



**TO:** Medical Care Advisory Committee  
**DATE:** August 11, 2022  
**FROM:** Dana Williamson  
Program Policy Director

**SUBJECT:** Transition Assistance Services

## **Agenda Item No.:**

**Amendments to:** §272.1, concerning Purpose; §272.3, concerning Definitions; §272.5, concerning Service Description; §272.7, concerning TAS in the HCS Program; §272.11, concerning Contracting Requirements; §272.33, concerning Service Delivery; and §272.41, concerning Record Keeping in Texas Administrative Code (TAC) Title 26 Chapter 272 Transition Assistance Services.

**BACKGROUND:** ☐ Federal Requirement ☐ Legislative Requirement ☒ Other:  
Program Initiative

The purpose of the proposed amendments is to replace the reference to the Department of Aging and Disability Services (DADS) with the Texas Health and Human Services Commission (HHSC), revise references to program rules and make minor editorial changes for clarity.

## **ISSUES AND ALTERNATIVES:**

HHSC does not anticipate any issues with this rule proposal.

## **STAKEHOLDER INVOLVEMENT:**

The draft rules were posted on HHSC's website for informal comment from December 17, 2021 to January 04, 2022. HHSC received one comment from Disability Rights Texas and EveryChild, Inc. The commenters are recommending that an individual in the Deaf Blind with Multiple Disabilities (DBMD) Program be allowed to receive up to \$1000 of transition assistance services (TAS) if the individual's enrollment plan of care includes licensed assisted living or licensed home health assisted living. In accordance with §272.5(b), HHSC does not authorize TAS if licensed assisted living or licensed home health assisted living is on an individual's enrollment plan of care. HHSC declines to revise the rules as recommended because the recommended changes are outside the scope of this project and would require additional research, funding, and amendments to the DBMD Program rules and waiver application.

## **FISCAL IMPACT:**

☒ None

**RULE DEVELOPMENT SCHEDULE:**

August 11, 2022	Present to the Medical Care Advisory Committee
August 18, 2022	Present to HHSC Executive Council
September 2022	Publish proposed rules in <i>Texas Register</i>
January 2023	Publish adopted rules in <i>Texas Register</i>
January 2023	Effective date

**REQUESTED ACTION: (*Check appropriate box*)**

☒ The MCAC recommends approval of the proposed rules for publication.

☐ Information Only

TITLE 26	HEALTH AND HUMAN SERVICES
PART 1	HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 272	TRANSITION ASSISTANCE SERVICES

**PROPOSED PREAMBLE**

The Texas Health and Human Services Commission (HHSC) proposes amendments to §272.1, concerning Purpose; §272.3, concerning Definitions; §272.5, concerning Service Description; §272.7, concerning TAS in the HCS Program; §272.11, concerning Contracting Requirements; §272.33, concerning Service Delivery; and §272.41, concerning Record Keeping.

**BACKGROUND AND PURPOSE**

The purpose of the proposed amendments is to replace the reference to the Department of Aging and Disability Services (DADS) with the Texas Health and Human Services Commission (HHSC), revise references to program rules, and make minor editorial changes for clarity.

**SECTION-BY-SECTION SUMMARY**

The proposed amendment to §272.1 replaces "DADS" with "HHSC," spells out acronyms used in the section and removes language about waiver programs that is addressed in the definitions of the programs.

The proposed amendment to §272.3 spells out acronyms used in the section. The proposed amendment adds definitions for "HHSC" and "Texas Administrative Code (TAC)," removes the definition of "DADS," and replaces "DADS" with "HHSC." The proposed amendment updates rule references, including rule titles, and replaces a reference to a DADS website with a reference to the HHSC website. The proposed amendment reformats the definition of "facility" and revises the definition of "general residential operation (GRO)" to reference Texas Human Resources Code, §42.002 instead of including the entire definition in §272.3.

The proposed amendment to §272.5 replaces "DADS" with "HHSC."

The proposed amendment to §272.7 revises a rule reference, including the title of the rule.

The proposed amendment to §272.11 revises a rule reference.

The proposed amendment to §272.33 replaces "DADS" to "HHSC."

The proposed amendment to §272.41 revises rule references.

**FISCAL NOTE**

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

#### **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 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**

Trey Wood has also determined that there will be no adverse economic effect on small businesses or micro-businesses because the proposed rules do not require a transition assistance services (TAS) provider to alter its current business practices or impose new fees. There are no rural communities that contract with HHSC to provide TAS.

