrollment in the DBMD Program made to an

individual if:

(1) the completed Documentation of Provider Choice form and Applicant Acknowledgement form are postmarked or faxed more than 60 calendar days after the date on the offer letter;

~~[(2) the individual or LAR declines the offer of enrollment in the DBMD Program;]~~

(2) [(3)] the individual or LAR does not complete the enrollment process as described in §42.212 of this division (relating to Process for Enrollment of an Individual); or

(3) [(4)] the individual was offered enrollment in the DBMD Program because [while] the individual was residing in a nursing facility, but was discharged from the nursing facility before the effective date of the enrollment IPC.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 42 DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM
AND COMMUNITY FIRST CHOICE (CFC) SERVICES
SUBCHAPTER D ADDITIONAL PROGRAM PROVIDER PROVISIONS

§42.402. Qualifications of Program Provider Staff.

(a) A program provider must employ a program director who is responsible for the program provider's day-to-day operations. The program director must:

(1) have a minimum of one year of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities and have a master's degree in a health and human services related field;

(2) have a minimum of two years of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities, and have a bachelor's degree in a health and human services related field; or

(3) have been the program director for a DBMD Program provider on or before June 15, 2010.

(b) A program provider must ensure that a case manager:

(1) has:

(A) a bachelor's degree in a health and human services related field and a minimum of two years of experience in the delivery of direct services to individuals with disabilities;

(B) an associate [associate's] degree in a health and human services related field and a minimum of four years of experience providing direct services to individuals with disabilities; or

(C) a high school diploma or certificate recognized by a state as the equivalent of a high school diploma and a minimum of six years of experience providing direct services to individuals with disabilities; and

(2) either:

(A) is fluent in the communication methods used by an individual to whom the case manager is assigned (for example American sign language, tactile symbols, communication boards, pictures, and gestures); or

(B) within six months after being assigned to an individual, becomes fluent in

the communication methods used by the individual.

(c) For purposes of subsection (d) of this section and consistent with Texas Government Code, §531.0973, "deafblind-related course work" means educational courses designed to improve a person's:

(1) knowledge of deafblindness and its effect on learning;

(2) knowledge of the role of intervention and ability to facilitate the intervention process;

(3) knowledge of areas of communication relevant to deafblindness, including methods, adaptations, and use of assistive technology, and ability to facilitate the development and use of communication skills for a person with deafblindness;

(4) knowledge of the effect that deafblindness has on a person's psychological, social, and emotional development and ability to facilitate the emotional well-being of a person with deafblindness;

(5) knowledge of and issues related to sensory systems and ability to facilitate the use of the senses;

(6) knowledge of motor skills, movement, orientation, and mobility strategies and ability to facilitate orientation and mobility skills;

(7) knowledge of the effect that additional disabilities have on a person with deafblindness and the ability to provide appropriate support; or

(8) professionalism and knowledge of ethical issues relevant to the role of an intervener.

(d) A program provider must ensure that:

(1) an intervener:

(A) is at least 18 years of age;

(B) is not:

(i) the spouse of the individual to whom the intervener is assigned; or

(ii) if the individual is under 18 years of age, a parent of the individual to whom the intervener is assigned;

(C) holds a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma [~~equivalency certificate~~];

(D) has at least ~~[a minimum of]~~ two years of experience working with individuals with developmental disabilities; and

(E) has the ability to proficiently communicate in the functional language of the individual to whom the intervener is assigned;

(2) an intervener I:

(A) meets the requirements for an intervener ~~[as]~~ described in paragraph (1) of this subsection;

(B) has at least ~~[a minimum of]~~ six months of experience working with persons who have deafblindness or function as persons with deafblindness;

(C) has completed at least ~~[a minimum of]~~ eight semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and

(D) has completed a [one-hour] practicum that is at least one semester credit hour in deafblind-related course work at a college or university accredited by [a state agency or a non-governmental entity recognized by]:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education;

(3) an intervener II:

(A) meets the requirements for ~~[of]~~ an intervener I ~~[as]~~ described in paragraph (2)(A), (C), and (D) of this subsection;

(B) has at least ~~[a minimum of]~~ nine months of experience working with persons who have deafblindness or function as persons with deafblindness; and

(C) has completed at least an additional 10 semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and

(4) an intervener III:

(A) meets the requirements for [øf] an intervener II [æs] described in paragraph (3)(A) of this subsection;

(B) has at least [~~a minimum of~~] one year of experience working with persons with deafblindness or function as persons with deafblindness; and

(C) holds an associate degree [~~associate's~~] or bachelor's degree in a course of study with a focus on deafblind-related course work from a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education. [÷]

(e) A program provider must ensure that a service provider who interacts directly with an individual is able to communicate with the individual.

