§42.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's service planning team, based on the person's:

(A) interactions with the individual;
(B) availability to the individual for assistance or support when needed; and
(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adaptive aid--An item or service (including a medically necessary supply or device) that enables an individual to retain or increase the ability to:

(A) perform activities of daily living; or
(B) perceive, control, or communicate with the environment in which the individual lives.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);
(B) Inventory for Client and Agency Planning (ICAP);
(C) Scales of Independent Behavior--Revised (SIB-R); or
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(7) ALF--Assisted living facility. An entity required to be licensed under the Texas Health and Safety Code, (THSC), Chapter 247, Assisted Living Facilities.

(8) Behavioral emergency--A situation in which an individual is acting in an aggressive, destructive, violent, or self-injurious manner that poses a risk of death or serious bodily harm to the individual or others.

(9) Behavioral support--Formerly referred to as "behavior communication," a service that provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life, with a particular emphasis on communication as it affects behavior.

(10) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(11) Calendar day--Any day, including weekends and holidays.

(12) Case management--Services that assist an individual to gain access to needed waiver and other state plan services, as well as needed medical, social, education, and other services, regardless of the funding source for the services.

(13) Case manager--A service provider who is responsible for the overall coordination and monitoring of DBMD Program services provided to an individual.

(14) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(15) CDSA--FMSA.

(16) Chore services--Services needed to maintain a clean, sanitary, and safe environment in an individual's home.

(17) CMS--The Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(18) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(19) Contract--A written agreement between DADS and a program provider for the program provider to provide DBMD Program services. A contract is a provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.
(20) DADS--The Department of Aging and Disability Services.

(21) DAHS--Day Activity and Health Services. Day activity and health services as defined in §98.2 of this title (relating to Definitions).

(22) DBMD Program--The Deaf Blind with Multiple Disabilities Waiver Program.

(23) DBMD Program specialist--Employee in DADS [DADS] state office who is the primary contact for the DBMD Program.

(24) Deafblindness--A chronic condition in which a person:

   (A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

   (B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(25) Denial--A DADS [DADS] action that disallows:

   (A) an individual's request for enrollment in the DBMD Program;

   (B) a DBMD Program service requested on an IPC that was not authorized on the prior IPC; or

   (C) a portion of the amount or level of a DBMD Program service requested on an IPC that was not authorized on the prior IPC.

(26) Dental treatment--A service that provides the following services, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of DADS website at www.dads.state.tx.us):

   (A) therapeutic, orthodontic, routine preventive, and emergency treatment; and

   (B) sedation.

(27) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

   (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

   (B) is manifested before the individual attains 22 years of age;

   (C) is likely to continue indefinitely;
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(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(28) DFPS--Department of Family and Protective Services.

(29) Dietary services--A therapy service that:

(A) assists an individual to meet basic or special therapeutic nutritional needs through the development of individual meal plans; and

(B) is provided by a person licensed in accordance with Texas Occupations Code, Chapter 701, Dieticians.

(30) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(31) FMS--Financial management services. Services, as defined in §41.103 of this title provided to an individual participating [who chooses to participate] in the CDS option.

(32) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS to an individual participating in the CDS option.

(33) Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(34) Habilitation--Services that assist an individual in acquiring, retaining, and improving socialization and adaptive skills related to activities of daily living to enable the individual to live
successfully in the community and participate in home and community life, including day habilitation and residential habilitation.

(35) HCSSA (Home and community support services agency) --An entity required to be licensed under THSC, Chapter 142, Home and Community Support Services.

(36) HHSC--Texas Health and Human Services Commission.

(37) ICF/IID--A facility in which ICF/IID Program services are provided.

(38) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(39) ID/RC Assessment (Intellectual Disability/Related Condition Assessment)--An assessment conducted to determine if an individual meets the diagnostic eligibility criteria for the DBMD Program.

(40) Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(41) Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(42) Institutional services--Services provided in an ICF/IID or a nursing facility.

(43) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(44) Intervener--A service provider with specialized training and skills in deafblindness who, working with one individual at a time, serves as a facilitator to involve an individual in home and community services and activities, and who is classified as an "Intervener", "Intervener I", "Intervener II", or "Intervener III" in accordance with Texas Government Code, §531.0973.

(45) IPC--Individual Plan of Care. A written [DADS form that documents the] plan developed by an individual's service planning team using person-centered [person-directed] planning and documented on a DADS form that;

(A) meets:

(i) the criteria in §42.201(5) of this chapter (relating to Eligibility Criteria); and

(ii) the requirements described in §42.214(a)(1) and (b)(1)-(6) of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).
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[describes the type, amount, and estimated cost of each DBMD Program service to be provided to an individual.]

(46) IPP--Individual Program Plan. A written plan documented on a DADS form and completed by an individual's case manager that describes the goals and objectives for each DBMD Program service included on the individual's IPC.

(47) IPC period--The effective period of an IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of service approved by DADS until the first calendar day of the same month of the effective date of service in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC.

(48) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(49) Licensed assisted living--A service provided in a residence licensed in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) for four to six individuals.

(50) Licensed home health assisted living--A service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence.

(51) LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(52) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body. The term does not include a protective device.

(53) Medicaid--A program funded jointly by the states and the federal government that provides medical benefits to groups of low-income people, some who may have no medical insurance or inadequate medical insurance.

(54) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(55) Military member--a member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.
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(56) Military family member--an applicant who is the spouse or child (regardless of age) of:

(A) a military member who has declared and maintains Texas as the member's home of record in the manner provided by the applicable military branch; or

(B) a former military member who had declared and maintained Texas as the member's home of record in the manner provided by the applicable military branch:

  (i) who was killed in action; or

  (ii) who died while in service.

