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Community Living Assistance & Support Services and Deaf Blind with Multiple Disabilities Rules Webinar

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Objectives

- Review the purpose of the Community Living Assistance & Support Services (CLASS) and Deaf Blind with Multiple Disabilities (DBMD) rule changes
- Review new requirements added to the CLASS and DBMD rules
- Review substantive changes to existing requirements in the CLASS and DBMD rules

The information in this presentation is based on HHSC's draft rules which were posted for public comment on September 9, 2022 and may change based on public comment.

Comments can be emailed to the HHS Rules Coordination Office: HHSRulesCoordinationOffice@hhs.texas.gov

Purpose of Rule Changes

These amendments will:

- Move CLASS and DBMD program rules from Title 40, TAC Chapter 45 and 42 to Title 26 TAC, Chapter 259 and 260
- Bring HHSC into compliance with CMS home and community-based settings rules (Title 42, Code of Federal Regulations (42 CFR), Part 441, Chapter IV, Subchapter C, Subpart G, §441.301)
- Implement changes in state law from the 87th Legislature

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CLASS and DBMD Rule Changes

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Definitions

Agency Foster Home	Mental Health Facility
Enrollment Individual Program Plan (IPP)	Person-Centered Planning Process
Hospital	Residential Child-Care Facility
Inpatient Chemical Dependency Treatment Facility	Synchronous Audio-Visual Telehealth Service
In Person or In-Person	Texas Workforce Commission
Institution for Mental Diseases	Videoconferencing
Medicaid HCBS	

§259.5 (CLASS) and §260.5 (DBMD)

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Person-Centered Planning Process

- An individual's service planning team must ensure the person-centered planning process:
  - Is led by the individual to the maximum extent possible;
  - Is used during enrollment, renewals, and revisions to develop an individual's individual plan of care (IPC); and
  - Describes the activities involved in the person-centered planning process.

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Service Settings

- A program provider must ensure that a setting in which an individual receives a CLASS or DBMD Program service or a CFC service:
  - Is based on the needs of the individual as documented in the individual's person-centered service plan;
  - Ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint; and
  - Optimizes the individual's initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

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Service Settings

- A program provider must ensure that a setting in which an individual receives a CLASS or DBMD Program service or a CFC service:
  - Is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual to:
    - Seek employment and work in a competitive integrated setting;
    - Engage in community life; and
    - Control personal resources.

Service Settings

- A program provider must ensure that CLASS and DBMD Program services and CFC services are **not** provided in a setting that is presumed to have the qualities of an institution.
  - A setting is presumed to have the qualities of an institution if the setting:
    - Is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
    - Is located in a building on the grounds of, or immediately adjacent to, a public institution; or
    - Has the effect of isolating individuals from the broader community of persons **not** receiving Medicaid HCBS.

§259.57 (CLASS) and §260.57 (DBMD)

Service Settings

- A program provider may provide a CLASS/DBMD or CFC service to an individual in a setting that is presumed to have the qualities of an institution if CMS determines through a heightened scrutiny review that the setting:
  - **Does not** have the qualities of an institution; and
  - **Does** have the qualities of home and community-based settings.

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Translation Requirements

- A program provider who submits documentation to HHSC containing information that is not in English, must at the same time, submit a translation of the information in English.

- This applies to CLASS case management agencies (CMAs) and direct service agencies (DSAs), and DBMD Program providers.

§259.321, §259.373 (CLASS) and §260.223 (DBMD)

Exceptions During Disasters

- HHSC may allow program providers and service coordinators to use one or more of the exceptions described while an executive order or proclamation declaring a state of disaster is in effect.
  - HHSC notifies program providers and LIDDAs:
    - If it allows an exception to be used; and
    - If an exception is allowed to be used, the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.
- "Disaster area" means the area of the state specified in an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014.

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§259.451 (CLASS) and §260.451 (DBMD)

Interest List Processes

- HHSC adds an individual's name to the CLASS interest list using the date that the individual's name was removed, only if it is the individual's first request to be placed back on the list.

- If the individual's request to be placed back on the interest list is made more than 90 days after their name was removed from the list and the request is the individual's first request, and HHSC determines that extenuating circumstances exist, HHSC adds the individual's name to the interest list using the date that the individual's name was removed from the list.

Interest List Processes

- If a request to be placed back on an interest list by an individual in these situations is not the individual's first request, the individual's name is added back to the interest list using the date of the request as the interest list date.

- This change removes an incentive for an individual to repeatedly decline a written offer of CLASS Program services.

Enrollment Processes

- A CLASS or DBMD case manager must provide an oral and written explanation to the individual and legally authorized representative (LAR) or actively involved person about the use of electronic visit verification as required by 1 TAC Chapter 354, Subchapter O.

§259.61 (CLASS) and §260.61 (DBMD)

IPP and IPC Renewals and Revisions

- The proposed rule removes the annual requirement for the case manager to obtain the signature of the individual or LAR on a Waiver Program Verification of Freedom of Choice form documenting the individual's or LAR's choice of the DBMD Program over the ICF/IID Program.

