April XX, 2015

To: Financial Management Services Agencies
Community Living Assistance and Support Services Direct Service Agencies and Case Management Agencies
Deaf Blind with Multiple Disabilities Provider Agencies

Subject: Information Letter 15-XX
Implementation of Community First Choice Through the Consumer Directed Services Option for Individuals Receiving Community Living Assistance and Support Services or Deaf Blind with Multiple Disabilities

The purpose of this information letter (IL) is to inform Financial Management Services Agencies (FMSAs), Community Living Assistance and Support Services (CLASS) Direct Service Agencies (DSAs) and Case Management Agencies (CMAs), and Deaf Blind with Multiple Disabilities (DBMD) program providers about the implementation of the Community First Choice (CFC) option for individuals in the CLASS and DBMD Programs, effective June 1, 2015. This IL only addresses requirements for FMSAs, CDS employers, CLASS DSAs and CMAs, and DBMD case managers regarding the provision of CFC services through the CDS option. This letter does not address CFC services provided:

- through the CDS option in Medicaid managed care;
- by CLASS DSAs; or
- by DBMD program providers.

Requirements for CLASS DSAs and DBMD program providers are addressed in IL15-XX.

For your convenience, a table of contents is listed below.

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Introduction

CFC is a state plan option governed by Code of Federal Regulations (CFR), Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides certain services and supports to individuals living in the community, including individuals in the CLASS and DBMD programs. CFC services are state plan services, not waiver services.

Important Things to Know About CFC and the CDS Option:

1. The CFC option offers CFC personal assistance services (PAS), CFC Habilitation (HAB), CFC emergency response services (ERS), and CFC support management services as defined below.
2. For CLASS and DBMD, the CFC services of PAS and HAB are combined into one CFC service -- CFC PAS/HAB and is considered the same service as habilitation in CLASS and residential habilitation in DBMD.
3. CFC PAS/HAB through the CDS option will be delivered in the same manner as habilitation in the CLASS program and residential habilitation in the DBMD Program. CFC CDS PAS/HAB will replace CDS habilitation and CDS residential habilitation.
4. ERS will be provided through CFC ERS and not as an adaptive aid and is not available through the CDS option.
5. The reimbursement rate for CFC CDS PAS/HAB and CFC FMS will be the same as the current CDS CLASS habilitation, CLASS FMS, CDS DBMD residential habilitation, and DBMD FMS reimbursement rates.
6. Individuals receiving licensed assisted living (LAL) or licensed home health assisted living in DBMD or support family services or continued family services in the CLASS program will not receive CFC PAS/HAB.
7. CFC PAS/HAB will not be included in the calculation of the individual’s IPC cost for the CLASS and DBMD programs.
8. Electronic visit verification (EVV) will not apply to DBMD program providers delivering services to individuals enrolled in the DBMD program. CLASS CDS employers may choose to use EVV for CFC CDS PAS/HAB.
9. Service provider qualifications for CFC PAS/HAB differ from current qualifications for habilitation providers in the CLASS program.
10. Individuals in the CLASS and DBMD Programs may no longer receive personal assistance services through the HHSC Medicaid benefit of personal care services (PCS). Personal assistance services will be provided by as CFC PAS/HAB.

11. Criminal history checks will be paid for by the FMSA for employees hired to provide CFC CDS PAS/HAB. The cost will be paid for from the CDS employer budget.

12. CDS employers have the option to use support consultation as an employer support.

Services Offered Under the CFC Option

In accordance with the state plan amendment approved by the Centers for Medicare & Medicaid Services (CMS), and rules of the Health and Human Services Commission (HHSC) at 1 Texas Administrative Code (TAC) Chapter 354, Subchapter A, Division 27 (relating to Community First Choice), CFC provides the following services:

1. **CFC personal assistance services (PAS)** -- Services that provide assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as defined in 42 CFR §441.505, through hands-on assistance, supervision, and/or cueing. Such assistance is provided to an individual in performing ADLs and IADLs based on the individual’s person-centered service plan. CFC personal assistance services include:
   A. non-skilled assistance with the performance of the ADLs and IADLs;
   B. household chores necessary to maintain the home in a clean, sanitary, and safe environment;
   C. escort services, which consist of accompanying, but not transporting, and assisting an individual to access personal assistance services or activities in the community; and
   D. assistance with health-related tasks as defined in 42 CFR §441.505.

2. **CFC habilitation (HAB)** -- Acquisition, maintenance, and enhancement of skills necessary for an individual to accomplish ADLs, IADLs, and health-related tasks. CFC habilitation is provided to allow an individual to reside successfully in a community setting by assisting the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting with and training the individual on ADLs and IADLs. Personal assistance may be a component of CFC habilitation for some individuals’ ADLs. CFC habilitation includes habilitation training, which is interacting face-to-face with an individual to train the individual in activities such as:
   A. self-care
   B. personal hygiene
   C. household tasks;
   D. mobility;
   E. money management;
   F. community integration including how to get around in the community;
   G. use of adaptive equipment;
   H. personal decision making;
I. reduction of challenging behaviors to allow individuals to accomplish ADLs and IADLs and health-related tasks; and
J. self-administration of medication.