(57) [(55)] Minor home modifications--Physical adaptation to an individual's residence necessary to address the individual's specific needs and enable the individual to function with greater independence or control the residence's environment.

(58) [(56)] MR/RC Assessment (Mental Retardation/Related Condition Assessment)--ID/RC Assessment.

(59) [(57)] Natural supports--Unpaid [Assistance to help sustain an individual's living in the community from] persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual [that occurs naturally within the individual's environment].

(60) [(58)] Nursing--Treatments and health care procedures provided by an RN or LVN that are:

  (A) ordered by a physician; and

  (B) provided in compliance with:

    (i) Texas Occupations Code, Chapter 301, Nurses; and

    (ii) rules at Texas Board of Nursing at Texas Administrative Code (TAC), Title 22, Part 11, Texas Board of Nursing.

(61) Nursing facility--A facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(62) [(59)] Occupational therapy--Services that:

  (A) address physical, cognitive, psychosocial, sensory, and other aspects of performance to support an individual's engagement in everyday life activities that affect health, wellbeing, and quality of life; and

  (B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 454, Occupational Therapists.
Orientation and mobility--Service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

Person-centered planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meets the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

Physical therapy--Services that:

(A) prevent, identify, correct, or alleviate acute or prolonged movement dysfunction or pain of anatomic or physiologic origin; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 453, Physical Therapists.

Physician--As defined in §97.2 of this title (relating to Definitions), a person who is:
(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(70) [(67)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide DBMD Program services, excluding an FMSA under a contract.

(71) [(68)] Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

(A) used only:

(i) to protect an individual from injury; or

(ii) for body positioning of the individual to ensure health and safety; and

(B) not used to modify or control behavior.

(72) [(69)] Psychoactive medication restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(73) [(70)] Reduction--A DADS action taken as a result of a review of a revision or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(74) [(71)] Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;
(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(75) [72] Request date--The date an individual or LAR requests the individual's name be added to the DBMD Program interest list.

(76) [73] Respite--Services provided on a short-term basis to an individual because of the absence or need for relief of an individual's unpaid caregiver.

(77) [74] Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a psychoactive medication restraint.

(78) [75] Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations or activities, or restricts an individual's rights, including a restraint, a protective device, and seclusion.

(79) [76] RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(80) [77] Seclusion--A restrictive intervention that is the involuntary separation of an individual away from other individuals in an area that the individual is prevented from leaving.

(81) [78] Service planning team--A team [comprising persons] convened and facilitated by a DBMD Program case manager for the purpose of developing, reviewing, and revising an individual's IPC. The team consists of [includes]:

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(A) the individual;

(B) if applicable, the individual's LAR or an actively involved person;

(C) the DBMD Program case manager;

(D) except as described in subparagraph (E) of this paragraph, the program director or a RN designated by the program provider;

(E) if the DBMD Program case manager and program director are the same person, a RN designated by the program provider, in addition to the DBMD Program case manager;

(F) other persons whose inclusion is requested by the individual, LAR, or actively involved person; and

[(D) the program director or a RN designated by the program provider; and] (G) other persons selected by the program provider who are:

(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(82) Service provider--A person who provides a DBMD Program service directly to an individual and who is an employee or contractor of:

(A) the program provider; or

(B) the individual or LAR, if the individual has chosen the CDS option.

(83) Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(84) Speech, language, audiology therapy--Services that:

(A) address the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

(85) Specialized nursing--Nursing provided to an individual who has a tracheostomy or is dependent on a ventilator.
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(86) [§3] SSA--Social Security Administration.


(88) [§5] Support consultation--A service, as defined in §41.103 of this title, that may be chosen by an individual who chooses to participate in the CDS option.

(89) [§6] Supported employment--Assistance provided, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.


(91) [§8] TAS--Transition Assistance Services. Services provided to a Medicaid-eligible person receiving institutional services in Texas to assist with setting up a household when transitioning from institutional services into the DBMD Program.

(92) [§9] TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(93) [§10] Transfer--The movement of an individual from a DBMD Program provider or a FMSA to a different DBMD Program provider or FMSA.

(94) [§11] Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.

§42.201. Eligibility Criteria.

An individual is eligible for DBMD Program services if:

(1) the individual meets the financial eligibility criteria as described in Appendix B of the DBMD Program waiver application approved by CMS and found at www.dads.state.tx.us [is financially eligible for Medicaid because the individual receives supplemental security income cash benefits or is determined by HHSC to be financially eligible for Medicaid];

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual, as documented on an ID/RC Assessment form:

(A) has one or more diagnosed related conditions and, as a result:

(i) has deafblindness;
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(ii) has been determined to have a progressive medical condition that will result in deafblindness; or

(iii) functions as a person with deafblindness; and

(B) has one or more additional disabilities that result in impairment to independent functioning;

(4) the individual's related conditions, as described in paragraph (3)(A) of this section, manifested before the individual became 22 years of age;

(5) the individual has an IPC with a cost for DBMD Program services at or below $114,736.07;

(6) the individual is not enrolled in another Medicaid waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table in Appendix V of the DBMD Program Manual available at www.dads.state.tx.us [other than the DBMD Program or another DADS operated program as described in the DBMD Program Manual other than Day Activity and Health Services (DAHS)];

(7) the individual does not reside in:

(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, Convalescent and Nursing Homes and related Institutions;

(C) an ALF, unless it provides licensed assisted living in the DBMD Program;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a residential facility operated by the Texas Youth Commission; or

(G) a jail or prison;

(8) at least one program provider is willing to provide DBMD Program services to the individual; and

(9) the individual resides or moves to reside in a county served by a program provider.