- This change is consistent with the CMS requirement which only applies at enrollment.

§259.79 (CLASS) and §260.77 (DBMD)

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New CLASS Rules

Information About Services After Termination

- If the individual's CLASS and CFC services are terminated, a case manager must inform the individual of alternative community services and institutional services.

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§259.169 (CLASS)

CMA Requirements

- When notified by the DSA that an individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area in which the individual resides the CMA must:
  - Provide an oral explanation to the individual or LAR, on or before the 35th day of the period services have been provided outside the catchment area; and
  - Document that the CMA provided the oral explanation required by paragraph (1) of this subsection

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CMA Requirements

- If the individual or LAR expresses a desire to transfer to a DSA serving the catchment area in which the individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB, the CMA must:
  - Give the individual and LAR or actively involved person a written list of CMAs and DSAs serving the catchment area in which the individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB

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CMA Requirements

- If the individual or LAR expresses a desire to transfer to a DSA serving the catchment area in which the individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB, the CMA must:
  - Have the individual or LAR select a CMA and DSA by completing an HHSC Selection Determination form, as described in the Community Living Assistance and Support Services Provider Manual; and
  - Coordinate the individual's transfer in accordance with §259.151 of this chapter (relating to Coordination of Transfers).

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Therapy & Telehealth

- Physical therapy (PT), occupational therapy (OT), and speech and language pathology may be provided as telehealth services.
- A program provider must ensure that the provider of PT, OT, or speech and language pathology:
  - Uses a HIPAA-compliant synchronous audio-visual platform to interact with the individual;
  - Does not use an audio-only platform to provide the service; and
  - Obtains the written informed consent of the individual or LAR to provide the service.

Therapy & Telehealth

- A program provider must ensure that the provider of PT, OT, or speech and language pathology performs certain PT, OT, or speech and language pathology services **in person**, as required by the Texas Medicaid Provider Procedures Manual and outlined in rule.

- In person only services include hands-on therapy such as orthotic and prosthetic management, training for an upper or lower extremity, wheelchair assessment, or a complex rehabilitation technology assessment.

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Individual Plans of Care

- A service planning team meeting can be held in person or by videoconference.
- If the service planning team meeting is conducted in person, the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:
  - The individual or LAR;
  - The case manager; and
  - The DSA.
- If the service planning team meeting is conducted by videoconference, the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by the individual or LAR and the DSA electronically, by fax, or by United States mail.

Individual Program Plans

- The case manager must ensure that an individual's service planning team:
  - Develops an enrollment IPP for each CLASS service and CFC service listed on a proposed enrollment IPC; and
  - Develops a renewal or revised IPP for each CLASS service and CFC service, other than CFC support management, and submits the renewal or revised IPP to HHSC in accordance with program rule.

Individual Program Plans

- The case manager must ensure that an enrollment, renewal, or revised IPP documentation is accurate.
- The case manager must ensure that an enrollment, renewal, or revised IPP is reviewed, signed, and dated as evidence of agreement by:
  - The individual or LAR
  - The case manager
  - The DSA

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CMA Training

- Within six months after a case manager's date of hire, the CMA must ensure the case manager completes a comprehensive, non-introductory, person-centered service planning training developed or approved by HHSC.

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DSA Training

- A program provider must ensure a DSA staff person who participates as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

New DBMD Rules

Residential Agreements

- If an individual is interested in receiving licensed assisted living services, the case manager must inform them or their LAR that:
  - The individual or LAR must pay the cost of room and board in accordance with the residential agreement.
  - If room and board is not paid as required by a residential agreement, the program provider may evict the individual in accordance with the residential agreement and state law.
  - If evicted, the individual will not receive licensed assisted living until the delinquent room and board is paid, and the IPC will be revised to own home or family home if the delinquent room and board is not paid.

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Residential Agreements

- If an individual is interested in receiving licensed assisted living services, the case manager must inform them or their LAR that:
  - If the individual is receiving licensed assisted living from the program provider, the program provider must ensure there is a written residential agreement with an individual or LAR.
  - If the individual causes damage to the licensed assisted living residence beyond ordinary wear and tear, the individual will pay for the damages to property in the residence.

Provider-Owned Residential Settings

- A program provider must ensure in a residence in which licensed assisted living is provided, the individual:
  - Has privacy in their bedroom;
  - Has the option not to share a bedroom with a roommate, and if they are sharing a bedroom, has a choice of roommates;
  - Has a lock installed on their bedroom door at no cost to them;
  - Has control of their own schedule and activities that are not part of the implementation plan;
  - Has access to food at any time;
  - Can furnish and decorate their space; and
  - May have visitors of the individual's choosing at any time.

