Subchapter A -- APPLICATION AND DEFINITIONS

49.102 Definitions

Comment – (6) Change of Ownership. Defined as more than 50% of a contractor transferring to someone who had previously owned less than 5% - and no change in the federal tax ID. Going from a 4% owner to a 54% owner triggers a change in ownership. However going from a 6% owner to a 100% owner would not trigger a change of ownership.  
DADS- Applicants with 5% or more ownership must be successfully screened prior to contracting with DADS. A controlling person with 5% or more ownership who obtains additional ownership interest as a result of a transfer or sale, has previously undergone DADS screening process. Although notification to DADS is required, increasing from 6% to 100% ownership would not necessitate a change of ownership.  
A person with 4% or less ownership who obtains up to a 50% ownership would have to be reported and DADS would screen the person but this would not be a change of ownership. A person with less than 4% ownership who obtain 50% or more ownership would have to be reported and this would be a change of ownership. DADS considers a 50% or more change of ownership significant such that the change of ownership requirements would apply.

Comment - (12) Controlling Ownership Interest. Why any combination of ownership of 5% or more?  
DADS- The definition for controlling person is patterned after 42 CFR, Part 455, Subpart B, Disclosure of Information for Providers and Fiscal Agents (see §455.101) and Texas Health and Safety Code Chapter 142, Home and Community Support Services [see §142.001(9) and §142.0012]. Therefore, 5% is consistent with current law and policy as well as 40 TAC Chapter 9, Subchapter Q, §9.703 (1) Affiliate.

Comment – (12) Is the CFR reference (42 CFR Part 455, subpart B) related to the ACA.  
DADS- No. CFR 42 CFR Part 455, related to Program Integrity: Medicaid. Part B relates to Disclosure of Information by Providers and Fiscal Agents

Comment- (13) Controlling Person. Identify the specific federal citation.  
DADS- The definition for controlling person is patterned after 42 CFR, Part 455, Subpart B, Disclosure of Information for Providers and Fiscal Agents (see §455.101) and Texas Health and Safety Code Chapter 142, Home and Community Support Services [see §142.001(9) and §142.0012]]. DADS has the authority to adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person [§142.0012(d) Health and Safety Code]. DADS decided on the Chapter 49 definition of controlling person to encompass both persons with an ownership interest and persons who have control over some operational aspect of the provider. This is within the general authority of a state agency to create rules that govern the agency's contracting with an entity that provides services for which DADS is responsible. DADS believes this definition is appropriate so DADS can exercise control over what entities it contracts with and for continuing oversight of the contracts.

Comment-(14) Conviction. This is an impossible new definition of conviction for history checks. Under §49.102(14) (A) (II) no one would ever know of an effectively expunged judgment.  
DADS- The definition is consistent with the definition of “convicted” under 42 CFR §1001.2.

Comment-(21) Exploitation. Why is using the individual's resources for a caregiver or family member for personal gain allowed with informed consent? Shouldn't we include some parameters like “a reasonable amount" or define what is allowed?  
DADS- Individuals have the right to manage their own finances unless deemed to be legally incompetent. §49.102 (21) is consistent with the Texas Human Resources Code 48.002.

Comment – (25) Neglect. What about the neglect standard for children under the Family Code Chapter 261, which is different than the standard for adults?
RESPONSE TO CHAPTER 49 COMMENTS

DADS- The definition of neglect has been revised to add the Family Code Chapter 261 as applicable to children.

SUBCHAPTER B -- CONTRACTOR ENROLLMENT

49.202 Provisional Contract Application Process

Comment-(c) and (d) provides a new opportunity to correct application mistakes, but includes mistakes that DADS has communicated orally in §49.202(d)(1)(A), (B), and (C), which should be deleted to ensure only documented communications.

DADS- Chapter 49 has been revised to require written request from DADS regarding submission of missing documents.

Comment – (d) (1) (A), (B) and (C) Given issues with the US postal service, shouldn’t this be from the date of receipt of the letter?

DADS- Chapter 49 has been revised to delete reference to a letter. DADS will provide a request in writing for a missing document. The date of the written request will “start the clock”.

49.203 Additional Provisional Contract Application Requirements

Comment – (c) requires a score of 85% or higher on the competency exam. Is 85% sufficient? PACSTX would recommend this be at least 90%.

DADS- Currently, an applicant must score 70%. DADS determined 85% is sufficient to achieve the competency desired by the program.

49.204 License, Certification, Accreditation and Other Requirements

Comment- Why are CDSAs not included?

DADS- CDSAs are not required to be licensed.

49.205 Ineligibility Due to Criminal History

Comment – (c) doesn’t spell out the process, the criteria/list of factors, who reviews and who makes the decision. Doesn’t appear to be an open/transparent process. Again, "controlling interest" is here and based on previous comments re: the definition of controlling interest-this is a big concern.

DADS- §49.205 (c) lists factors DADS will consider and in addition it allows the applicant, contractor or controlling person to submit an explanation of the offense. It is not necessary to include DADS internal procedures regarding "who reviews and who makes the decision" in rule.

49.206 Provisional Contract Application Denial

Comment - (b) (1) states that DADS may deny a provisional contract if the application packet contains incorrect information. Do all mistakes bear the same weight? Should it specify "material" mistakes?

DADS- Chapter 49 uses “may” - a decision to deny a provisional contract will be based on the incorrect information submitted to DADS. Since whether or not to grant a provisional contract is a DADS internal decision DADS does not believe the addition of "material" is necessary. Also DADS does not believe the word adds clarity to the rule.

Comment- (b) (5) & (6) allow contract denial, cancellation and non-renewal in the event of any prior termination or penalty. This must have some end date, such as the past 3 years. Otherwise it can be applied to every renewal forever after the rule comes into effect.

DADS- DADS review of a provisional contract application should include the applicant’s entire performance history.

Comment – (c) describes that if a provisional contract is denied and the applicant wants to be a contractor, they must repeat the application process described earlier. Should require the applicant to
show they have corrected the problem that has caused the original denial rather than requiring the process to begin over again.  

DADS- In accordance with §49.202 (c), under certain circumstances, DADS allows correction of the application packet. However, once an application packet has been denied, a new application packet is required.

49.208 Standard Contract

Comment- (d)(2) for financial monitoring described in §49.412 of this chapter (relating to Financial Monitoring of FMSAs) a score of 100% is unreasonable. Even effective, highly experienced agencies make occasional errors which may not have been corrected by the date of monitoring.  
DADS- DADS will reduce the compliance score to 90% to remain consistent with other community services contract programs

49.209 Contractor Change of Ownership or Legal Entity

Comment- (d) appears to allow contract cancellation for the existing contract holder in any case where a seller proposes but does not go through with an ownership change.  
DADS- In accordance with §49.209 (b)(3) when a change of ownership or change of legal entity occurs, DADS enters into a provisional contract with the contractor or new legal entity with an effective date the same as the date of the change of ownership or change of legal entity. If a change of ownership or change of legal entity does not occur DADS should be notified immediately to assess appropriate actions.

SUBCHAPTER C -- REQUIREMENTS FOR A CONTRACTOR

49.302. General Requirements

Comment – (c) Would this provision prevent providers from employing/pay minimum wage to an individual in their programs to do office/clerical work or answer phones?  
DADS- Chapter 49 has been revised as follows:  
(c) Except as provided in DADS rules governing services provided under the contract, a contractor must not allow an individual to perform services under the contract or perform other work that benefits the contractor.

Comment – (f) (2) contractor must read email updates at least once every seven consecutive days. How is this to be tracked; how will auditors confirm we are complying?  
DADS- Chapter 49 has been revised as follows:  
(1) subscribe to receive electronic notifications using the link provided at the DADS website; and
(2) be informed of the notifications.