§42.202. DBMD Interest List.
(a) 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 interest list by:

(1) calling DADS toll-free number; or

(2) submitting a written request to DADS.

(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.

(d) DADS removes an individual's name from the DBMD interest list if:

(1) the individual moves out of Texas, unless the individual is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(2) DADS withdraws an offer of a DBMD Program Services as described in §42.211(e) of this chapter (relating to Written Offer of DBMD Program Services), unless the individual is a military family member temporarily living outside of Texas;

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

(4) the individual is deceased; or

(5) 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.

(e) If DADS removes an individual's name from the DBMD interest list in accordance with subsection (d)(1)-(3) of this section and, within 90 calendar days after the name was removed,
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receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) reinstates the individual's name to the interest list based on the original request date 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 reinstated to the interest list in accordance with paragraph (1) if this subsection.

(f) If DADS removes an individual's name from the DBMD interest list in accordance with subsection (d)(1)-(3) of this section and, more than 90 calendar days after the name was removed, receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

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

(g) If DADS removes an individual's name from the DBMD interest list in accordance with subsection (d)(5) of this section and receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

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


(a) DADS maintains an interest list with the names of individuals interested in receiving DBMD Program services.

(1) To request an individual's name be added to the interest list for the DBMD Program, the individual or LAR must call the DBMD Program toll-free number (1-877-438-5658).

(2) DADS adds an individual's name to the interest list according to the date the request is received.

(3) DADS removes an individual's name from the interest list if:

(A) the individual or LAR requests in writing that the individual's name be removed from the interest list;
(B) the individual is deceased;

(C) the individual moves out of the state of Texas;

(D) the individual or LAR has not responded within 30 calendar days after DADS attempts to contact the individual or LAR during a periodic update of the DBMD interest list; or

(E) the individual receives an offer of a program vacancy as described in §42.211(a) of this chapter (relating to Written Offer of a DBMD Program Vacancy).

(b) If DADS removes an individual's name from the interest list in accordance with subsection (a)(3)(D) of this section, the individual or LAR may request that DADS review the circumstances under which the individual's name was removed.

(1) At its discretion, DADS may:

(A) reinstate the individual's name to the interest list according to the original date the individual or LAR requested the individual's name be added; or

(B) add the individual's name to the interest list according to the date the individual or LAR requested that DADS review the circumstances under which the individual's name was removed.

(2) DADS notifies the individual or LAR by phone and in writing that the individual's name has been:

(A) reinstated to the interest list in accordance with paragraph (1)(A) of this subsection; or

(B) added to the interest list in accordance with paragraph (1)(B) of this subsection.

(c) DADS approves an individual receiving institutional services reimbursed through Texas Medicaid for immediate enrollment in the DBMD Program if the individual requests services while receiving institutional services and meets all eligibility criteria for the DBMD Program. If the individual is discharged from institutional services to transition to a community setting before being determined eligible for Medicaid institutional services and the DBMD Program, DADS adds the individual's name to the interest list in accordance with subsection (a)(2) of this section.

§42.211. Written Offer of [a] DBMD Program Services [Vacancy].

(a) [When a DBMD program vacancy occurs,] DADS sends a written offer of DBMD Program services [a program vacancy] to:

(1) the individual whose interest list request date is earliest on the DBMD [Program] interest list, unless the individual is a military family member temporarily living outside of Texas; or
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(2) an individual who is residing in a nursing facility and requesting DBMD Program services.

(b) DADS encloses with the written offer:

(1) a list of DBMD program [Program] providers;

(2) a Documentation of Provider Choice form; [and]

(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) [•] The individual or LAR accepts DADS [DADS’] offer of [a] DBMD Program services [vacancy] 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 [is] submitted to DADS and postmarked or faxed no later than 60 [30] 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, DADS notifies the program provider designated by the individual or LAR.

(e) [•] DADS withdraws an offer of DBMD Program services [a program vacancy] made to an individual if:

(1) the completed Documentation of Provider Choice form and Applicant Acknowledgement form are [is] postmarked or faxed more than 60 [30] calendar days after the date on the offer letter;

(2) the individual or LAR declines the offer of DBMD Program services; [or]

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

(4) the individual was offered DBMD Program services because the individual residing in a nursing facility was discharged from the nursing facility before the effective date of the enrollment IPC.

§42.212. Process for Enrollment of an Individual.
(a) A program provider, after notification by DADS that an individual designated the program provider on a completed Documentation of Provider Choice form, must assign a case manager to the individual.

(b) The program provider must ensure that the assigned case manager contacts the individual or LAR within five business days after the program provider receives the DADS notification. During the initial contact, the case manager must:

(1) verify that the individual resides in a county for which the program provider has a contract;

(2) determine if the individual is currently enrolled in Medicaid;

(3) determine if the individual is currently enrolled in another Medicaid waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table in Appendix V of the DBMD Program Manual available at www.dads.state.tx.us [another DADS-operated program described in the DBMD Program Manual other than DAHS]; and

(4) arrange with the individual and LAR for an initial face-to-face, in-home visit to occur as soon as possible but no later than 30 calendar days after the program provider receives the DADS notification.