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Provider-Owned Residential Settings (2 of 3)

- Upon learning that an IPP modification that limits any of these rights must be made, the service planning team must:
  - Revise the individual's IPP in accordance with program rule;
  - Document the justifications for the modification on the individual's IPP;
  - Document interventions and less intrusive methods that did not work;
  - A description of the condition requiring the limitation;

Provider-Owned Residential Settings

- Upon learning that an IPP modification that limits any of these rights must be made, the service planning team must:
  - A description of how effectiveness of modification will be measured,
  - The established time limits for periodic review of the modification,
  - The individual or LAR's signature for consent, and
  - The program provider's assurance the modification will cause no harm to the individual.

Enrollment IPPs

- The case manager must convene an in-person meeting with the service planning team in which the service planning team completes the individual's enrollment IPP for each DBMD Program service and CFC service, other than CFC support management, identified on the individual's proposed enrollment IPC.

Enrollment IPCs

- The program provider must ensure the case manager convenes an in-person service planning team meeting to complete the individual's enrollment IPC for each DBMD service and CFC service, other than CFC support management, identified on the individual's proposed enrollment IPC.
- The case manager must complete the HHSC Transition Assistance Services (TAS) Assessment and Authorization form if TAS is included on the enrollment IPC.

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Description of DBMD & CFC

- DBMD services are intended to:
  - Enhance the individual's integration into the community,
  - Maintain or improve the individual's independent functioning, and
  - Prevent the individual's admission into an institution.

- The proposed rule also separates speech and language pathology and audiology into two separate services.

Suspension of Services

A program provider now has two business days instead of five business days to submit a written request that HHSC suspend the individual's services after learning that an individual has left the state or been admitted to one of the following:

- ICF/IID
- Nursing facility
- Non-DBMD assisted living facility
- Residential child-care facility other than an agency foster home
- Hospital
- Mental health facility
- Inpatient chemical dependency treatment facility
- Facility operated by the Texas Workforce Commission
- Residential facility operated by the Texas Juvenile Justice Department
- Jail or prison

§260.85 (DBMD)

Training

A program provider must ensure that:

- Within six months after a case manager's date of hire, the case manager completes a comprehensive, non-introductory, person-centered service planning training developed or approved by HHSC; and
- A service provider who participates as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

Training

A program provider must ensure that the following have current certification in cardiopulmonary resuscitation and choking prevention:

- Program director
- Case manager
- Intervener
- Providers of:
  - Licensed assisted living or licensed home health assisted living
  - Day habilitation
  - Employment assistance
  - Transportation provided as a residential habilitation activity
  - Respite
  - Supported employment
  - CFC PAS/HAB

§260.205 (DBMD)

Behavioral Support

- The following professionals can deliver behavior supports:
  - A provisional license holder licensed in accordance with Texas Occupations Code Chapter 501;
  - A licensed behavior analyst in accordance with Texas Occupations Code Chapter 506;
  - A licensed clinical social worker in accordance with Texas Occupations Code Chapter 505; and
  - A licensed professional counselor in accordance with Texas Occupations Code Chapter 503

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Case Management

- A program provider must ensure that case management includes:
  - Initiating and overseeing the process of assessment and reassessment of the individual's LOC
  - Reviewing the service plan at enrollment, annually, and as needed, including if requested by the individual or LAR
  - Observing the individual in their home to determine the intent and level of their communication

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Case Management

- A program provider must ensure that case management includes:
  - Becoming familiar, based on the individual's non-verbal communication, with their likes and dislikes
  - Leading the service planning team to use the person-centered planning process to develop a service plan that optimizes the opportunities for the individual to use their abilities and to integrate in community settings

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Nursing

- A program provider must ensure that nursing:
  - Is ordered or prescribed by a physician or other medical practitioner acting within the scope of the practitioner's license; and
  - Is provided in accordance with:
    - Texas Occupations Code Chapter 301;
    - 22 TAC Chapter 217;
    - 22 TAC Chapter 224; and
    - 22 TAC Chapter 225.

Respite

- A program provider must ensure that respite includes:
  - Assistance with ADLS;
  - Assistance with functional living tasks;
  - Assistance with planning and preparing meals;
  - Transportation or assistance in securing transportation;
  - Assistance with ambulation and mobility;
  - Reinforcement of behavioral support or therapy activities;

Respite

- A program provider must ensure that respite includes:
  - Assistance with medications and the performance of tasks delegated by an RN in accordance with state law
  - Supervision of the individual's safety and security
- A program provider must ensure that respite includes activities that facilitate the individual's:
  - Inclusion in community activities;
  - Use of natural supports and typical community services;
  - Social interaction:
  - Participation in leisure activities; and
  - Daily and functional living skills.

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Non-Billable Time and Activities

- A program provider must not bill for, and HHSC does not reimburse for, an item or service provided to an individual at the request of the individual or LAR if the item or service is not a reimbursable item in the DBMD Program.

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Questions?

Please submit all questions in the chat box in the right-hand corner of the presentation screen.

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Thank you!

Send questions to:

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DBMDPolicy@hhs.texas.gov