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Abuse, Neglect, and Exploitation (ANE) Changes in CLASS and DBMD

September 26, 2019

Agenda

- Background Information
- Current ANE requirements
- ANE rule changes
- ANE Learning Portal mandatory test and training troubleshooting
- Non-ANE rule changes
- Critical Incident Clarification
- DBMD Program Updates



Background Information

- Effective September 1, 2015, DFPS, APS and PI were given authority to investigate ANE in the CLASS and DBMD Programs.
- In September 2017, DADS was abolished and all it's functions were moved under HHSC.
- DFPS, APS and PI were transferred to HHSC.



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Background Information (cont.)

- The new rules address ANE investigations conducted by HHSC for individuals in the CLASS and DBMD programs and describe the CMA, DSA, and DBMD program provider requirements.
- Contractors are still required to follow requirements listed in Chapter 49 along with new rules in Chapters 42 and 45.



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Current ANE Rules

- Current requirements for reporting ANE is located in 40 TAC [§49.310](#) Abuse, Neglect, and Exploitation Allegations.
- 40 TAC [Chapter 711](#)
- HHSC contractors contracting for community services need to meet requirements listed in §49.310.
 - Ensure employee's are knowledgeable of:
 - Acts considered ANE
 - When and how to report ANE
 - Methods to prevent ANE occurrence



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ANE Changes in CLASS and DBMD

The following rules apply to both waiver programs:

- If there is suspicion of ANE, it must be reported to DFPS immediately, but no later than 24 hours after knowledge or suspicion.
 - Call DFPS Abuse Hotline at **800-252-5400**, or
 - Use DFPS Hotline Website:
<https://www.txabusehotline.org/>



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ANE Changes in CLASS and DBMD

In DBMD, the following applies to Assisted Living Facilities (ALF)

- Title 26 Part 1 Chapter 553 (Licensing Standards for Assisted Living Facilities) [Subchapter F](#) gives guidance to ANE complaint and incident reports and investigations.
- If there is suspicion of ANE, it must be reported to HHSC Complaint and Incident Intake (CII) immediately after knowledge or suspicion.
 - Call CII at **800-458-9858**, or
 - Email CII: ciicomplaints@hhsc.state.tx.us



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ANE Changes in CLASS and DBMD (cont.)

Program providers who report ANE:

- **DBMD Program Provider**
 - Service provider, staff person, volunteer, or controlling person
- **CLASS CMA**
 - Case manager, staff person, volunteer, or controlling person
- **CLASS DSA**
 - Service provider, staff person, volunteer, or controlling person



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ANE Changes in CLASS and DBMD (cont.)

Provider agencies must ensure that each service provider, staff person, or volunteer are trained and knowledgeable of:

- What constitutes as an ANE act
- Signs and symptoms of ANE
- Methods to prevent ANE
- Reporting ANE to DFPS immediately but no later than 24 hours after having knowledge of suspicion of ANE.
 - DFPS Abuse Hotline **800-252-5400**
 - DFPS Abuse Hotline website
<https://www.txabusehotline.org/>



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ANE Changes in CLASS and DBMD (cont.)

If service provider, staff, and volunteer are hired:

- **Before July 1, 2019:** Training must be completed within 1 year of most recent ANE training and annually after.
- **On/after July 1, 2019:** Training must be completed before assuming duties and annually thereafter if hired



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ANE Changes in CLASS and DBMD (cont.)

Documentation of ANE training must be kept:

- Name of person receiving training
- Date of training
- Name of person who conducted the training

If a training other than HHSC Learning Portal ANE training is used, please document ANE training and keep in the service provider, staff, and/or volunteer's personnel file.



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ANE Changes in CLASS and DBMD (cont.)

- Reporting alleged ANE by a person who is **not** a staff, volunteer, or controlling person of a provider agency
 - Assist and obtain immediate and ongoing medical or psychological services
 - Discuss alternative settings and additional services that may help
 - Avoid compromising the investigation
 - Preserve and protect evidence
 - Avoid traumatizing the individual



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ANE Changes in CLASS and DBMD (cont.)

- Reporting ANE by a person who **is** a service provider, staff, volunteer, or controlling person of a provider agency
 - Assist and obtain immediate and ongoing medical or psychological services
 - Secure the safety of the individual, and ensure the alleged perpetrator does not have contact with the individual until investigation is concluded.
 - Avoid compromising the investigation
 - Preserve and protect evidence
 - Avoid traumatizing the individual



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ANE Changes in CLASS and DBMD (cont.)

Within 24 hours of reporting the ANE allegation:

- **CLASS:**

- Inform Individual, and LAR of the report
- CMA informs DSA, or DSA informs CMA

- **DBMD**

- Inform Individual, and LAR of the report
- Case manager must be informed if CM did not make the report

Actions taken based on the allegation, condition of the individual, and nature and severity of harm to the individual.