#### **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 do not impose a cost on regulated persons.

#### **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 have the correct state agency name and accurate rule references.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not require a TAS provider to alter its current business practices or impose new fees.

#### **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 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto: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 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) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R012" 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; and 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.

The amendments affect Texas Government Code §531.0055 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.

#### **ADDITIONAL INFORMATION**

For further information, please call: (512) 438-3501.

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 26                   HEALTH AND HUMAN SERVICES  
PART 1                    HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 272           TRANSITION ASSISTANCE SERVICES  
SUBCHAPTER A          INTRODUCTION

§272.1. Purpose.

This chapter:

(1) establishes the requirements for transition assistance services (TAS) ~~[TAS]~~ provided through ~~[the following DADS programs]~~:

(A) the Community Living Assistance and Support Services ~~[CLASS]~~ Program;

(B) the Medically Dependent Children Program ~~[MDCP]~~; and

(C) the Deaf Blind with Multiple Disabilities ~~[DBMD]~~ Program; and

(2) provides information regarding TAS in the Home and Community-based Services ~~[HCS]~~ Program.

§272.3. Definitions.

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

(1) Case manager--The person who is responsible for case management activities in the Community Living Assistance and Support Services ~~[CLASS]~~, Medically Dependent Children Program (MDCP) ~~[MDCP]~~, and Deaf Blind with Multiple Disabilities (DBMD) ~~[DBMD]~~ Programs.

(2) CLASS Program--Community Living Assistance and Support Services Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by the Texas Health and Human Services Commission (HHSC) ~~[DADS]~~ under Title 40 Texas Administrative Code (TAC) Chapter 45 ~~[of this title]~~ (relating to Community Living Assistance and Support Services and Community First Choice (CFC) Services).

~~[(3) DADS--The Department of Aging and Disability Services.]~~

~~(3)~~ ~~[(4)]~~ Day--A calendar day, unless otherwise specified in the text. A calendar day includes Saturday, Sunday, and a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(4) ~~(5)~~ DBMD Program--Deaf Blind with Multiple Disabilities Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by HHSC [DADS] under 40 TAC Chapter 42 [of this title] (relating to Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC) Services).

(5) ~~(6)~~ Facility--~~[Means:]~~

(A) a nursing facility, for an individual enrolling in MDCP~~[, a nursing facility]~~;  
or

(B) a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), for an individual enrolling in the DBMD Program or CLASS Program~~[, a nursing facility or an ICF/IID]~~.

(6) ~~(7)~~ GRO--General Residential Operation. This term has the meaning set forth [As defined] in Texas Human Resources Code, §42.002~~[, a child care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps]~~.

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

(8) HCS Program--Home and Community-based Services Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by HHSC [DADS] under 40 TAC Chapter 9, Subchapter D [of this title] (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

(9) HCS program provider--A person, as defined in 40 TAC §49.102 [of this title] (relating to Definitions), that has a contract with HHSC [DADS] to provide HCS Program [program] services, excluding a financial management services agency.

(10) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by HHSC [DADS].

(11) Individual--A person for whom HHSC [DADS] authorizes the delivery of transition assistance services (TAS) [TAS].

(12) IPC--Individual plan of care.

(13) 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.

(14) MDCP--Medically Dependent Children Program. A Medicaid waiver program authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act and operated by HHSC [DADS] under 1 TAC §353.1155 [Chapter 51 of this title] (relating to Medically Dependent Children

Program).

(15) Nursing facility--A facility licensed in accordance with Texas Health and Safety Code, Chapter 242.

(16) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the Transition Assistance Services Orientation Handbook [available on DADS website at <http://www.dads.state.tx.us/handbooks/tas/appendix/index.htm>].

(17) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas State Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(18) [(17)] TAS--Transition assistance services.

(19) [(18)] TAS provider--A person, as defined in 40 TAC §49.102 [of this title (relating to Definitions)], that has a contract with HHSC [DADS] to provide TAS in accordance with 40 TAC Chapter 49 [of this title] (relating to Contracting for Community Services).

(20) [(19)] Working day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

#### §272.5. Service Description.

(a) TAS assists an individual in setting up a household in the community before being discharged from:

(1) a nursing facility and enrolling in MDCP; or

(2) a nursing facility or an ICF/IID and enrolling in the DBMD Program or CLASS Program.