(c) During the initial face-to-face, in-home visit, the case manager must:

(1) explain to the individual or LAR:

   (A) the DBMD Program services [and supports];

   (B) the application and enrollment process described in this chapter;

   (C) the individual's rights and responsibilities, including the right to request a Medicaid Fair Hearing as described in §42.251 of this chapter (relating to Individual's Right to a Fair Hearing);

   (D) the mandatory participation requirements as described in §42.252 of this chapter (relating to Mandatory Participation Requirements of an Individual);

   (E) if the individual is enrolled in another Medicaid waiver program or receiving a mutually exclusive service as identified in the Mutually Exclusive Services table in Appendix V of another DADS-operated program described in the DBMD Program Manual [other than DAHS], that the individual or LAR must choose between the DBMD Program and the other waiver program or mutually exclusive service;

   (F) the procedures for an individual or LAR to file a complaint regarding a DBMD Program provider;
(G) the CDS option as described in §42.217 of this chapter (relating to Consumer Directed Services (CDS) Option);

(H) if the individual is Medicaid-eligible and receiving institutional services, TAS as described in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services);

(I) the voter registration process, if the individual is 18 years of age or older; [and]

(J) how to contact the program provider, the case manager, and the RN;

(K) that the individual or LAR may request the provision of residential habilitation, case management, nursing, out-of-home respite in a camp, adaptive aids, or intervener services while the individual is temporarily staying at a location outside the contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days; and

(L) orally and in writing, procedures for reporting an allegation of abuse, neglect, and exploitation;

(2) if possible:

(A) complete an adaptive behavior screening assessment or ensure an appropriate professional completes the adaptive behavior screening assessment; and

(B) ensure an RN completes a nursing assessment using the DADS DBMD Nursing Assessment form;

(3) complete the ID/RC Assessment form; and

(4) obtain the signature of the individual or LAR on:

(A) the Verification of Freedom of Choice form designating the individual's choice regarding enrollment in the [of] DBMD Program [services] over enrollment in the ICF/IID Program; and

(B) DADS Release of Information Consent form or a similar form developed by the program provider.

(d) If one or both of the assessments described in subsection (c)(2) of this section is not completed during the initial face-to-face, in-home visit, the case manager must ensure that the assessment is completed within 10 business days after the date of the initial face-to-face, in-home visit.

(e) If the individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, the case manager must:
(1) provide the individual or LAR with a list of TAS provider agencies;

(2) using the TAS Assessment and Authorization form, assist the individual or LAR to:
   (A) identify the individual's essential needs for TAS; and
   (B) provide estimated amounts for TAS items and services; and

(3) retain the completed TAS Assessment and Authorization form in the individual's record for inclusion on the enrollment IPC as described §42.214 of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)).

(f) The program provider must:

(1) gather and maintain the information necessary to process the individual's request for enrollment in the DBMD Program using forms prescribed by DADS in the DBMD Program Manual;

(2) assist the individual who does not have Medicaid financial eligibility or the individual's LAR to:
   (A) complete an application for Medicaid financial eligibility; and
   (B) submit the completed application to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit;

(3) document in the individual's record any problems or barriers the individual or LAR encounters that may inhibit progress towards completing:
   (A) the application for Medicaid financial eligibility; and
   (B) enrollment in DBMD Program services; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(g) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (f)(2)(B) of this section as a result of problems or barriers documented in subsection (f)(3) of this section but is making progress in collecting the documentation necessary for an application, the program provider may grant one or more 30 calendar day extensions.

(1) The program provider must ensure the case manager documents the rationale for an extension in the individual's record.
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(2) The program provider must not issue an extension that will cause the period of Medicaid application preparation to exceed 12 months after the date of the case manager's initial face-to-face, in-home visit.

(3) The program provider must notify DADS DBMD program specialist in writing if the individual or LAR:

   (A) fails to submit a completed Medicaid application to HHSC within 12 months after the date of the case manager's initial face-to-face, in-home visit; or

   (B) does not cooperate with the case manager in completing the enrollment process described in this section.

(h) A program provider must ensure:

   (1) the related conditions documented on the ID/RC Assessment form for the individual are on DADS Approved Diagnostic Codes for Persons with Related Conditions list contained in the DBMD Program Manual;

   (2) the ID/RC Assessment is submitted to a physician for review; and

   (3) the DADS Prior Authorization for Dental Services form is sent to a dentist as described in the DBMD Program Manual if the individual or LAR requests dental services other than an initial dental exam.

   (i) After receiving the signed and dated ID/RC Assessment from the physician establishing that the individual meets the eligibility criteria described in §42.201(3) and (4) of this subchapter [chapter] (relating to Eligibility Criteria), the case manager must:

      (1) convene a service planning team meeting within 10 business days after receipt of the signed and dated ID/RC Assessment; and

      (2) if a DADS Prior Authorization for Dental Services form was submitted to a dentist as described in subsection (h)(3) of this section, ensure that the signed and completed form is available for the service planning team to review.

   (j) During the service planning team meeting, the case manager must ensure:

      (1) if the individual or LAR is requesting dental services other than an initial dental exam, the DADS Prior Authorization for Dental Services form has been signed by the dentist as described in §42.624(b) of this chapter (relating to Dental Treatment);

      (2) an enrollment IPC is developed as described in §42.214 of this chapter; and

      (3) if the enrollment IPC includes residential habilitation, nursing, or specialized nursing:
(A) the service planning team determines whether the individual requires a service backup plan in accordance with §42.407 of this chapter (relating to Service Backup Plans); and

(B) that a service backup plan is developed if needed.