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ANE Changes in CLASS and DBMD (cont.)

During an investigation if the alleged perpetrator is staff, volunteer, or controlling person of an agency

- Cooperate with the investigation, including providing documentation and interviews.
- Give HHSC access to:
 - Sites owned, operated, or controlled by the agency
 - Individual, staff, volunteers, and controlling person
 - Records important to the investigation

Staff, volunteers, and controlling person must comply with the investigation.



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ANE Changes in CLASS and DBMD (cont.)

If the ANE allegation is confirmed by HHSC

- The reporting agency must review the report including concerns and recommendations by HHSC
- Take appropriate action to prevent the reoccurrence of ANE, including disciplinary action

If the ANE allegation is unconfirmed, inconclusive or unfounded

- The reporting agency must review the report including concerns and recommendations by HHSC
- Take appropriate action within the agency authority



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ANE Changes in CLASS and DBMD (cont.)

- The agency must immediately, but no later than 5 calendar days, notify the Individual and the LAR of the investigation findings and the actions taken in response to the investigation.
- The agency must not retaliate against the Individual, person(s), or person(s) on behalf of the individual who files the complaint or provides good faith information relating to the possible ANE.
 - This is including use of seclusion and restraint not in compliance with federal and state laws, rules and regulations.



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ANE Changes in CLASS and DBMD (cont.)

All providers must annually:

- Review all final investigations reports from HHSC and evaluate critical incident data
- Identify process improvements that prevent ANE and improve delivery of services.
- Evaluate critical incident data
- Identify process improvements that prevent critical incidents and improve delivery of services.



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- Once the Financial Management Services Agency (FMMSA) is notified of a report alleging ANE, the FMMSA must within 1 working day after receiving the initial intake report from HHSC, send a copy by fax or secure email to the program director of the entity employing the individuals CLASS or DBMD case manager.



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- For an individual enrolled in DBMD or CLASS, a program director is required to give the intake report received from the FMSA to the individual's case manager. (§42.401 & §45.702)



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- A case manager who receives an initial intake report must, within 4 working days, convene an SPT in person or by phone to review the report and discuss the actions the employer has taken or will take.
- This may include transferring to a different FMSEA to protect the individual during the HHSC investigation or temporary suspension of participating in the CDS option.



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- Recommend termination of the CDS option.
- Document in writing any actions that have or will be taken as a result of the allegation.



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- Once the Financial Management Services Agency (FMSA) is notified of a final investigative report, the FMSA must within 1 working day after receiving the initial intake report from HHSC, send a copy by fax or secure email to the program director of the entity employing the individuals CLASS or DBMD case manager



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- Within 5 working days after receiving the report:
 - Use the report to complete HHSC Form 1719, Notification of Investigatory Findings, and
 - Send completed form to the alleged perpetrator, and
 - Take action within FMISA's authority in response to the HHSC investigation, including disciplinary action



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ANE Changes in CLASS and DBMD (cont.)

For individuals using the CDS option:

- If a final investigative report confirms the allegation and/or contains inconclusive finding, or includes concerns and recommendations.
- Within 4 working days after receiving the report:
 - Convene an SPT in person or by phone to discuss the content of the report.
 - Document, in writing, any action that have or will be taken by the employer as a result of the findings



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ANE Definitions

- Abuse
- Alleged perpetrator
- Calendar Day
 - *CLASS only*
- Chemical restraint
 - *DBMD only*
- Controlling person
- DADS-HHSC
- Texas Workforce Commission
 - *CLASS only*
- Exploitation
- LOC
- MESAV
- Neglect



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ANE Definitions (cont.)

- Physical abuse
- Sexual abuse
- Sexual activity
- Sexual exploitation
- Staff person
 - DBMD only
- Texas Health and Safety Code (THSC)
 - DBMD only
- Verbal or emotional abuse
- Volunteer



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ANE Learning Portal

- **ANE Competency Training and Exam:**

<https://learningportal.dfps.state.tx.us/course/view.php?id=66>

- **Information Letter 19-12 - New Requirements Regarding Abuse, Neglect, and Exploitation:**

<https://apps.hhs.texas.gov/providers/communications/2019/letters/IL2019-12.pdf>

- **CLASS Provider Manual:**

[Appendix XV](#)

- **DBMD Program Manual**

[Appendix XI](#)



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Learning Portal Troubleshooting

Q: I signed up for an account, but did not receive a confirmation email.

A: Try another browser, call the IT Help Desk, use a different email address, as the one you are using may already been taken.

Q: How do I create an account?

A: Login to

<https://learningportal.dfps.state.tx.us/login/index.php>



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Learning Portal Troubleshooting (cont.)

Q: Where is my certificate?