Comment – (h) Change of physical address notification 30 days prior notice is not always possible. Could the timeframe be within 14 days of the change like in 49.202(k)?  
DADS- Under normal circumstances, notification to DADS at least 30 before a change in physical address is a reasonable amount of time to provide notice to DADS. An exception due to an emergency or disaster will be added.  
Revised as follows:  
(h) If there is a change to a contractor’s physical, mailing, or e-mail address, as stated on the contractor’s contract application packet or on a prior written notice of change to the information, the contractor must notify DADS of the change and provide the new physical, mailing, or e-mail address:

(1) at least 30 days before the address changes;

(2) if a natural or unforeseen disaster prevents compliance with paragraph (1) of this subsection, within three days after the change.
RESPONSE TO CHAPTER 49 COMMENTS

Comment- (l) should be “within 3 business days of knowledge of the conviction.”
DADS- Chapter 49 has been revised as follows: …must notify DADS within 3 business days after the contractor or controlling person becomes aware of the conviction

Comment- (n) should be “within 3 business days of knowledge of the exclusion.”
DADS- Chapter 49 has been revised as follows: …must notify DADS of the exclusion within 3 business days after the contractor or controlling person becomes aware of the exclusion.

Comment- (o) The EMR and the NAR are only required to be checked by the contractor annually. The contractor may not be aware that they have been listed.
DADS- DADS will reorient the provision to focus on providers having a policy requiring controlling persons to notify providers if they become listed on the EMR or NAR and requiring providers to notify DADS within three days of becoming aware that a controlling person has been listed.
Revised §49.302 (o)/(n): If a contractor or controlling person of a contractor becomes aware the contractor or controlling person is listed on any of the following, the contractor must notify DADS within 3 business days after the contractor becomes aware of the listing

Comment- (p) can the notice be sent electronically? What happens if the person in (p) (2) is not available within the required timeframes to submit the notice to DADS?
DADS- The notice is required to be in writing and may be sent electronically. The “Governing Authority Resolution” form authorizes an individual and his/her successors to provide such notice to DADS.

49.304 Background Checks.

Comment- (b) Who are the contractors who do not have a license other than HCS and TxHmL that will be subject to this section?
DADS- Contractors who do not have a license issued by DADS other than HCS and TxHmL are Transitional Assistance Services (TAS), Community Living Assistance and Support Services- Case Management Agency (CLASS-CMA), Home Delivered Meals, Adult Foster Care (AFC- 3 bed or less), Consumer Directed Services (CDS) and Emergency Response Services (EMS)

Comment- (b) (1), HCS and TxHmL providers currently do the background check themselves—does this language now require the potential employees to do it?
DADS- Revised as follows- before offering employment to an applicant for employment, contracting with a potential subcontractor, or accepting a volunteer applicant for a volunteer position, require the applicant or potential subcontractor to obtain from the DPS the criminal history record of the applicant or potential subcontractor.

Comment- (b) (1) requires a contractor to obtain criminal history for all volunteer “positions.” In residential settings people or groups come in for birthday parties, Christmas choirs, etc. are these one-time volunteers included in this?
DADS- §49.102 (39) defines a volunteer as a person who works for a contractor without compensation, other than reimbursement for actual expenses. The examples provide would not be considered a volunteer position.

Comment- (d), (e) & (f) Verify ALL contractors are in compliance with other requirements- Franchise tax, not on State debarment list, & “in existence” with the Secretary of State These rules seem cumbersome. How would providers be expected to demonstrate compliance?
DADS- These searches can be conducted through available websites
§49.304 (d) Secretary of State (http://www.sos.state.tx.us/corp/sosda/index.shtml) $1.00 per search

SOS Registration Required:
• All corporations, limited liability corporations, limited partnerships that transact business in Texas
• All out-of-state entities of any kind (except individuals and general partnerships) that transact business in Texas

SOS Registration Optional:
• Individuals (sole proprietor or sole proprietor DBA)
• General partnerships
• Hospital districts or authorities
• Texas governmental entities (with very few exceptions).

§49.304 (e) and (f) Comptroller of Public Accounts (No charge)
Debarred Vendor List: http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/
Franchise Tax Account Status: http://www.window.state.tx.us/taxinfo/coasintr.html

A print out indicating the result of the search would provide sufficient evidence of compliance.

Comment: What if the Franchise Tax Account status reporting by the CPA is wrong?
DADS- The contractor or potential subcontractor will need to work that out with the Secretary of State.

Comment- (g) exceeds the current HCSSA licensure requirement which only requires credentialing of unlicensed staff that has face to face contact with clients. Furthermore, current HCSSA rule only requires that CHC be conducted once prior to employment; and registry check on an annual basis. Additionally, HCSSA rule currently requires that a HCSSA immediately discharge an unlicensed person when the agency becomes aware that the person is designated in the NAR or EMR as unemployable; and if a CHC reveals a conviction that bars them from employment.

DADS- The requirement applies to non-licensed agencies.

Comment- (g) gives no grace period on when this must happen.
DADS- The anticipated effective date of the proposed Chapter 49 is 9/1/2014. DADS recommends development of the policy for an implementation date prior of 9/1/2014.

Comment- (h) requires employees and subcontractors to have LEIE reviewed monthly. Providers must also report the amount paid, so would there be a recoupment, and if so, how far back does the recoupment go? There is currently confusion among providers about who has to be checked monthly. Some providers only check the vendors used during a specific month. Some providers check all vendors monthly, even if they are used only 1-2 times per year.

DADS- Potentially, a recoupment could include all payments made to an excluded individual or entity as of the date of the exclusion. Once a contractor self-reports payments made to an excluded individual or entity to the OIG, the OIG will assess the recoupment amount. See the OIG Self disclosure protocol at: http://oig.hhsc.state.tx.us/OIGPortal/tabid/86/ShowArticle/mid/112/Default.aspx

It is DADS policy that providers check the LEIE before employing an applicant or engaging a vendor and at least once per month for each month payment is made to the employee or vendor. For a month in which no payment is made, the LEIE search is not required.

49.305 Records

Comment- (i) (3) ensure a stamped signature is not used. Many individuals in DADS programs have difficulty with physical signatures and use a stamp. Please clarify how this is to be accommodated.
DADS- This applies to contractors only. CDS employers are not contractors, this requirement does not apply to them.

Comment – (k) (2) (A) and (B) unlimited copies without reimbursement seems unreasonable.
DADS- DADS limits these requests to documents that are essential to the review, survey or investigation.
49.307 Record Retention and Disposition

Comment - (a) (1) record retention is 6 years. ICF is 5 years. Some of the hope of providers with consolidation of contracting rules in Ch. 49 was that there would be more consistency between the programs which would create less opportunity for confusion for providers offering services in multiple programs.
DADS- The proposed Chapter 49 provides consistency across DADS Community Services Contracts. The rule is not applicable to ICF.

49.308 Subcontracts

Comment- (1) - (3) ...a written agreement ...to be in compliance with Subchapter D. The beginning of this chapter states that Chapter D does not apply to HCS & TxHmL. So does that mean (1)-(3) does not apply to HCS and TxHmL?
DADS- §49.308(1) has been revised as follows:
(1) have a written agreement with the subcontractor that requires the subcontractor and any of its subcontractors to comply with applicable provisions of the contract, this subchapter, Subchapter D of this chapter (relating to Monitoring and Investigation of a Contractor) and DADS rules governing services provided under the contract, as if the subcontractor and its subcontractors were the contractor

49.309 Complaint Process

Comment – (a) Problematic is the timeline to investigate, resolve and send the complainant a written response in 30 days after the complaint is received. Minimally resolution and the written report should be within 30 days after the investigation is complete. Also, what's the difference between a true complaint and feedback? Parents may call and tell a provider the transporter was 5 minutes late- is that a complaint? Or the parent may tell the provider that the SHL staff showed up 10 minutes late. Is this a complaint? What is routine communication from parents and an actual complaint? It appears as anything even mildly negative is a complaint. Complaints can be verbal, written, anonymous, etc., so where is the line drawn? It just says "....a complaint about services provided."
(a) (1) (A) States providers must ALLOW complaints to be done orally, in writing, or anonymously.
(a) (2) (A) States providers must request the name of the complainant etc. So if the complaint is anonymous, the provider must document that a name was requested?
DADS- These requirements are consistent across many of DADS community services programs. Agencies will continue to determine if a statement of dissatisfaction with services should be investigated as a complaint based on the facts of the case.