(b) HHSC [DADS] does not authorize TAS if an individual's enrollment IPC includes any of the following services:

(1) support family services in the CLASS Program;

(2) continued family services in the CLASS Program;

(3) licensed assisted living in the DBMD Program; or

(4) licensed home health assisted living in the DBMD Program.

(c) An individual may receive TAS only once in the individual's lifetime.

(d) An individual may receive a maximum of \$2,500 for TAS.

(e) TAS consists of:

(1) payment of security deposits required to lease a home, including an



apartment, or to establish utility services for a home;

(2) purchase of essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(3) payment of expenses required to move personal items, including furniture and clothing, into a home;

(4) payment for services to ensure the health and safety of the individual in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(5) purchase of essential supplies for a home, including toilet paper, towels, and bed linens.

§272.7. TAS in the HCS Program.

(a) An individual being discharged from a nursing facility, an ICF/IID, or a GRO and enrolling in the HCS Program may receive TAS from an HCS program provider in accordance with 40 TAC Chapter 9, Subchapter D~~[, of this title]~~ (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

(b) An HCS program provider may contract with a TAS provider to provide TAS in accordance with 40 TAC Chapter 9, Subchapter D~~[, of this title]~~.

TITLE 26                   HEALTH AND HUMAN SERVICES  
PART 1                    HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 272            TRANSITION ASSISTANCE SERVICES  
SUBCHAPTER B          TAS PROVIDER REQUIREMENTS

§272.11. Contracting Requirements.

A TAS provider must comply with this chapter and 40 TAC Chapter 49 [~~of this title~~]  
(relating to Contracting for Community Services).

TITLE 26                   HEALTH AND HUMAN SERVICES  
PART 1                    HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 272           TRANSITION ASSISTANCE SERVICES  
SUBCHAPTER D       SERVICE DELIVERY REQUIREMENTS

§272.33. Service Delivery.

(a) A TAS provider must:

(1) deliver TAS to an individual for whom the TAS provider receives, from the individual's case manager, a completed Transition Assistance Services (TAS) Assessment and Authorization form authorized by HHSC [~~DADS~~];

(2) deliver to the individual the specific TAS authorized on the form;

(3) purchase TAS for the individual within the monetary amount authorized on the form; and

(4) submit a service claim to HHSC [~~DADS~~] only after all of the authorized TAS has been delivered to the individual.

(b) A TAS provider must complete the delivery of TAS to the individual at least two days before the individual's facility discharge date unless the delay in delivery is beyond the control of the TAS provider.

(c) If a TAS provider does not deliver the authorized TAS in accordance with subsection (b) of this section, the TAS provider must:

(1) document the following:

(A) a description of the pending TAS;

(B) the reason for the delay;

(C) the date the TAS provider anticipates it will deliver the pending TAS or specific reasons why the TAS provider cannot anticipate a delivery date; and

(D) a description of the TAS provider's ongoing efforts to deliver the TAS;  
and

(2) at least two days before the facility discharge date, provide the information described in paragraph (1) of this subsection to:

(A) the individual or LAR, or in MDCP, the individual's primary caregiver; and

(B) the case manager.

(d) A TAS provider must, within one working day after TAS has been delivered, notify the following persons that TAS has been delivered:

(1) the individual or LAR, or in MDCP, the individual's primary caregiver; and

(2) the case manager.

TITLE 26                   HEALTH AND HUMAN SERVICES  
PART 1                    HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 272           TRANSITION ASSISTANCE SERVICES  
SUBCHAPTER E        CLAIM PAYMENTS AND DOCUMENTATION

§272.41. Record Keeping.

(a) A TAS provider must maintain service delivery documentation in the individual's record, including:

- (1) the individual's name and Medicaid number;
- (2) the TAS provider's name and contract number;
- (3) a description of the TAS delivered;
- (4) the date the TAS was purchased;
- (5) the date the TAS was delivered;
- (6) the total monetary amount of the TAS purchased, including taxes and delivery fees;
- (7) the original purchase receipts; and
- (8) the dated signature of the employee or contractor who delivered the TAS.

(b) If a TAS provider does not complete the delivery of TAS to the individual by the due date described in §272.33(b) [~~§62.33(b)~~] of this chapter (relating to Service Delivery), the TAS provider must maintain the documentation required in §272.33(c)(1) [~~§62.33(c)(1)~~] of this chapter in the individual's record.