(k) Within ten business days after the service planning team meeting, the case manager must:

(1) complete an enrollment Individual Program Plan (IPP) as described in §42.215 of this chapter (relating to Development of Enrollment Individual Program Plan (IPP));

(2) submit a request for enrollment to DADS for review as described in §42.216 of this chapter (relating to DADS Review of Request for Enrollment) that includes the following:

(A) a copy of the completed enrollment IPC;

(B) a copy of the ID/RC Assessment form signed by a physician;

(C) a copy of the completed enrollment IPP;

(D) a copy of the adaptive behavior screening assessment;

(E) a copy of the Related Conditions Eligibility Screening Instrument form;

(F) a copy of the DBMD Summary of Services Delivered form (for pre-assessment services) with supporting documentation;

(G) a copy of the Verification of Freedom of Choice, Waiver Program form;

(H) a copy of the Non-Waiver Services form;

(I) a copy of the Documentation of Provider Choice form;

(J) a copy of the DADS DBMD Nursing Assessment form; and

(K) if applicable:

(i) Prior Authorization for Dental Services form;

(ii) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(iii) Provider Agency Model Service Backup Plan form;

(iv) Specialized Nursing Certification form;

(v) copies of letters of denial from non-waiver resources; and
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(vi) TAS Assessment and Authorization; and

(3) keep the original ID/RC Assessment, signed by a physician, in the individual's record.

(1) Within five business days after receiving a written notice from DADS approving or denying the individual's request for enrollment, the program provider must notify the individual or LAR of DADS decision. If DADS:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services as described on the IPC; or

(2) denies the request for enrollment, the program provider must send the individual or LAR a copy of DADS written notice of denial.

(m) The program provider must not provide DBMD Program services to an individual until notified by DADS that the individual's request for enrollment is approved. If a program provider provides DBMD Program services to an individual before the effective date of service approved by DADS, DADS does not reimburse the program provider for those services.

(n) Within ten business days after receiving a written notice from DADS approving the individual's request for enrollment, the program provider must provide to the individual or LAR a copy of the approved enrollment IPC and IPP, and if a service backup plan is needed, a copy of the service backup plan.

§42.213. Program Provider Cannot Ensure Individual's Health and Welfare.

(a) DADS requests an individual or LAR to choose a different program provider if the program provider chosen by the individual or LAR informs DADS in writing that it cannot ensure the individual's health and welfare and is not willing to provide DBMD Program services to the individual.

(1) The program provider must include in the written notification to DADS:

(A) a description of the specific reasons the program provider cannot ensure the individual's health and welfare; and

(B) a statement that the program provider is not willing to provide DBMD Program services to the individual.

(2) DADS notifies the individual or LAR in writing that the program provider is not willing to provide DBMD Program services to the individual because the program provider cannot ensure individual's health and welfare. DADS includes with the notice a list of program providers as described in §42.211(c)(1) of this division (relating to Written Offer of DBMD Program Services).
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(b) If the individual is unable to find a program provider willing to serve the individual, DADS:

(1) denies enrollment in the DBMD Program as described in §42.241(a) of this subchapter [chapter] (relating to Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service); and

(2) if requested by the individual or LAR, adds the individual's name to the interest list as described in §42.202 (c) [§42.202(a)(2)] of this subchapter [chapter] (relating to DBMD Interest List).

§42.214. Development of Enrollment Individual Plan of Care (IPC).

(a) The program provider must ensure that an individual's case manager convenes a service planning team meeting in which the service planning team:

(1) develops [to develop, using person-directed planning,] an enrollment IPC that includes:

(A) [4] identifies the type of each DBMD Program service to be provided to the individual [specific DBMD Program services];

(B) [2] specifies the number of units of each [the specified] DBMD Program service to be provided to the individual;

(C) does not exceed the service limits described in Subchapter F of this chapter (relating to Service Descriptions and Requirements) if the enrollment IPC includes adaptive aids, dental, minor home modifications, and respite; and

(D) [3] specifies the frequency of each DBMD Program service to be provided to the individual [the services];

(E) [4] if the individual will receive TAS, includes the amounts for items and services to be paid through TAS identified in accordance with §42.212(e)(2) of this chapter (relating to Process for Enrollment of an Individual);

(F) [5] includes an effective date of service that:

(i) [A] is at least 10 business days after submission of the enrollment IPC to DADS as described in §42.212(k)(2) of this chapter; and

(ii) [B] does not overlap with the end date of another Medicaid waiver program or another DADS-operated program described in the DBMD Program Manual, other than DAHS, in which the individual may have been enrolled; and
identifies a determination of whether the individual needs a service backup plan for residential habilitation, nursing, or specialized nursing services critical to the individual's health and safety; and, [ ]

(2) identifies the individual's non-waiver resources using the Non-Waiver Services form.

For an enrollment IPC that includes adaptive aids, dental, minor home modifications, or respite, the program provider must ensure that the units for those services do not exceed the service limits described in Subchapter F of this chapter (relating to Service Descriptions and Requirements).

(b) [The] program provider must ensure that the DBMD Program services on the enrollment IPC:

(1) are necessary to protect the individual's health and welfare in the community;

(2) address at least one of the individual's related conditions or the additional disability that impairs independent functioning;

(3) supplement rather than replace the individual's natural supports and other non-waiver services and supports for which the individual is eligible;

(4) prevent the individual's admission to an institution;

(5) are the most appropriate type and amount of DBMD Program services to meet the individual's needs; and

(6) are cost effective.

c) [The] program provider must:

(1) ensure that the enrollment IPC is signed and dated by each member of the service planning team;

(2) submit a copy of the enrollment IPC to DADS as described in §42.212(k) of this chapter; and

(3) maintain the original of the enrollment IPC in the individual's record.

d) [The] program provider must maintain the following in the individual's record and provide copies to DADS upon request:

(1) current data obtained from standardized evaluations and formal assessments to support the individual's diagnoses in accordance with §42.201(3) and (4) of this chapter (relating to Eligibility Criteria);
(2) documentation, including assessments of the individual, that support the DBMD Program services recommended on the IPC; and

(3) documentation that no other sources are available for DBMD Program services recommended on the IPC.