(f) A program provider must ensure that a service provider of a therapy described in §42.632(a) of this chapter (relating to Therapies) is licensed by the State of Texas as described in §42.632(b) of this chapter.

(g) A program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is under 18 years of age; and

(3) has:

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

(B) an associate [~~associate's~~] degree in rehabilitation, business, marketing, or a related human services field with one year of paid or unpaid experience

providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, with two years of paid or unpaid experience providing services to people with disabilities.

(h) Documentation of the experience required by subsection (g) of this section must include:

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

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

(i) A program provider must ensure that dental treatment is provided by a person licensed to practice dentistry or dental hygiene in accordance with Texas Occupations Code, Chapter 256.

(j) [(+)] A program provider must ensure that a service provider not required to meet the other education or experience requirements described in this section:

(1) is 18 years of age or older;

(2) has:

(A) a high school diploma;

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

(C) the following:

(i) documentation of a proficiency evaluation of experience and competence to perform job tasks including an ability to provide the required services needed by the individual as demonstrated through a written competency-based assessment; and

(ii) at least three personal references from persons not related by blood that evidence the person's ability to provide a safe and healthy environment for the individual; and

(3) except for a service provider of chore services, either:

(A) is fluent in the communication methods used by the individual to whom the service provider is assigned (for example American sign language, tactile symbols, communication boards, pictures, and gestures); or

(B) has the ability to become fluent in the communication methods used by an individual within three months after being assigned to the individual.

~~(k)~~ ~~[(j)]~~ A program provider must ensure that:

(1) a vehicle in which a service provider transports an individual has a valid Vehicle Identification Certificate of Inspection, in accordance with state law; and

(2) a service provider who transports an individual in a vehicle has:

(A) a current Texas driver's license; and

(B) vehicle liability insurance, in accordance with state law.

~~(l)~~ ~~[(k)]~~ A service provider:

(1) must not be a parent of the individual to whom the service provider is providing any service, if the individual is under 18 years of age; [÷]

~~[(A) the parent of an individual if the individual is under 18 years of age; or]~~

(2) ~~[(B)]~~ must not be the spouse of the [an] individual to whom the service provider is providing any service;

(3) must not be a relative or guardian of the individual to whom the service provider is providing an adaptive aid; and

(4) ~~[(2)]~~ must not ~~[, if an individual is an adult,]~~ be a relative or guardian of the individual to whom the service provider is providing any of the following services, if the individual is 18 years of age or older:

(A) assisted living;

(B) case management;

(C) behavioral support;

(D) dental treatment;

(E) dietary services;

(F) FMS, if the individual is participating in the CDS option;

(G) occupational therapy;

(H) orientation and mobility;

(I) physical therapy;

(J) speech, language, audiology therapy; and [ø]

(K) support consultation, if the individual is participating in the CDS option.
[; and]

~~[(3) may be, if an individual is an adult, a relative or guardian of the individual to whom the service provider is providing:]~~

~~[(A) adaptive aids;]~~

~~[(B) chore services;]~~

~~[(C) day habilitation;]~~

~~[(D) employment assistance;]~~

~~[(E) intervener;]~~

~~[(F) minor home modifications;]~~

~~[(G) nursing;]~~

~~[(H) residential habilitation;]~~

~~[(I) respite;]~~

~~[(J) supported employment; or]~~

~~[(K) CFC PAS/HAB.]~~

(m) [(+)] A service provider of CFC PAS/HAB must:

(1) have:

(A) a high school diploma;

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

(C) both of the following:

(i) a successfully completed written competency-based assessment demonstrating the service provider's ability to perform CFC PAS/HAB tasks, including an ability to perform CFC PAS/HAB tasks required for the individual to whom the service provider will provide CFC PAS/HAB; and

(ii) at least three written personal references from persons not related by blood that evidence the service provider's ability to provide a safe and healthy environment for the individual; and

(2) meet any other qualifications requested by the individual or LAR based on the individual's needs and preferences.

(n) [~~(m)~~] The program provider must maintain documentation in a service provider's employment, contract, or personal service agreement file that the service provider meets the requirements of this section.