SUBCHAPTER D -- MONITORING AND INVESTIGATION OF A CONTRACTOR

49.412 Financial Monitoring of FMSAs

Comment- (c) contractor must provide records requested by DADS to DADS immediately after the entrance conference. This requirement is impossible to comply with if taken literally. DADS should allow for a particular period of time to be allowed for the contractor to extract the required records for the required individuals and time frame. Financial information kept by FMSA’s is significant in volume. DADS should require that contractors are notified in advance of the individuals, timeframes, record types that are required or allow for some period of hours for the contractor to assemble the requested records.
DADS- Providers are given advanced notice of the materials needed immediately following the entrance conference. DADS will clarify that the immediate availability pertains to materials of which the provider was notified in advance.
Revised wording- (c) An FMSA contractor must provide records requested in advance by DADS to DADS immediately after the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, DADS conducts financial monitoring with any records provided.

Comment- (d) If DADS determines that a contractor’s overall compliance score is less than 100%, DADS considers the contractor out of substantial compliance with the contract. Why would FMSAs be expected to have 100% perfect compliance when other contractors are held to 90%?

DADS- DADS will reduce the compliance score to 90% to remain consistent with other community services contract programs

49.413 Investigation

Comment- (c) Provide required records within 1 hour after entrance (if on site) and 1 business day after DADS request (if desk review). Requiring contractors provide records to DADS within 1 day of a request during a desk review is not practical. Records should be produced as soon as possible but with the reliance upon technology to produce Santrax Visit Maintenance, other electronic records, and off site discharged records. Recommend that a request be sent the afternoon prior to the morning of the onsite visit thus allowing time for records to be retrieved and provided upon entrance; replace one hour time frame with as soon as possible.

DADS- Complaint investigations are unannounced. This requirement has been a longstanding practice in Regulatory Services as well as Community Services Contracts.

SUBCHAPTER E --ENFORCEMENT BY DADS AND TERMINATION BY CONTRACTOR

49.533 Recoupment

Comment: Recoupment without prior notification of the contractor is an unreasonable business practice. DADS should establish a reasonable requirement for notification that allows time for the contractor to object to appeal a clearly incorrect recoupment. Recoupment of money paid for services delivered before a billing audit is final in terms of appeals seems unfair and may be unconstitutional

DADS- This issue has been elevated for review by DADS leadership.

49.531 - Sanction by DADS

Comment - A list of potential sanctions is presented. Criteria for recommending a specific punitive action are not presented. Rules should include specific criteria for punitive action. Double jeopardy occurs when actions imposed on a separate contract can affect the recommendation for punitive action on the contract being surveyed. What is the basis for the decision and what are the criteria for the sanction imposed?

DADS- §49.531 (b) provides factors to be considered in determining the sanction to be taken.

49.532 - Vendor Hold

Comments – Appeal of vendor hold of any kind in a system where it takes two years to be heard is meaningless. Without an expedited appeal process, there is no real remedy for a wrongful vendor hold. This is most important under 49.532(c) and (d).

DADS- The issue of an expedited appeal process is not within the scope of Chapter 49

Comment- (a) seems to create a disincentive to participate in wage enhancement. Why does participation in wage enhancement necessitate vendor hold? What is the time frame for due process to occur when vendor hold is recommended? A reasonable timeframe to review and reach final decision should be in rule.
DADS- Vendor hold in relation to failure to return cost reports due to participation in wage enhancement is a HHSC requirement (1 TAC Part 15, §355.112).

Comment- (b) references immediate protection and immediate protection plan. In previous sections these terms do not apply to HCS.
DADS- Immediate protection plan does not apply to HCS and TxHmL and therefore, vendor hold due to failure to submit or comply with an immediate protection plan is not applicable to HCS and TxHmL contractors

Comment- (c) What are the time frames for an administrative hearing to occur and final decision to be reached? There should be deadlines established in the rule.
DADS- 1 TAC Part 15, Chapter 357 related to the HHSC administrative hearing process is not within the scope of Chapter 49

49.533 Recoupment

Comment – (c) Recouping funds before a decision is made does not support due process. The provider is punished before ruling is final.
DADS- The recoupment process for HCS and TxHmL will not change. DADS continues to review this issue in relation to DADS other community services programs.

49.534 Termination of Contract by DADS

Comment – (a) DADS should also have to show cause for termination.
DADS- Consistent with 40 TAC §49.62, DADS may terminate the provider agency’s contract without stating cause by giving the provider agency written notice, as stated in the contract, of the impending termination. The Provider Agreement/Contract also includes a provision allowing the contract to be terminated by either party to this contract by giving 60 calendar days written notice to the other. For example, this clause was used to terminate contracts associated with a program no longer offered by DADS.

Comment – (a) (2) (B) (iv) DADS may terminate contracts for cause if they have had repeated actions/sanctions that considered cumulatively constitute noncompliance. What constitutes “repeated actions or sanctions”?
DADS- DADS may consider a provider’s entire performance history to include repeated contract actions or sanctions to determine cause for contract termination.

Comment - (a) (2) (J) (M) Good cause for terminating a contract includes a “proposed or imposed action or sanction against another contract of the contractor; or, a contract of a person for whom the contractor is a controlling person of the contractor or was a controlling person.” A contract should stand on its own merit. The language as proposed means that once any cancellation is proposed, all other contracts may be cancelled as well. There is no time when this will no longer apply, unless 49.701 is strengthened.
DADS- Poor performance or misconduct under a contract, license, registration or certification reflects on a contractor’s ability and competency to perform under another contract.

Comment – (c) The notification requirements in this section do not support the provision of due process for an action recommended by the state.
DADS- This notification is consistent with current practice. Information regarding a contractor’s performance, to include non-compliance issues and proposed sanctions, is critical to protect the health and safety of individuals and allows individuals to make an informed choice of contractors.
Comment: If a contract has been terminated due to the fact they were transitioned to managed care or a contract consolidation, why would the contract be up for review?

DADS: DADS tries to avoid creating identifiable periods where it can be determined in advance that provider performance or billing would not be subject to review. Currently, DADS has the option to review closed or expired contracts.

Comment: (d) This provision references 49.701 (e) & (f) which mandates a minimum of 12 months of sitting on the sidelines before you can apply to contract again. The issue for providers is the language: "...minimum of 12 months OR a period determined by DADS." This should be less subjective for DADS.

DADS: DADS requires discretion in the assessment of the length of the application denial period in order to review the factors related to the contract termination on a case-by-case basis.

49.701 Application Denial Period

Comment: Unspecified, discretionary and indefinite bar on contract, applicable solely to HCS, is unjustified.

DADS: The DADS Sanction Action Review Committee will determine the application denial period based on the severity and pervasiveness of non-compliance. This provision would apply to all providers with contracts for community services not just HCS providers.
TITLE 40, CHAPTER 49
CONTRACTING FOR COMMUNITY SERVICES

SUBCHAPTER A
APPLICATION AND DEFINITIONS
§ 49.101 Application.
§ 49.102 Definitions.

SUBCHAPTER B
CONTRACTOR ENROLLMENT
§49.201 Contractors Not Subject to Certain Portions of Subchapter B.
§49.202 Provisional Contract.
§49.203 Provisional Contract Application Process.
§49.204 Additional Provisional Contract Application Requirements
§49.205 License, Certification, Accreditation, and Other Requirements.
§49.206 Ineligibility Due to Criminal History.
§49.207 Provisional Contract Application Denial.
§49.208 Provisional Contract Application Approval.
§49.209 Standard Contract.
§49.210 Contractor Change of Ownership or Legal Entity.
§49.211 Religious Organization Applicants.

SUBCHAPTER C
REQUIREMENTS OF A CONTRACTOR
§49.301 Purpose.
§49.302 General Requirements.
§49.303 Confidentiality of Information.
§49.304 Background Checks.
§49.305 Records.
§49.306 Electronic Visit Verification System.
§49.307 Records Retention and Disposition.
§49.308 Subcontracts.
§49.309 Complaint Process.
§49.310 Abuse, Neglect, and Exploitation Allegations.
§49.311 Claims Payment.
§49.312 Personal Attendants.