3. **CFC emergency response services (ERS)** -- Electronic devices to ensure continuity of services and supports. These services are available for individuals who live alone, who are alone for significant parts of the day, or have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. CFC ERS will not be available through the CDS option.

4. **CFC support management services** -- Voluntary training on how to select, manage, and dismiss attendants.

Health-related tasks, in accordance with 42 CFR §441.505, include tasks delegated by a registered nurse, health maintenance activities, and extension of therapy. An extension of therapy is an activity that a speech therapist, physical therapist or occupational therapist, instructs the individual to do as follow-up to therapy sessions. If appropriate, the individual’s attendant can assist the individual in accomplishing such activities with supervision, cueing and hands-on assistance. As permitted by Texas Government Code, §531.051(e), a CDS employer may allow a CFC CDS PAS/HAB service provider to perform a health-related task that is not delegated by a registered nurse.

**Impact of CFC in the CLASS and DBMD Waiver Programs**

For CLASS and DBMD the CFC services of PAS and HAB are combined into one CFC service—CFC PAS/HAB. A CDS employer will receive CFC CDS PAS/HAB in the same manner as the employer currently receives habilitation or residential habilitation. An individual receiving support family services or continued family services in the CLASS program or receiving licensed assisted living or licensed home health assisted living in the DBMD program, may not receive CFC PAS/HAB.

DADS rules at 40 TAC §42.214(d) and §45.214(b) require that an individual use non-waiver services before using a CLASS or DBMD service. Because of this requirement:
- if an individual in the DBMD program needs services similar to residential habilitation and chooses to receive those services through the CDS option, the individual must receive CFC CDS PAS/HAB instead of residential habilitation; and
- if an individual in the CLASS program needs services similar to habilitation and chooses to receive those services through the CDS option, the individual must receive CFC CDS PAS/HAB instead of habilitation.
DBMD Program Provider, CLASS CMA and DSA Responsibilities Related to Implementation of CFC through the CDS Option

Specific requirements about how CDS employers, DMBD program providers, and CLASS CSAs and DSAs implement the provision of CFC services in the CLASS and DBMD programs are set forth below.

Inclusion of CFC CDS Services on an Individual Plan of Care (IPC)

A DBMD program provider, CLASS CMA, or DSA must ensure that CFC CDS PAS/HAB is on the IPC of an individual if the individual would have received CDS residential habilitation in DBMD or CDS habilitation in CLASS as follows:

- For an individual whose SPT meets, before June 1, 2015, to develop an initial an IPC or to renew or revise an existing IPC, the DBMD provider or CLASS CMA and DSA, if the IPC includes residential habilitation or habilitation, may continue to include residential habilitation or habilitation on the IPC until the IPC is renewed or revised on or after June 1, 2015; and

- For an individual whose SPT meets, on or after June 1, 2015, to renew or revise the IPC, the DBMD provider or CLASS CMA and DSA must, if the individual needs CFC PAS/HAB, ensure that the renewal IPC or revised IPC includes CFC PAS/HAB and does not include residential habilitation or habilitation on the IPC; and

- For an applicant enrolling in the CLASS or DBMD program whose SPT meets, on or after June 1, 2015, to develop the initial IPC, the DBMD provider or CLASS DSA must, if the applicant needs CFC PAS/HAB, ensure that the initial IPC includes CFC PAS/HAB and does not include residential habilitation or habilitation on the IPC.

CLASS Determination of Need for CFC Services, Inclusion on IPC, and Development of IPP

- The CLASS case manager must ensure that the service planning team (SPT) determines whether the individual needs CFC PAS/HAB using the person-directed planning process. If the SPT determines that the individual needs CFC PAS/HAB and chooses to receive it through the CDS option, the case manager must include the service on the IPC as if the service were a CLASS program service.

- If CFC PAS/HAB is included on the individual’s IPC, the case manager must complete an IPP based on the decisions made by the service planning team.

- If CFC CDS PAS/HAB is included on an authorized IPC, the SPT must develop a CFC CDS PAS/HAB plan (a modified version of the current CLASS/DBMD Habilitation Plan) for delivering the service in accordance with the plan.
DBMD Determination of Need for CFC Services, Inclusion on IPC, and Development of IPP

- The DBMD case manager must ensure that the SPT determines whether the individual needs CFC PAS/HAB using the person-directed planning process in the same manner the SPT would have determined a need for residential habilitation. If the SPT determines that the individual needs CFC PAS/HAB and chooses to receive it through the CDS option, the case manager must include the service on the IPC as if the service were a DBMD program service.
- If CFC PAS/HAB is included on the individual’s IPC, the case manager must include the service as well as a plan for delivering the service on the IPP based on the decisions made by the SPT.