§42.216. DADS Review of Request for Enrollment.

(a) DADS reviews a request for enrollment submitted by a program provider in accordance with §42.212(k) of this division (relating to Process for Enrollment of an Individual) to determine if:

(1) the individual meets the diagnostic eligibility criteria described in §42.201(2)-(4) of this subchapter (relating to Eligibility Criteria);

(2) the cost of the enrollment IPC meets the criteria described in §42.201(5) of this subchapter;

(3) the DBMD Program services specified in the enrollment IPC meet the requirements described in §42.214(a)(1) and (b)(1)-(6) [§42.214(d)(1)-(6)] of this division (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(4) the goals and objectives described in the IPP for each DBMD Program service in the IPC meet the criteria described in §42.215(2)(A)-(D) of this division (relating to Development of Enrollment Individual Program Plan (IPP)).

(b) To support the information in the enrollment IPC and IPP, DADS may request from the case manager:

(1) additional assessments and supporting documentation related to the individual's diagnosis; and

(2) the documentation described in §42.214(d) [§42.214(f)] of this division.

(c) If DADS requests the information described in subsection (b) of this section, the case manager must submit the information to DADS within 10 calendar days after the date of the request.

(d) DADS notifies the program provider, in writing, that the individual's request for enrollment is approved if:

(1) the request for enrollment meets the requirements described in subsection (a)(1)-(4) of this section;

(2) the individual is Medicaid-eligible due to receipt of SSI cash benefits or is determined by HHSC to be financially eligible for Medicaid; and
(3) the individual is not enrolled in another [a Medicaid] waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table in Appendix V of [other than the DBMD Program, or another DADS-operated program described in] the DBMD Program Manual available at www.dads.state.tx.us [, other than DAHS].

(c) DADS notifies the individual's program provider, in writing, that the individual's request for enrollment is denied if:

(1) the request for enrollment does not meet the requirements described in subsection (a)(1)-(4) of this section;

(2) the individual is not Medicaid-eligible due to receipt of SSI cash benefits or is determined by HHSC not to be financially eligible for Medicaid; or

(3) the individual is enrolled in another [a Medicaid] waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table [other than the DBMD Program or another DADS-operated program described in the DBMD Program Manual, other than DAHS].

(f) If DADS notifies the program provider that the individual's request for enrollment is denied, the program provider must send the individual or LAR written notice of the denial in accordance with §42.241(a)(2) of this subchapter (relating to Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service).

(g) If DADS determines a DBMD Program service specified in the enrollment IPC does not meet the requirements described in §42.214(a)(1) and (b)(1)-(6) [§42.214(d)(1)-(6)] of this division or §42.215(2)(A)-(D) of this division, DADS:

(1) denies the service;

(2) modifies and authorizes the IPC;

(3) approves the individual's request for enrollment with the modified IPC; and

(4) notifies the program provider, in writing, of the action taken.

(h) If DADS notifies the program provider of the denial of the DBMD Program service and of the modification of the enrollment IPC in accordance with subsection (f) of this section, the program provider must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of a DBMD Program service in accordance with §42.241(a)(2) of this subchapter.
(i) DADS may approve the effective date of service as requested on the enrollment IPC or may modify the effective date of service.

(j) DADS verification of diagnostic eligibility and approval of the enrollment IPC is valid for the IPC period of the enrollment IPC.

§42.221. Utilization Review of IPC by DADS.

(a) At DADS discretion, DADS conducts utilization review of an IPC to determine if:

(1) the cost of the IPC meets the criteria described §42.201(5) of this subchapter (relating to Eligibility Criteria); and

(2) the DBMD Program services specified in the IPC meet the requirements described in §42.214(a)(1) and (b)(1)-(6) §42.214(d)(1)-(6) of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)).

(b) If requested by DADS, a program provider must submit documentation supporting the IPC to DADS within 10 business days after DADS request.

(c) If DADS determines that an IPC does not meet the criteria described in §45.201(a)(5) of this subchapter, DADS notifies the program provider of such determination and sends written notice to the individual or LAR that the individual's DBMD Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §42.251 of this subchapter (relating to Individual's Right to a Fair Hearing).

(d) If DADS determines that the IPC meets the criteria described in §45.201(5) of this subchapter but one or more DBMD Program services specified in the IPC do not meet the requirements described in §42.214(a)(1) and (b)(1)-(6) §42.214(d)(1)-(6) of this subchapter, DADS:

(1) denies or reduces the service, as appropriate;

(2) modifies and authorizes the IPC; and

(3) notifies the program provider, in writing, of the action taken.

(e) If DADS notifies the program provider of the denial or reduction of a DBMD Program service and of the modification of the IPC in accordance with subsection (d) of this section, the program provider must send the individual or LAR written notice and provide services in accordance with:

(1) §42.241(b)(2) of this chapter (relating to Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service); or

(2) §42.243(b) and (c) of this subchapter (relating to Reduction of a DBMD
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Program Service [Services]).

§42.222. Annual Review and Reinstatement of Lapsed Diagnostic Eligibility.

(a) Annual Review of Diagnostic Eligibility.