SUBCHAPTER D
MONITORING AND INVESTIGATION OF A CONTRACTOR

DIVISION 1
APPLICABILITY OF SUBCHAPTER
§49.401 Contractors Not Subject to Subchapter D.
DIVISION 2
MONITORING AND INVESTIGATION
§49.411 Contract and Fiscal Monitoring.
§49.412 Financial Monitoring of FMSAs.
§49.413 Investigation.
§49.414 Financial Review.

SUBCHAPTER E
ENFORCEMENT BY DADS AND TERMINATION BY CONTRACTOR

DIVISION 1
APPLICABILITY OF SUBCHAPTER
§49.501 Contractors Not Subject to Certain Portions of Subchapter E.

DIVISION 2
IMMEDIATE PROTECTION
§49.511 Immediate Protection and Immediate Protection Plan.

DIVISION 3
ACTIONS
§49.521 Action by DADS.
§49.522 Corrective Action Plan.
§49.523 Referral Hold.

DIVISION 4
SANCTIONS
§49.531 Sanction by DADS.
§49.532 Vendor Hold.
§49.533 Recoupment.
§49.534 Termination of Contract by DADS.

DIVISION 5
APPEALS
§49.541 Contractor’s Right to Appeal.

DIVISION 6
TERMINATION BY CONTRACTOR
§49.551 Termination of Contract by Contractor.
SUBCHAPTER F
REVIEW BY DADS OF EXPIRING OR TERMINATED CONTRACT

§49.601 DADS Review and Provider Requirements Related to Expiring or Terminated Contract.

SUBCHAPTER G
APPLICATION DENIAL PERIOD
§49.701 Contractors Not Subject to Subchapter G.
§49.702 Application Denial Period.
SUBCHAPTER A
APPLICATION AND DEFINITIONS
§49.101 Application.
(a) Except as provided in subsections (b) - (d) of this section, all of the subchapters of this chapter apply to an applicant or contractor for one or more of the following programs and services:

(1) Medicaid waiver programs and services under Title XIX, §1915(c) of the Social Security Act as follows:
   (A) Community Living Assistance & Support Services (CLASS) Program:
       (i) CLASS-Case Management Agency (CMA);
       (ii) CLASS-Continued Family Services (CFS);
       (iii) CLASS-Direct Service Agency (DSA); and
       (iv) CLASS-Support Family Services (SFS);
   (B) Deaf Blind with Multiple Disabilities (DBMD) Program;
   (C) Home and Community Based Services (HCS) Program;
   (D) Medically Dependent Children (MDCP) Program:
       (i) MDCP-Adaptive Aids (AA);
       (ii) MDCP-Home and Community Support Services Agency (HCSSA);
       (iii) MDCP-Minor Home Modifications; and
       (iv) MDCP- Out of Home Respite (OHR):
           (I) MDCP-OHR-Camp;
           (II) MDCP-OHR-Special Care Facility;
           (III) MDCP-OHR-Child Care Facility;
           (IV) MDCP-OHR- Nursing Facility (NF);
           (V) MDCP-OHR-Hospital; and
           (VI) MDCP-OHR-Host Family;
   (E) Texas Home Living (TxHmL) Program; and
   (F) Transition Assistance Services (TAS);

(2) Medicaid state plan services under Title XIX, §1902(a)(10)(A) of the Social Security Act as follows:
   (A) Hospice;
(B) Primary Home Care (PHC)/Community Attendant Services (CAS); and
(C) Day Activity and Health Services (DAHS);
(3) services and programs under Title XX, Subtitle A of the Social Security Act as follows:
(A) Adult Foster Care (AFC);
(B) Emergency Response System;
(C) Home Delivered Meals (HDM);
(D) Residential Care (RC);
(E) DAHS;
(F) Family Care (FC);
(G) Consumer Managed Personal Attendant Services (CMPAS);
(H) Special Services to Persons with Disabilities (SSPD); and
(I) SSPD – 24-Hour Shared Attendant Care;
(4) Relocation Services;
(5) financial management services under the Consumer Directed Services option authorized under Texas Government Code, §531.051 (relating to Consumer Direction of Certain Services for Persons with Disabilities and Elderly Persons) as follows:
(A) Financial Management Services Agency (FMSA)--CLASS;
(B) FMSA-DBMD;
(C) FMSA-HCS;
(D) FMSA-MDCP;
(E) FMSA-PHC/CAS/FC; and
(F) FMSA-TxHmL.
(b) Subchapter D of this chapter (relating to Monitoring and Investigation of a Contractor) and Divisions 2 and 3 of Subchapter E (relating to Immediate Protection; and Actions) of this chapter do not apply to a contractor that has a contract for:
(1) the HCS Program; or
(2) the TxHmL Program.
(c) Subchapter D of this chapter and §49.523 of this chapter (relating to Referral Hold) do not apply to a contractor that has a contract for Hospice.
(d) Sections 49.202 – 49.205 and 49.207 – 49.211 of this chapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) and Subchapter G of this chapter (relating to Application Denial Period) do not apply to a contractor that has a contract for:
(1) CMPAS;
(2) SSPD;
(3) SSPD – 24-Hour Shared Attendant Care; or
(4) Relocation Services.
§ 49.102 Definitions.
The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise:

2. Applicant – A person seeking to obtain a contract.
3. Application denial period – A period of time during which DADS denies a contract application submitted to DADS.
4. 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).
5. Change of legal entity – An event that occurs when a contractor is required to obtain a new federal tax identification number.
6. Change of ownership – An event that occurs when:
   A. as a result of a transfer or sale, at least 50% of the ownership of a contractor is held by one or more persons who owned less than 5% of the contractor before the transfer or sale; and
   B. the contractor is not required to obtain a new federal tax identification number.
7. Choice list – A list of contractors from which an individual or LAR chooses to receive services unless DADS has imposed a referral hold on the contractor.
8. Clean claim – In accordance with Code of Federal Regulations, Title 42, §447.45(b), (relating to Timely Claims Payment) a claim for services submitted by a contractor that can be processed without obtaining additional information from the contractor or a party other than DADS, including a claim with errors originating in the Texas claims management system, but not including a claim from a contractor under investigation for fraud or abuse, or a claim under review for medical necessity.
9. Contract – A written agreement between DADS and another person that obligates the other person to provide a service described in §49.101 of this subchapter (relating to Application) in exchange for payment from DADS. The term includes standard and provisional contracts.
10. Contractor – The person other than DADS who is a party to a contract.
11. Contractual agreement – A written, legally binding agreement that is not a contract as defined in this section.
12. Controlling ownership interest – A direct ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests, of five percent or more in an applicant or contractor.
13. Controlling person – A person who:
   A. has a controlling ownership interest;
   B. is a managing employee;
   C. has been delegated the authority to obligate or act on behalf of an applicant or contractor;
   D. is an officer or director of a corporation that is an applicant or contractor;
   E. is a partner in a partnership that is an applicant or contractor;
   F. is a member or manager in a limited liability company that is an applicant or contractor;
(G) is a trustee or trust manager of a trust that is an applicant or contractor;
(H) is a spouse of a person who is an applicant or contractor; or
(I) because of a personal, familial, or other relationship with an applicant or contractor, is in a position of actual control or authority with respect to the applicant or contractor, regardless of the person’s title.

(14) Conviction – a determination of being found or proved guilty that:
(A) is any of the following:
   (i) a judgment of conviction that has been entered by a federal, state or local court, regardless of whether:
      (I) there is a post-trial motion or an appeal pending; or
      (II) the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;
   (ii) a finding of guilt made by a federal, state, or local court; or
   (iii) an acceptance of a plea of guilty or no contest by a federal, state, or local court; and
(B) does not include successful completion of a period of deferred adjudication community supervision and receipt of a dismissal and discharge in accordance with Texas Code of Criminal Procedure, Article 42.12, Section 5(c) (relating to Deferred Adjudication; Community Supervision).