Cost of CFC Services Not Included in Total Waiver IPC cost

The cost of CFC CDS PAS/HAB is not included in the calculation of the IPC cost as described in 40 TAC §45.201(a)(5) and §42.201(5).

Provision of CFC Support Management Services

If an individual in the CLASS or DBMD Program is receiving CFC CDS PAS/HAB and would like training on how to select, manage, and dismiss attendants, the FMSA must provide CFC support management to the individual by providing information developed by DADS and available on DADS website.

Determining Whether to Include CFC FMS or FMS on the IPC

- The CLASS case manager or DBMD program provider must include CFC FMS, rather than FMS, on the IPC if CFC CDS PAS/HAB is the only service the individual is receiving through the CDS option.
- The CLASS case manager or DBMD program provider must include FMS, rather than CFC FMS, on the IPC if the individual is using the CDS option for CFC PAS/HAB and is receiving at least one other CLASS or DBMD service.
- FMS and CFC FMS must not be included on the IPC at the same time.

Service Provider Requirements

Requirements Regarding Service Providers of CFC CDS PAS/HAB

- A CDS employer must ensure that a service provider of CFC CDS PAS/HAB services:
is at least 18 years of age; and
has:

• a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or
• documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:
  o a written competency-based assessment; and
  o at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

is not the parent of an individual who is under 18 years of age or the individual’s spouse; and
meets any other qualifications established by the CDS employer based on the individual’s needs and preferences.

A qualified service provider of habilitation in the CLASS Program who was hired before June 1, 2015 may be a service provider of CFC PAS/HAB. The service provider must still meet any other qualifications requested by the individual or LAR based on the individual’s needs and preferences.

In addition to the training required in 40 TAC Chapter 41, an individual or LAR may:

• train the CFC CDS PAS/HAB service provider to perform CFC CDS PAS/HAB in a manner that matches the individual’s personal, cultural, or religious preferences; and
• require the CFC CDS PAS/HAB service provider to attend training by HHSC or DADS so that the CFC CDS PAS/HAB service provider can meet any additional qualifications desired by the individual or LAR.

FMSA and CDS Employer Compliance with CDS Rules Regarding the Provision of CFC CDS PAS/HAB

An FMSA and CDS employer must comply with 40 TAC Chapter 41, including but not limited to:

• ensuring initial criminal history checks, annual registry checks, and monthly Office of Investigator General checks in accordance with 40 TAC §41.225 (relating to Criminal History Check of an Applicant for Employment and an Employee; §41.227 (relating to Required Registry Checks); §41.323 (relating Criminal History Check of an Applicant for Employment and to be an Employee); and §41.325 (relating to Required Registry Checks of an Applicant to be an Employee);
• completing service agreements in accordance with 40 TAC §41.237 (relating to Service Provider Agreements) and §41.333 (relating to Service Agreements);
• conducting and documenting training in accordance with 40 TAC §41.233 (relating to Training and Management of Service Providers); and
• ensuring that a service provider of CFC CDS PAS/HAB is paid the base wage rate in accordance with 40 TAC §41.505 (relating to Payroll Budgeting).

For service providers hired before June 1, 2015, who will provide CFC CDS PAS/HAB instead of CDS habilitation or CDS residential habilitation, the CDS employer is not required to request another criminal history check, complete new service agreements, or update employer related forms.

Cost of Criminal History Checks

As required by CFR §441.555(b)(2), costs for running criminal history checks for CFC CDS PAS/HAB providers will not be paid for from the CDS employer budget. The cost of criminal history checks for CFC CDS PAS/HAB providers will be paid by the FMSA from the monthly FMS fee.

CDS employers must develop, using the 2015 revised CLASS or DBMD employer budget workbooks and based on the revised IPC, a budget for CFC CDS PAS/HAB, separate from the budget for CLASS or DBMD program services, in accordance with 40 TAC 41.501 (relating to Budget Development).

Compliance with CDS Information Letters and CLASS and DBMD Program Manuals

A CDS employer, FMSA, CLASS DSA, CMA, and DBMD program provider must comply with CDS ILs and the CLASS and DBMD program manuals as if CFC CDS PAS/HAB, and CFC FMS are CLASS and DBMD program services and as if CFC CDS PAS/HAB is CLASS habilitation or DBMD residential habilitation delivered through the CDS option.

Billing and Rates

Billing for FMS

An FMSA may not bill both FMS and CFC FMS for the same individual in the same month. The FMSA must bill the type of FMS authorized on the IPC.