(1) To establish that an individual continues to meet the diagnostic eligibility criteria described in §42.201(2)-(4) of this subchapter [chapter] (relating to Eligibility Criteria), a case manager [program provider] must submit a current ID/RC [MR/RC] Assessment to DADS in accordance with the timeframe [timeframes] described in §42.223(b)(3) of this division [§42.223(b)(1) and (2)(D) of this chapter] (relating to Periodic Review and Update of IPC and IPP).

(2) If requested by DADS, the case manager [program provider] must submit assessments and supporting documentation related to the individual's diagnosis in accordance with the timeframe described in §42.223(b)(5) of this division.

(3) DADS reviews the ID/RC [MR/RC] Assessment and notifies the program provider of the approval or denial of the individual's diagnostic eligibility.

(4) DADS verification of diagnostic eligibility is valid for the IPC period of the enrollment IPC.

(b) Lapsed [Reinstatement of] Diagnostic Eligibility.

(1) DADS considers an individual's diagnostic eligibility to be lapsed if the case manager [program provider] does not submit a current ID/RC [MR/RC] Assessment before the end of the IPC period.

(2) DADS does not pay a program provider for DBMD Program services provided during [for] a period of time [during which] an individual's diagnostic eligibility is lapsed unless the program provider requests and is granted a reinstatement of diagnostic eligibility.

(3) To request reinstatement of diagnostic eligibility, a [the] program provider must submit to DADS a current ID/RC [MR/RC] Assessment.

(4) DADS does not grant a request for reinstatement of diagnostic eligibility:

(A) if the program provider does not submit a current ID/RC [MR/RC] Assessment for the individual in accordance with paragraph (3) of this subsection [(a)(1) of this section];

(B) for a period of time for which [if] DADS denied diagnostic eligibility [for the period of time for which the program provider has requested the reinstatement of diagnostic eligibility]; or
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(C) for a period of time during which the individual is not financially eligible for Medicaid as required by §42.201(1) of this subchapter [chapter].

(5) If DADS grants a reinstatement of an individual's diagnostic eligibility, the reinstatement will be for a period of not more than 180 calendar days before the date DADS receives the completed ID/RC [MR/RC] Assessment submitted by the program provider in accordance with paragraph (3) of this subsection.

§42.241. Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service.

(a) Denial of an Individual's Request for Enrollment.

(1) DADS denies an individual's request for enrollment in the DBMD Program if:

(A) the individual does not meet the eligibility criteria described in §42.201 of this subchapter [chapter] (relating to Eligibility Criteria);

(B) the individual or LAR fails to submit a completed Medicaid application to HHSC within one calendar year after the date of the case manager's initial face-to-face, in-home visit; or

(C) the individual cannot obtain services from at least one program provider.

(2) DADS sends a written notice of denial for enrollment in the DBMD Program to the program provider that the program provider, upon receipt, must send to the individual or LAR, copying the FMSA [CDSA] if applicable.

(3) If the individual or LAR requests a fair hearing, the program provider is not required to provide services to the individual while the appeal is pending.

(b) Denial of a DBMD Program service.

(1) DADS denies a DBMD Program service requested on the individual's IPC if DADS determines, following utilization review conducted as described in §42.221 of this chapter (relating to Utilization Review of IPC by DADS), that the service does not meet the requirements described in §42.214(a)(1) and (b)(1)-(6) [§42.214(d)(1) - (6)] of this subchapter [chapter] (relating to Development of Enrollment Individual Plan of Care (IPC)).

(2) DADS sends a written notice with the effective date of the denial to the program provider that the program provider, upon receipt but no later than 12 calendar days before the effective date of denial, must send to the individual or LAR, copying the FMSA [CDSA], if applicable.

(3) If the service denied by DADS is requested:
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(A) on an enrollment IPC submitted by the program provider in accordance with §42.212 of this chapter (relating to Process for Enrollment of an Individual) and the individual or LAR requests a fair hearing, the program provider is not required to provide the service while the appeal is pending; or

(B) on a revision or renewal IPC submitted by the program provider in accordance with §42.223 of this chapter (relating to Periodic Review and Update of IPC and IPP) and the individual or LAR requests a fair hearing before the effective date of denial specified in the written notice, the program provider:

(i) is not required to provide the service while the appeal is pending if the service was not authorized by DADS on the prior IPC; or

(ii) must provide the service at the previously approved amount or level while the appeal is pending if the service was authorized by DADS on the prior IPC.

§42.243. Reduction of a DBMD Program Service.

(a) DADS reduces an individual's DBMD Program services if, during utilization review of an individual's IPC conducted as described in §42.221 of this chapter (relating to Utilization Review of IPC by DADS), DADS determines that the amount or level of a service on the individual's IPC does not meet the requirements described in §42.214(a)(1) and (b)(1)-(6) [§42.214(d)(1)-(6)] of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)).

(b) DADS sends a written notice with the effective date of the reduction to the program provider that the program provider, upon receipt but no later than 12 calendar days before the effective date of reduction, must send to the individual or LAR, copying the FMSA [CDSA] if applicable.

(c) If the individual or LAR requests a fair hearing before the effective date of the reduction specified in the written notice, the program provider must provide the DBMD Program service at the amount or level authorized by DADS on the prior IPC while the appeal is pending.

§42.249. Individual Whose DBMD Program Services Are Terminated May Request Name be Added to DBMD Interest List.

If DADS terminates an individual's DBMD Program services, the individual or LAR may request the individual's name be placed on the DBMD interest list [for DBMD Program services] in accordance with §42.202(b) [§42.202(a)(1)] of this subchapter [chapter] (relating to DBMD Interest List).