(15) DADS – The Department of Aging and Disability Services.

(16) DADS debarment list – A list, made before the effective date of this chapter, of persons and entities prohibited by DADS from conducting business with DADS in any capacity for a specified period.

(17) Day – A calendar day, including weekends and holidays.

(18) DFPS – The Department of Family and Protective Services.

(19) Desk review – A review by DADS of a contractor's service delivery or business operation that takes place away from the contractor's administrative and service delivery sites, using records provided to DADS by the contractor. The scope of the review is at the discretion of DADS.

(20) Direct ownership interest – An interest in the ownership of an applicant or contractor as described below.
(A) Direct ownership interest is:
   (i) ownership of equity in the capital, stock, or profits of an applicant or contractor; or
   (ii) ownership in a mortgage, deed of trust, note, or other obligation secured by property of an applicant or contractor.
(B) The percentage of direct ownership interest of an applicant or contractor, based on ownership of a mortgage, deed of trust, note, or other obligation, is determined by multiplying the percentage of ownership in the obligation by the percentage of the applicant’s or contractor’s assets used to secure the obligation. For example, ownership of 10% of a note secured by 60% of a contractor’s or applicant's assets equals 6% direct ownership interest in the applicant or contractor (that is, 0.1 X 0.6 = 0.06).

(22) Governmental entity -- an agency or other entity of federal, state, or local government.

(23) HHSC – The Texas Health and Human Services Commission.

(24) Indirect ownership interest – An interest in the ownership of an applicant or contractor as described below.

(A) Indirect ownership interest is an ownership interest in a person that has a direct or indirect ownership interest in an applicant or contractor.

(B) The percentage of indirect ownership interest is determined by multiplying the percentage of ownership interest in the person that has a direct ownership interest in the applicant or contractor by the percentage of direct ownership that the person has in the applicant or contractor. For example:

(i) ownership of 10% of the stock of a corporation that owns 80% of the stock of an applicant or contractor equals 8% indirect ownership of the applicant or contractor (that is, 0.1 X 0.8 = 0.08); and

(ii) ownership of 50% of the stock of a corporation that owns 10% of the stock of a corporation that owns 80% of the stock of an applicant or contractor equals 4 percent indirect ownership of the applicant or contractor (that is, 0.5 X 0.1 X 0.8 = 0.04).

(25) Individual – A person who is enrolled in a program or service described in §49.101(a) of this subchapter.

(26) LAR – Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a particular matter. The term may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(27) LEIE – List of excluded individuals and entities. In this context, “individual” does not have the meaning in paragraph (25) of this section.

(28) Local authority -- An entity to which HHSC’s authority and responsibility, as described in Texas Health and Safety Code, §531.002(11), has been delegated.

(29) Managing employee – A person who exercises operational or managerial control over, or who conducts the day-to-day operation of, an applicant or contractor.


(31) Person – A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(32) Personal attendant – An employee or subcontractor of a contractor or an employee of a CDS employer who provides:

(A) PHC;

(B) FC;

(C) CAS;

(D) DAHS;
(E) RC;

(F) flexible family support in MDCP;

(G) respite services in MDCP;

(H) personal attendant services in the CMPAS Program;

(I) habilitation in the CLASS Program;

(J) residential habilitation in the DBMD Program;

(K) chore services in the DBMD Program;

(L) day habilitation in the DBMD Program;

(M) supported home living in the HCS Program; or

(N) community support in the TxHmL Program.

(33) Provisional contract – An initial 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.

(34) Records – Documentation of a contractor, including written, electronic, digital, audio, and video documentation.

(35) Recoup – To reduce payments that are due to a contractor under a contract to satisfy a debt the contractor owes to DADS but does not include making routine adjustments for prior overpayments to the contractor.

(36) Referral hold – An action in which DADS prohibits a contractor from, for a period of time determined by DADS, providing services to an individual not receiving services from the contractor at the time the referral hold was imposed.

(37) Standard contract – A contract that DADS enters into in accordance with §49.208 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(38) Subcontract – An agreement, other than a contract, between a contractor and another person that obligates the other person to provide all or part of the goods, services, work, or materials required of the contractor in a contract.

(39) Subcontractor – The person other than a contractor who is a party to a subcontract.

(40) Vendor hold – A temporary suspension of payments that are due to a contractor under a contract.

(41) Volunteer – A person who works for a contractor without compensation, other than reimbursement for actual expenses.
SUBCHAPTER B
CONTRACTOR ENROLLMENT

§49.201 Contractors Not Subject to Certain Portions of Subchapter B.

Sections 49.202 – 49.205 and 49.207 – 49.211 of this subchapter (relating to Provisional Contract; Provisional Contract Application Process; Additional Provisional Contract Application Requirements; License, Certification, Accreditation, and Other Requirements; Provisional Contract Application Denial; Provisional Contract Application Approval; Standard Contract; Contractor Change of Ownership or Legal Entity; and Religious Organization Applicants) do not apply to a contractor that has a contract for:

(1) CMPAS;
(2) SSPD;
(3) SSPD – 24-Hour Shared Attendant Care; or
(4) Relocation Services.

§49.202 Provisional Contract.

(a) To obtain a contract for a service or program for which a person does not have a contract, or a contract in a service or catchment area in which the person does not have a contract, the person must apply for a provisional contract in accordance with §49.203 of this subchapter (relating to Provisional Contract Application Process) and §49.204 of this subchapter (relating to Additional Provisional Contract Application Requirements).

(b) DADS may require that a contract be limited to a single facility or single service or catchment area.

§49.203 Provisional Contract Application Process.

(a) To apply for a provisional contract, an applicant must:

(1) if required by DADS as stated on the DADS website, complete DADS pre-application orientation (PAO) and training in accordance with the instructions on the DADS website before submitting an application packet to DADS as described in paragraph (4) of this subsection;

(2) if applying for a Title XX HDM contract, obtain written approval from DADS staff in the region in which the applicant is seeking to provide services regarding budgetary issues and health inspections before submitting an application packet to DADS as described in paragraph (4) of this subsection;

(3) if applying for an FMSA contract listed in §49.101(a)(5) of this chapter (related to Application), complete DADS training in accordance with the instructions on the DADS website and receive a passing score on DADS financial management services test before submitting an application packet to DADS as described in paragraph (4) of this subsection; and

(4) submit an application packet that contains:

(A) a DADS provisional contract application completed in accordance with the application instructions;
(B) other documents required by the application instructions including:

(i) if required to complete PAO or training, a certificate of completion of the PAO or training issued by DADS;

(ii) if the applicant is applying not because of a change of ownership as described in §49.210 of this subchapter (relating to Contractor Change of Ownership or Legal Entity), a copy of any document required to be a contractor as described in §49.205 this subchapter (relating to License, Certification, Accreditation, and Other Requirements);

(iii) if the applicant is applying because of a change of ownership or because of a change of legal entity as described in §49.210 of this subchapter, a copy of the application for change of ownership of any license required to be a contractor as described in §49.205 of this subchapter; and

(iv) if the applicant is not required to have a license issued by DADS under §49.205 of this subchapter, a written acknowledgement from the Texas Department of Public Safety that the applicant has requested, in accordance with the application instructions, a criminal history record be sent to DADS for all persons with a controlling interest in the applicant.

(b) An applicant must submit the completed application packet to DADS in a timely manner as described below.

(1) An application packet must be delivered to DADS, in accordance with the application instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 60 days after the applicant completed the PAO;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 60 days after the applicant completed the PAO; or

(C) hand delivery, no later than 60 days after the applicant completed the PAO.

(2) For purposes of paragraph (1)(B) and (C) of this subsection, if the 60th day is a day on which the DADS office receiving the application packet is closed, the period extends through the end of the next day the office is open.

(c) If the applicant timely submits an incomplete or incorrect application packet, including failing to submit a required document, DADS:

(1) requests, in writing, that the applicant submit a missing document; or

(2) returns a document to the applicant for correction or completion.