A: You are required to take the survey at the end of the test to receive a certificate.

Q: How can I share this exam with others on my team?

A: Each individual has to sign up for their own account, take the exam, complete the survey, then print out the certificate.



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Learning Portal Troubleshooting (cont.)

Q: The online training will not allow me to continue to course when I stop in the middle. The Learning Portal prompts me to take the exam and will not allow me to return to the training.

A: Call IT Help Desk for assistance. **512-438-4720**

Q: Can a certificate be mailed to me?

A: No, however, you can print it out once you completed the survey



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Learning Portal Troubleshooting (cont.)

Q: I am trying to sign up my staff for the ANE Training, but I am not receiving the email?

A: Each person that needs to sign up will need their own account and their own email.

Questions: contact LTSS_Policy@hhsc.state.tx.us



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Non-ANE Rule Changes

- CMAs, DSAs, and DBMD program providers are required to report critical incidents electronically to HHSC on the HHSC CLASS/DBMD Notification of Critical Incidents form.

<http://texashhs.force.com/NCIForm>

- When CMAs, and DSAs complete an HHSC Documentation of Services Delivered form, and DBMD program providers complete an HHSC DBMD Summary of Services Delivered form, the person signing and dating as timekeeper cannot be the CM or service provider who completed the form.



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Non-ANE Rule Changes (cont.)

- CMAs, DSAs, and DBMD program providers have to have a written policies and procedure to:
 - Ensure timely submission of LOC determinations to HHSC Individual Plan of Care expires.
 - Written or electronic tracking system to alert for a timely submission
- CLASS - [IPP Service Review Due Dates Chart](#)
- DBMD - [Case Manager's Review Schedule](#)



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Non-ANE Rule Changes (cont.)

- Replacing “diagnostic eligibility” with Level of Care (LOC) VIII throughout Chapter 45 and 42.
 - CMA, DSA, and DBMD program provider must continue to provide services to the individual until HHSC authorizes the proposed renewal IPC and ID/RC (LOC VIII) to ensure continuity of care and prevent the individual's health and welfare from being jeopardized
- * DBMD requires CPR, choking prevention, **and** first aid.



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Non-ANE Rule Changes (cont.)

- At enrollment and renewal, individual's in DBMD and CLASS must sign a Waiver Program Verification of Freedom of Choice form documenting their choice of the waiver over the ICF/IID program.
 - CFC PAS/HAB service providers are required to have training in cardiopulmonary resuscitation (CPR) and choking prevention so that the service provider is prepared and qualified to assist an individual who needs CPR.
- * DBMD requires CPR, choking prevention, **and** first aid.



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Non-ANE Rule Changes

- CMAs, DSAs and DBMD program providers are required to access the Medicaid Eligibility Service Authorization Verification (MESAV) system to determine if the information on an individual's enrollment IPC, revision IPC, or renewal IPC authorized by HHSC is consistent with the information in MESAV.
 - If not, notify HHSC of the inconsistency.
- Website: <http://www.tmhp.com/Pages/default.aspx>
- In chapters where rules were opened:
 - HHSC replaced DADS
 - Specific websites were updated



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Critical Incident Clarification

Critical incident

- “**Critical incident**” means an incident that meets any of the definitions listed below and:
 - Involves a staff person or service provider of the Deaf Blind with Multiple Disabilities (DBMD) program provider, Direct Services Agency (DSA) or Case Management Agency (CMA);
 - Occurs during the provision of services to an individual; or
 - Affects the provision of services to an individual.



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Critical Incident Clarification (cont.)

Examples of Critical Incidents:

- Choking
- Criminal Conduct
- Elopement/Missing Individual
- Emergency room visits due to illness or injury
- Medication error(s)
- Restraint
- Other incidents or events that involve harm or risk of harm to an individual



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Critical Incident Clarification (cont.)

Examples of Critical Incidents:

- **Death**
 - **CLASS ONLY** - DSA and CMA must report a death to HHSC and the CMA within 24 hours after learning of the death through HHSC CLASS/DBMD Notification of Critical Incidents form.
 - **DBMD ONLY** - A DBMD program provider must report a death to HHSC within 24 hours after learning of the death, in accordance with 40 TAC, §42.401(c).
 - Complete form 8498, Notification Regarding a Death in HCS, TxHmL and DBMD Programs
 - Fax completed form to HHSC at 512-438-4148



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Critical Incident Clarification (cont.)

- **HHSC CLASS/DBMD Notification of Critical Incidents Form:**
<http://texashhs.force.com/NCIForm>
- **HHSC Form 8493, Notification Regarding a Death in HCS, TxHmL and DBMD Programs:**
<https://hhs.texas.gov/laws-regulations/forms/8000-8999/form-8493-notification-regarding-a-death-hcs-txhtml-dbmd-programs>



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Critical Incident Clarification (cont.)