Billing and Reimbursement Rates for CFC PAS/HAB:

The reimbursement rate for CFC CDS PAS/HAB and CDS FMS will be the same as the current CLASS habilitation and DBMD residential habilitation reimbursement rates.
CLASS/DBMD New Service Codes (SAS/MESAV):

The service codes associated with the new CFC CDS services are:

- 10CFV – CFC CDS PAS/HAB
- 63CFV – CFC CDS FMS

CFC Support Management does not have a separate service code.

Eligibility and Fair Hearings

Eligibility for CFC services

An individual is eligible for CFC services provided by a DBMD provider, CLASS CMA or DSA if the individual meets the criteria described in:

- 40 TAC §45.201 or §42.201; and
- 1 TAC §354.1362.
- the next two headings.

An individual’s diagnostic eligibility for CFC services is determined based on information from eligibility assessments and documented in the Intellectual Disability/Related Condition assessment form.

Requirement for Provision of One CLASS or DBMD Service for All Individuals

In accordance with federal requirements, an individual must, in addition to meeting other eligibility criteria for the CLASS or DBMD Program, require the provision of at least one CLASS or DBMD service annually. In addition, an individual must receive a CLASS or DBMD service monthly or receive monitoring monthly to be eligible for the CLASS or DBMD Program.

A DBMD or CLASS case manager must inform an applicant or individual or LAR of the eligibility criteria described under this heading as follows:

- for an applicant, during the enrollment process; and
- for an individual or LAR, as soon as possible, but no later than 90 calendar days after June 1, 2015 and annually thereafter.

Informing Individuals Receiving CFC Services with Medical Assistance Only (MAO) Medicaid of Requirement for Monthly CLASS or DBMD Program Service

An individual who receives MAO Medicaid must, at least monthly, receive a CLASS or DBMD Program service in order to be eligible for CFC services as required by 42 CFR §441.510(d). If
the individual does not receive a monthly service, the individual will not be eligible for the CLASS or DBMD Program or any other Medicaid benefits. Monthly monitoring by a case manager is a CLASS or DBMD Program service and, therefore, meets this monthly requirement.

A DBMD or CLASS case manager must inform an applicant or individual or their LAR who receives MAO Medicaid or LAR of the eligibility criteria described under this heading as follows:

- for an applicant, during the enrollment process; and
- for an individual or LAR, as soon as possible, but no later than 90 calendar days after June 1, 2015 and annually thereafter.

**Fair Hearing**

An individual whose request for eligibility for CFC services is denied or is not acted upon with reasonable promptness, or an individual whose services have been terminated, suspended, denied, or reduced by DADS receives notice of the right to request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules). An individual who is enrolled in the CLASS or DBMD Program whose CFC services are terminated may be able to receive CFC services through Medicaid managed care.

**FMSA and Case Manager Requirements**

**Requirement for FMSA to give IL to CDS Employers**

Before June 30, 2015, an FMSA must provide a copy of the attached employer letter to each CDS employer in the CLASS and DBMD programs for whom the FMSA provides FMS.

**CDS Form Revisions**

**Revised Forms:**

Based on the implementation of the CFC option, DADS has revised the following forms which are available for the CDS option at [http://www.dads.state.tx.us/handbooks/cds/forms/index.asp](http://www.dads.state.tx.us/handbooks/cds/forms/index.asp).

**CDS Budget Workbook:** The CDS budget workbook for CLASS and DBMD will be revised to reflect the IPC total amount of funds allocated to the waiver and the total funds allocated to CFC state plan services.

**CDS Form 1735 Service Delivery Provision Agreements for CLASS and DBMD** will be revised to include a description of the service and service provider qualifications for CFC CDS PAS/HAB.
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CDS Form 1735 Service Provision Requirements Addendum for CFC will be a new form added to include a description of all CFC services available under the CDS option and service provider qualifications.

CDS Form 1583 Employee Qualifications Requirements will be revised to include service provider qualifications for CFC CDS PAS/HAB. CLASS CMAs and DBMD program providers will be expected to begin using this form on June 1, 2015.

CDS Form 1734 Service Provider and Employer Certification of Relationship Status for CDS will be revised.

Future Plans

Future ILs and Revision of Rules

As necessary, DADS will provide additional information regarding the implementation of the CFC option to providers through ILs. DADS will propose to amend 40 TAC Chapter 41 to address the requirements regarding CFC services delivered via the CDS option as described in this IL. DADS is planning webinars to continue educating CDS employers and FMSAs about CFC. As dates are determined, alerts will be sent via gov delivery and information posted on the DADS web pages dedicated to CDS, CLASS CMAs, DSAs and DBMD program providers.

For questions about the content of this IL, contact the CDS mailbox at cds@dads.state.tx.us.

Sincerely,

[signature on file]      [signature on file]
Donna Jessee      Elisa J. Garza
Director      Assistant Commissioner
Center for Policy and Innovation      Access and Intake