(d) DADS gives an applicant only one opportunity to submit a missing document or to complete or correct a document in accordance with this subsection. An applicant must submit a missing, completed, or corrected document to DADS in a timely manner as described below.

(1) A missing document must be delivered to DADS, in accordance with DADS instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 30 days after the date of DADS written request for a missing document;
(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 30 days after the date of DADS written request for a missing document; or

(C) hand delivery, fax, or e-mail no later than 30 days after DADS written request for a missing document.

(2) A properly completed or corrected document must be delivered to DADS, in accordance with DADS instructions, by:

(A) the United States Postal Service, with a postmark bearing a date no later than 30 days after the date of the letter from DADS returning the incomplete or incorrect document;

(B) a commercial carrier, with a receipt by the carrier showing it was given to the carrier no later than 30 days after the date of the letter from DADS returning the incomplete or incorrect document; or

(C) hand delivery, fax, or e-mail no later than 30 days after the date of the letter from DADS returning the incomplete or incorrect document.

(3) For purposes of paragraphs (1)(B) and (C) and (2)(B) and (C) of this subsection, if the 30th day is a day on which the DADS office receiving the missing, completed, or corrected document is closed, the period extends through the end of the next day the office is open.

§49.204 Additional Provisional Contract Application Requirements

(a) An applicant that is licensed as an assisted living facility, applies for a Title XX RC contract, and otherwise meets application requirements must meet the requirements in §46.13 of this title (relating to Housing Options), as determined by DADS based on an on-site visit.

(b) An applicant that applies for a Title XX AFC contract and otherwise meets application requirements must meet the requirements in Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care).

(c) An applicant that applies for an HCS or TxHmL contract and otherwise meets application requirements must complete provider applicant training and receive a score of at least 85% on the provider competency examination.

§49.205 License, Certification, Accreditation, and Other Requirements.

(a) To be a contractor, an applicant must have a license, certification, accreditation, or other document as follows:

(1) CLASS-CFS and CLASS-SFS require:

(A) a foster home verification certificate issued by a child-placing agency in accordance with Chapter 749 of this title (relating to Child-Placing Agencies);

(B) an independent foster home license issued by DFPS in accordance with Chapter 745 of this title (relating to Licensing); or

(C) a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:

   (i) the licensed home health services (LHHS) category; or
(ii) the licensed and certified home health services (L&CHHS) category;

(2) CLASS-DSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:
   (A) the LHHS category; or
   (B) the L&CHHS category;

(3) DBMD requires:
   (A) a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:
      (i) the LHHS category; or
      (ii) the L&CHHS category; and
   (B) for a contractor that provides residential services to four to six individuals, an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title;

(4) MDCP-AA requires, for a contractor that provides vehicle modification services, a copy of a current contractual agreement with the Department of Assistive and Rehabilitative Services to provide vehicle modification services;

(5) MDCP-HCSSA requires a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:
   (A) the personal assistance services (PAS) category;
   (B) the LHHS category; or
   (C) the L&CHHS category;

(6) MDCP-OHR-Camp requires written accreditation by the American Camping Association for providing summer camp services;

(7) MDCP-OHR-Special Care Facility requires a special care facility license issued by the Department of State Health Services (DSHS) in accordance with Chapter 125 of Title 25 (relating to Special Care Facilities);

(8) MDCP-OHR-Child Care Facility requires a child-care center license issued by DFPS in accordance with Chapter 745 of this title (relating to Licensing);

(9) MDCP-OHR-NF requires a nursing facility license issued by DADS in accordance with Chapter 19 of this title;

(10) MDCP-OHR-Hospital requires a hospital license issued by DSHS in accordance with Chapter 133 of Title 25 (relating to Hospital Licensing);

(11) MDCP-OHR-Host Family requires a foster family home license issued by DFPS in accordance with Chapter 745 of this title or verification as a child-placing agency foster family home issued by a child placing agency in accordance with Chapter 749 of this title;

(12) TAS requires:
   (A) written documentation from the Department of Assistive and Rehabilitative Services or the Rehabilitation Services Administration that the applicant is a center for independent living, as defined by 29 United States Code §796a;
   (B) a contract other than the TAS contract; or
   (C) written designation by DADS as an area agency on aging.

(13) Medicaid Hospice requires:
(A) a HCSSA license for hospice issued by DADS in accordance with Chapter 97 of this title; and
(B) a written notification from the Centers for Medicare and Medicaid Services that the applicant is certified to participate as a hospice agency in the Medicare Program;

(14) PHC/CAS, and FC require a HCSSA license issued by DADS in accordance with Chapter 97 of this title with:
(A) the LHHS category;
(B) the L&CHHS category; or
(C) the PAS category;

(15) DAHS requires an adult day care license issued by DADS in accordance with Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements);

(16) Title XX AFC requires for an AFC facility serving four to eight individuals as described in §48.8906(c) of this title, an assisted living license Type A or Type B issued by DADS in accordance with Chapter 92 of this title;

(17) Title XX ERS requires:
(A) a license as a personal emergency response system provider issued by DSHS in accordance with Chapter 140, Subchapter B of Title 25; or
(B) a license as an Alarm Systems Company issued by the Texas Private Security Board in accordance with the Texas Occupations Code, Chapter 1702; and

(18) Title XX RC requires an assisted living facility license Type A or Type B issued by DADS in accordance with Chapter 92 of this title.

(b) The license, certification, accreditation, or other document required by subsection (a) of this section must be valid in the service or catchment area:
(1) in which the applicant is seeking to provide services; or
(2) covered under the contractor’s contract.

§49.206 Ineligibility Due to Criminal History.

(a) DADS may determine an applicant or contractor is ineligible to contract with DADS if the applicant, contractor, or a controlling person has a conviction of any of the following misdemeanor or felony offenses, regardless of the date of conviction:
(1) an offense listed in §99.2(a) of this title (relating to Convictions Barring Licensure);
(2) an offense related to the person’s involvement in any program under Medicare, Medicaid, or Title XX, Subtitle A of the Social Security Act;
(3) an offense described in Texas Occupations Code, §102.001 or §102.006 (relating to Solicitation, Offense; and Failure to Disclose, Offense); or
(4) an offense of aiding, abetting, or conspiring to commit an offense described in paragraphs (1) – (3) of this subsection.

(b) DADS considers a conviction of an offense under the laws of another state, federal law, or the Uniform Code of Military Justice containing elements that are substantially similar to the elements of an offense listed in subsection (a) of this section as if it is a conviction of one of the listed offenses.
(c) If an applicant, contractor or a controlling person of an applicant or contractor has a conviction of an offense listed in subsection (a) or (b) of this section, DADS considers the following information when determining if the applicant or contractor is eligible to contract with DADS:

1. the nature and seriousness of the offense;
2. the relationship of the offense to the applicant’s, contractor’s, or controlling person’s duties under the contract;
3. the extent to which a contract might offer an opportunity for the applicant, contractor, or controlling person to engage in activity similar to the offense;
4. the age of the applicant, contractor, or controlling person at the time of the offense;
5. the amount of time since the offense;
6. whether the applicant, contractor, or controlling person has been convicted of other offenses; and
7. any other information provided by the applicant, contractor, or controlling person to explain the circumstances of the offense or to evidence the applicant’s, contractor’s, or controlling person’s conduct since the offense.