§42.301. Program Provider Compliance with Rules [Providers].

A program provider [provide] must comply with:
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(1) this chapter;

(2) Chapter 41 of this title (relating to Consumer Directed Services Option); and

(3) Chapter 49 of this title (relating to Contracting for Community Services).

§42.402. Staff Qualifications.

(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'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 high school equivalency certificate;

(D) has a minimum of two years of experience working with individuals with developmental disabilities; and
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(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 a minimum of six months of experience working with persons who have deafblindness or function as persons with deafblindness;

(C) has completed 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;

(D) a one-hour practicum 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 of an intervener I as described in paragraph (2)(A), (C), and (D) of this subsection;

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

(C) has completed 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 of an intervener II as described in paragraph (3)(A) of this subsection;

(B) has a minimum of one year of experience working with persons with deafblindness; and

(C) holds an 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'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 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.

(j) The 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.

(k) A service provider:

(1) must not be:

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

(B) the spouse of an individual;

(2) must not, if an individual is an adult, be a relative or guardian of the individual to whom the service provider is providing:

(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;

(K) support consultation, if the individual is participating in the CDS option; or

(L) TAS; 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; or
(J) supported employment.

(l) 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.

§42.403. Training.

(a) A program provider must ensure that a program director and all service providers complete a general orientation curriculum before assuming job duties and annually while holding the position of program director or service provider. The general orientation curriculum must include training in:

(1) the rights of an individual;

(2) confidentiality;

(3) abuse, neglect, and exploitation; and

(4) the program provider's complaint process.

(b) A program provider must ensure that, before assuming job duties, a program director, an intervener, and a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, residential habilitation, respite, and supported employment [a service other than behavioral support, chore services, orientation and mobility, nursing, specialized nursing, or a therapy] completes and has current documentation of completion of hands-on skills training in:

(1) cardiopulmonary resuscitation (CPR);

(2) first aid; and

(3) choking prevention.
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(c) A program provider must:

(1) ensure that a service provider required to complete hands-on skills training in accordance with subsection (b) of this section periodically updates hands-on skills training in accordance with guidelines of the training organization; and

(2) maintain a copy of current training documentation in the service provider's file.

(d) A program provider must ensure that a person who is a program director or case manager completes, within six months after assuming job duties:

(1) the DBMD Program case management training provided by DADS or training developed by the program provider that addresses the following elements from the DADS DBMD Program case management curriculum;

(A) the DBMD Program service delivery model:

(i) the role of the case manager and DBMD Program provider;

(ii) the role of the service planning team;

(iii) person-centered [person-directed] planning; and

(iv) the CDS option;

(B) DBMD Program services, including how these services:

(i) complement other Medicaid services;

(ii) supplement family supports and non-waiver services available in the individual's community; and

(iii) prevent institutionalization;

(C) DBMD Program process and procedures for:

(i) eligibility and enrollment;

(ii) service planning, service authorization, and program plans;

(iii) access to non-waiver resources; and

(iv) complaint procedures and the fair hearing process; and

(D) rules, policies, and procedures about:
(i) prevention of abuse, neglect, and exploitation of an individual;
(ii) reporting abuse, neglect, and exploitation to local and state authorities; and
(iii) financial improprieties toward an individual; and

(2) the Service Provider Curriculum required by DADS as described in subsection (e) of this section, if providing direct services to an individual.

(e) A program provider must ensure a service provider of a service other than behavioral support, chore services, orientation and mobility, or a therapy:

(1) completes, within 90 calendar days after assuming job duties, the Service Provider Training provided by DADS or training developed by the program provider that addresses the following elements from the DADS Service Provider Training curriculum:

(A) methods and strategies for communication;
(B) active participation in home and community life;
(C) orientation and mobility;
(D) behavior as communication;
(E) causes and origins of deafblindness; and
(F) vision, hearing, and the functional implications of deafblindness; and

(2) who has not completed the Service Provider training is accompanied at all times while providing services to an individual by a service provider who has completed Service Provider Training.

(f) A program provider must ensure a service provider of a service other than behavioral support, case management, chore services, orientation and mobility, nursing, specialized nursing, or a therapy, before providing direct services to an individual, annually while holding the position of service provider, and when the individual's needs change, completes specific training that includes:

(1) the special needs of the individual, including the individual's:

(A) methods of communication;
(B) specific visual and audiological loss; and
(C) adaptive aids; and
(2) managing challenging behavior, including training in:

(A) prevention of aggressive behavior; and

(B) de-escalation techniques; and

(3) instruction in the individual's home with full participation by the individual, LAR, or other involved persons, as appropriate, concerning the specific tasks to be performed.

(g) If a program provider develops training based on DADS curriculum as described in subsections (d)(1) or (e)(1) of this section, the program provider must ensure that the instructor who delivers the training has completed the appropriate training provided by DADS.

(h) The program provider must ensure a service provider performing a delegated task is trained before providing direct services to an individual, annually, and when the individual's needs change, and supervised by a physician or nurse, as appropriate, in compliance with applicable state law and rules.

(i) The program provider must document the training described in subsections (d) and (e) of this section by a certificate or form letter that includes the:

(1) name of the person who received the training;

(2) date(s) the training was completed; and

(3) name of the person certifying the completion of the course.

(j) A program provider must ensure compliance with the training and training documentation requirements described in §42.408(c)(8) and (9) of this subchapter (relating to Protective Devices).

(k) A program provider must ensure compliance with the training and training documentation requirements described in §42.409(d)(3) of this subchapter (relating to Restraints).