- **CLASS Provider Manual Appendix XIII:**

<https://hhs.texas.gov/laws-regulations/handbooks/classpm/appendices/appendix-xiii-critical-incident-reporting>

- **DBMD Program Manual Appendix IX:**

<https://hhs.texas.gov/laws-regulations/handbooks/dbmd/appendices/appendix-ix-critical-incident-reporting>



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Revised CLASS TAC

Revised CLASS Texas Administrative Code:

- §45.103 – Definitions
- §45.201 - Eligibility Criteria for CLASS Program Services and CFC Services
- §45.212 - Process for Enrollment of an Individual
- §45.213 - Determination by HHSC of Whether an Individual Meets LOC VIII Criteria
- §45.214 - Development of Enrollment IPC



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Revised CLASS TAC (cont.)

Revised CLASS Texas Administrative Code:

- §45.216 - HHSC's Review of an Enrollment IPC
- §45.221 - Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria
- §45.223 - Renewal and Revision of an IPC
- §45.225 - Utilization Review of an IPC by HHSC
- §45.403 - Denial of a CLASS Program Service or CFC Service



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Revised CLASS TAC (cont.)

Revised CLASS Texas Administrative Code:

- §45.405 - Reduction of a CLASS Program Service or CFC Service
- §45.406 - Termination of CLASS Program Services and CFC Services With Advance Notice Because of Ineligibility or Leave from the State or Because DSAs Cannot Ensure Health and Safety
- §45.702 - Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services
- §45.704 - Training of CMA Staff Persons and Volunteers



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Revised CLASS TAC (cont.)

Revised CLASS Texas Administrative Code:

- §45.707 - CMA: Quality Management Process
- §45.802 - DSA: Protection of Individuals and Annual Explanations
- §45.804 - Training of DSA Staff Persons, Service Providers, and Volunteers
- §45.807. DSA: Documentation of Services Delivered and Recordkeeping



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New CLASS TAC

New CLASS Texas Administrative Code:

- §45.226 - Tracking Annual Renewal of an ID/RC Assessment by a DSA
- §45.227 - Tracking Annual Renewal of an IPC by a CMA
- §45.708 - CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual
- §45.706 - CMA Documentation of Services Delivered and Recordkeeping



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New CLASS TAC (cont.)

New CLASS Texas Administrative Code:

- §45.709 - CMA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual
- §45.810 - DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual
- §45.811 - DSA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual



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Revised DBMD TAC

Revised DBMD Texas Administrative Code:

- §42.103 – Definitions
- §42.201 – Eligibility Criteria for DBMD Program Services and CFC Services
- §42.211 – Written Offer of Enrollment in the DBMD Program
- §42.212 - Process for Enrollment of an Individual
- §42.216 – HHSC’s Review of Request for Enrollment



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Revised DBMD TAC (cont.)

Revised DBMD Texas Administrative Code:

- §42.221 – Utilization Review of an IPC by HHSC
- §42.223 – Renewal and Revision of an IPC and IPP
- §42.301 – Program Provider Compliance with Rules
- §42.401 – Protection of Individual
- §42.405 – Documentation of Services Delivered and Recordkeeping



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Revised DBMD TAC (cont.)

Revised DBMD Texas Administrative Code:

- §42.406 – Quality Assurance
- §42.613 -Requesting Authorization to Purchase a Minor Home Modification that Costs Less than \$1,000.
- §42.614 – Requesting Authorization to Purchase a Minor Home Modification that Costs \$1,000 or More
- §42.617 - Time Frames for Completion of Minor Home Modification
- §42.623 – Case Management
- §42.632 – Therapies
- §42.641– Non-Billable Time and Activities



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New DBMD TAC

New DBMD Texas Administrative Code:

- §42.220 - Tracking Annual Renewal of an ID/RC Assessment and an IPC
- §42.403 - Training
- §42.410 - Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual
- §42.411 – Requirements Related to the Abuse, Neglect, and Exploitation of an Individual



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Repealed DBMD TAC

Repealed DBMD Texas Administrative Code:

- §42.222 – Annual Review and Reinstatement of Lapsed Diagnostic Eligibility
- §42.403 - Training



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DBMD Program Updates

DBMD Provider training:

- **October 22nd – 25th**
 - **Oct 22-23** is at Winters and for case managers, program directors, and anyone involved with developing Person Centered Plan
 - **Oct. 24-25** is at Texas School for the Blind and Visually Impaired (TSBVI) and is led by David Wiley.
 - This training focuses on DeafBlind communication and strategies for working with people who are in the DBMD program



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DBMD Program Updates (cont.)

DBMAT:

- **September 28th & 29th** - Deaf-Blind Multihandicapped Association of Texas (DBMAT) family conference in Wimberley, Texas



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Thank You

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