§49.207 Provisional Contract Application Denial.
(a) DADS denies a provisional contract application if:

1. HHSC has not approved the applicant or contractor for enrollment in accordance with 1 TAC Chapter 352 (relating to Medicaid and Children’s Health Insurance Program Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening);
2. HHSC has denied the enrollment application of the applicant or contractor, or has disenrolled the applicant or contractor, in accordance with 1 TAC Chapter 352 or Chapter 371, Subchapter E;
3. the applicant or a controlling person of the applicant is under an application denial period as described in §49.702 of this chapter (relating to Application Denial Period);
4. the applicant or a controlling person of the applicant is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;
5. the applicant or a controlling person of the applicant is listed on:
   (A) the DADS Employee Misconduct Registry as unemployable;
   (B) the Nurse Aide Registry as revoked or suspended;
   (C) the United States System for Award Management maintained by the General Services Administration;
   (D) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;
   (E) the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General;
   (F) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or
(G) the DADS debarment list;

(6) the applicant has not submitted a completed application packet as required by §49.203 of this subchapter (relating to Provisional Contract Application Process);

(7) the applicant does not have a license, certification, accreditation, or other document required by §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements);

(8) the applicant is applying because of a change of ownership or a change of legal entity and DADS has denied the application for change of ownership of any license required to be a contractor as described in §49.205 of this subchapter;

(9) the applicant or a controlling person of the applicant is ineligible to contract with DADS in accordance with §49.206 of this subchapter (relating to Ineligibility Due to Criminal History);

(10) the applicant or a controlling person of the applicant is prohibited from contracting with DADS in accordance with Chapter 79, Subchapter S of this title (relating to Contracting Ethics);

(11) the applicant does not meet a requirement described in §49.204 of this subchapter (relating to Additional Provisional Contract Application Requirements);

(12) a DSA in the CLASS Program is applying to be a CMA in the CLASS Program in the same catchment area in which the applicant is a DSA;

(13) a CMA in the CLASS Program is applying to be a DSA in the CLASS Program in the same catchment area in which the applicant is a CMA;

(14) the applicant is applying to be a DSA and CMA in the CLASS Program in the same catchment area;

(15) the applicant is required to register with the Texas Secretary of State and the applicant’s status with the Texas Secretary of State is not “in existence”; or

(16) the applicant is required to pay Texas franchise tax and the applicant’s right to transact business status with the Texas Comptroller of Public Accounts is not “active.”

(b) DADS may deny a provisional contract application for good cause, including that:

(1) the application packet contains incorrect information;

(2) the applicant or a controlling person of the applicant terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;

(3) the applicant or a controlling person of the applicant terminated a contract while an action or sanction by DADS, as described in §49.521 or §49.531 of this chapter (relating to Action by DADS; Sanction by DADS) was proposed or in effect;

(4) DADS proposed or imposed an action or sanction, as described in §49.521 or §49.531 of this chapter, against:

(A) a contract of the applicant, contractor or a controlling person of the applicant; or

(B) a contract of a person for whom the applicant or a controlling person of the applicant was a controlling person;
(5) DADS, another governmental entity, or a managed care organization contracting with a governmental entity, proposed or imposed a termination, suspension, recoupment, or penalty against:
   (A) a contractual agreement of the applicant or a controlling person of the applicant; or
   (B) a contract of a person for whom the applicant or a controlling person of the applicant was a controlling person;
(6) DADS or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, or registration held by the applicant or a controlling person of the applicant;
(7) the applicant or a controlling person of the applicant has an unresolved financial liability with DADS or another governmental entity; or
(8) the applicant or a controlling person of the applicant has been confirmed by DFPS as having committed abuse, neglect, or exploitation.
(c) If DADS denies a provisional contract application, DADS provides written notification to the applicant. If the applicant wants to be a contractor, the applicant must repeat the application process described in §49.203 and §49.204 of this subchapter.

§49.208 Provisional Contract Application Approval.
(a) DADS approves a provisional contract application if it is not denied in accordance with §49.207 of this subchapter (relating to Provisional Contract Application Denial).
(b) If DADS approves a provisional contract application, DADS:
   (1) provides written notification to the applicant;
   (2) enters into a provisional contract with the applicant; and
   (3) places the contractor’s name on the choice list for the program or service covered by the provisional contract.
(c) A provisional contract may be subject to conditions recommended by HHSC in accordance with 1 TAC Chapters 352 (relating to Medicaid and the Children’s Health Insurance Program Provider Enrollment) and Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).
(d) The effective date of a provisional contract is as follows:
   (1) if the applicant applied for the contract in accordance with §49.210(a)(2) of this subchapter (relating to Contractor Change of Ownership or Legal Entity), the effective date is the effective date of the change of ownership or legal entity of the contractor; or
   (2) for an applicant other than one described in paragraph (1) of this subsection, the effective date is determined by DADS.
(e) DADS and a contractor may agree to extend the term of a provisional contract. The extension of a provisional contract is not a determination by DADS that the contractor qualifies for a standard contract.
§49.209 Standard Contract.

(a) Except as provided in subsection (f) of this section, a contractor that has a provisional contract, other than a provisional contract for the HCS Program, TxHmL Program, Hospice, or financial management services, qualifies for a standard contract if, based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), DADS determines that the overall compliance score for the expiring provisional contract is 90% or greater.

(b) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for the HCS or TxHmL Program qualifies for a standard contract if:

1. at the end of the provisional contract term, the contractor is certified by DADS in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action) or §9.577 of this title (relating to Program Provider Compliance and Corrective Action); and

2. during the term of the provisional contract, DADS has not imposed a vendor hold on the contractor in accordance with §9.185 or §9.577 of this title.

(c) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for Hospice qualifies for a standard contract if:

1. at the end of the provisional contract term, the contractor has the license and written notification required by §45.205(a)(13) of this subchapter (relating to License, Certification, Accreditation, and Other Requirements).

(d) Except as provided in subsection (f) of this section, a contractor that has a provisional contract for financial management services qualifies for a standard contract if:

1. based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), DADS determines that the overall compliance score for the expiring provisional contract is 90% or greater; and

2. based on financial monitoring described in §49.412 of this chapter (relating to Financial Monitoring of FMSAs), DADS determines that the contractor’s overall compliance score for the expiring provisional contract is 90%.

(e) A standard contract issued by DADS in accordance with subsections (a)-(d) of this section is for the same program, service, or facility in the same service, catchment, or waiver contract area as the provisional contract.

(f) A contractor may not qualify for a standard contract for any reason for which DADS may deny a provisional contract application, as described in §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(g) A standard contract may be subject to conditions recommended by HHSC in accordance with 1 TAC Chapters 352 (relating to Medicaid and the Children’s Health Insurance Program Provider Enrollment) and Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(h) A standard contract is effective the day after the provisional contract expires.

(i) If DADS determines a contractor does not qualify for a standard contract, DADS notifies:

1. the contractor of the determination, in writing, and includes in the notification the application denial period set in accordance with §49.702(a) of this chapter (relating to Application Denial Period); and
(2) any controlling person, in writing, of the application denial period.

(j) If a contractor refuses a standard contract, DADS notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(b) of this chapter.

§49.210 Contractor Change of Ownership or Legal Entity.
(a) If a contractor intends to undergo a change of ownership or change of legal entity, the following action must be taken to obtain a new provisional contract with an effective date that is the same as the date of the change of ownership or change of legal entity:

(1) at least 60 days before the proposed date of the change of ownership or change of legal entity, the contractor must notify DADS of the planned change and the proposed date of the change;
(2) the contractor (for a change of ownership) or new legal entity (for a change of legal entity) must apply for a provisional contract in accordance with §49.203 of this subchapter (relating to Provisional Contract Application Process) at least 60 days before the proposed date of the change of ownership or change of legal entity;
(3) the contractor or new legal entity must receive approval from DADS of the provisional contract application before the date of the change of ownership or change of legal entity in accordance with §49.208 of this subchapter (relating to Provisional Contract Application Approval); and
(4) if required to have a license under §49.205 of this subchapter (relating to License, Certification, Accreditation, and Other Requirements) to be a contractor, the contractor or new legal entity must ensure that the date of the change of ownership or change of legal entity is the same as the date of the change of ownership or change of legal entity for the new license.

(b) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1)-(4) of this section are met, DADS:

(1) proposes to terminate the contractor’s contract in accordance with §49.534(a)(2)(C) of this chapter (relating to Termination of Contract by DADS);
(2) notifies individuals receiving services or LARs in accordance with §49.534(c)(1) and (2) of this chapter; and
(3) enters into a new provisional contract with the contractor or new legal entity with an effective date the same as the date of the change of ownership or change of legal entity.

(c) If a contractor undergoes a change of ownership or change of legal entity and the requirements in subsection (a)(1)-(4) of this section are not met, DADS:

(1) proposes to terminate the contractor’s contract in accordance with §49.534(a)(2)(C) of this chapter;
(2) notifies individuals receiving services or LARs in accordance with §49.534(c)(1) and (2) of this chapter; and
(3) does not enter into a new provisional contract with the contractor or new legal entity with an effective date the same as the date of the change.
(d) If a contractor or new legal entity does not receive approval in accordance with subsection (a)(3) of this section, DADS does not enter into a contract with the contractor or new legal entity.

§49.211 Religious Organization Applicants.
   (a) The provisions in this section are based on Code of Federal Regulations, Title 45, Part 87 (relating to Equal Treatment for Faith-Based Organizations).
   (b) An applicant that is a religious organization is eligible to become a contractor on the same basis as any other applicant.
   (c) DADS does not discriminate against an applicant based on the applicant’s religious character or affiliation, in approving or denying an applicant’s application.

SUBCHAPTER C
REQUIREMENTS OF A CONTRACTOR

§49.301 Purpose.
   This subchapter describes the requirements a contractor must meet to maintain a contract with DADS.

§49.302 General Requirements.
   (a) A contractor must have and maintain a license, certification, accreditation, or other document required of an applicant in §49.205 of this chapter (relating to License, Certification, Accreditation, and Other Requirements), except a contractor that has had a contract for the DBMD Program continuously since September 1, 1999 and does not provide home health or personal assistance services is not required to have a HCSSA license issued in accordance with Chapter 97 of this title for a contract in effect on September 1, 2014.
   (b) A contractor must complete any training required by DADS as stated on the DADS website before DADS places the contractor on a choice list.
   (c) A contractor must ensure that an employee, subcontractor, or volunteer can effectively communicate with an individual or LAR concerning service planning and the provision of services, which may require the contractor to provide an interpreter for the individual.
   (d) Except as provided in DADS rules governing services provided under the contract, a contractor must not allow an individual to perform services under the contract or perform other work that benefits the contractor.
   (e) A contractor must comply with the terms of its contract, which requires compliance with applicable federal and state laws, rules, and regulations, including this chapter, rules governing services provided under the contract, and applicable reimbursement rules in Chapter 355 of Title 1 (relating to Reimbursement Rates).
   (f) A contractor:
      (1) must accept the reimbursement rate for a service in effect at the time the service is provided as payment in full for performance under the contract; and
must not make an additional charge to the individual, any member of the individual’s family, or any other source for supplementation for performance under the contract, unless specifically allowed by federal or state law, rule, or regulation.

(g) A contractor must:
   (1) subscribe to receive DADS e-mail updates, using the link provided at the DADS website; and
   (2) be informed of the content of the e-mail updates.

(h) A contractor must notify DADS of a change of ownership or change in legal entity in accordance with §49.210(a)(1) of this chapter (relating to Contractor Change of Ownership or Legal Entity).

(i) If there is a change to a contractor’s physical, mailing, or e-mail address, as stated on the contractor’s contract application packet or on a prior written notice of change to the information, the contractor must notify DADS of the change and provide the new physical, mailing, or e-mail address:
   (1) at least 30 days before the address changes; or
   (2) if a natural or unforeseen disaster prevents compliance with paragraph (m) of this subsection, within three days after the change.

(j) If there is a change to the name of the person authorized to negotiate and execute a contract on behalf of a contractor, as stated on the DADS form, “Governing Authority Resolution,” the contractor must notify DADS of the change within 30 days after the change by submitting a new, fully executed DADS form, “Governing Authority Resolution.”

(k) If there is a change to the information regarding the applicant or a controlling person of the applicant being confirmed by DFPS as having committed abuse, neglect, or exploitation, as stated on the contractor’s contract application packet or on a prior written notice of change to the information, the contractor must notify DADS of the change at least 3 business days after the contractor or controlling person becomes aware of the change.

(l) If a controlling person of a contractor is convicted of any crime listed in §49.206 of this chapter (relating to Ineligibility Due to Criminal History), the contractor must notify DADS within three business days after the contractor or controlling person becomes aware of the conviction.

(m) If a contractor files for bankruptcy, the contractor must notify DADS within 14 days after filing.

(n) If a contractor or controlling person is excluded in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act, the contractor must notify DADS of the exclusion after the contractor or controlling person becomes aware of the exclusion.

(o) If a contractor or a controlling person of a contractor becomes aware the contractor or controlling person is listed on any of the following, the contractor must notify DADS within three business days after the contractor becomes aware of the listing:
   (1) DADS Employee Misconduct Registry as unemployable;
   (2) DADS Nurse Aide Registry as revoked or suspended;
   (3) the United States System for Award Management maintained by the General Services Administration;
(4) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;
(5) the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General; or
(6) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts.

(p) If there is a change to any of the information on the contractor’s contract application packet or on a prior written notice of change to the information, other than the information referenced in subsections (i) - (o) of this subsection, a contractor must notify DADS of the change and provide the new information within 14 days after the information changes.

(q) For a notice that a contractor is required to send to DADS in accordance with this chapter, the contractor must ensure that the notice is:

(1) in writing;
(2) signed by the person authorized to negotiate and execute a contract on behalf of a contractor, as stated on the DADS form, “Governing Authority Resolution”; and
(3) sent to DADS Community Service Contracts Section.

(r) A contractor must allow DADS and any authorized federal or state agency access to:

(1) individuals;
(2) employees, subcontractors, or volunteers of the contractor; and
(3) and premises controlled by the contractor.

(s) A contractor must not pay for any item or service furnished, ordered, or prescribed by an individual listed on either LEIE described in §49.304(h)(1) of this subchapter (relating to Background Checks).

§49.303 Confidentiality of Information.
   (a) A contractor must comply with applicable federal and state laws regarding confidentiality of information regarding an individual.
   (b) A contractor may use confidential information, including the names and contact information of an individual receiving services from another contractor, only for the authorized purpose for which the confidential information was legally obtained.

§49.304 Background Checks.
   (a) A contractor that is required to have a license, as described in §49.302(a) of this subchapter (relating to General Requirements), must comply with licensure requirements regarding criminal history record checks, the employee misconduct registry and the nurse aide registry for employees, subcontractors, and volunteers.
   (b) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:
      (1) before offering employment to an unlicensed applicant for employment, contracting with an unlicensed potential subcontractor, or accepting an unlicensed volunteer applicant for a volunteer position, obtain from the Department of Public Safety the criminal history record of the applicant or potential subcontractor;
(2) review the criminal history record of the unlicensed applicant or potential subcontractor;

(3) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position, for the time periods set forth in Texas Health and Safety Code, §250.006 (relating to Convictions Barring Employment), if the applicant or potential subcontractor has been convicted of an offense listed in Texas Health and Safety Code, §250.006;

(4) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position if the applicant or potential subcontractor has been convicted of an offense that the contractor determines is a contraindication to the applicant’s employment, contracting, or volunteering; and

(5) for a contractor that has a contract for the HCS or TxHmL Program, review the criminal history record of an unlicensed employee, contractor, and volunteer annually.

c) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:

(1) before offering employment to an unlicensed applicant for employment, contracting with an unlicensed potential subcontractor, or accepting an unlicensed volunteer applicant for a volunteer position, search DADS Employee Misconduct Registry and the Nurse Aide Registry for the name of the applicant or potential subcontractor; and

(2) not employ an unlicensed applicant for employment, contract with a unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position if the applicant or potential subcontractor is listed in:

(A) the DADS Employee Misconduct Registry as unemployable; or

(B) the Nurse Aide Registry as revoked or suspended.

d) A contractor must:

(1) before contracting with a potential subcontractor that is required to register with the Secretary of State of Texas, obtain a copy of the potential subcontractor’s certificate of status with the Secretary of State of Texas; and

(2) not contract with the potential subcontractor if the potential subcontractor does not have a certificate of status stating that the potential subcontractor is “in existence.”

e) A contractor must:

(1) before contracting with a potential subcontractor or offering employment to an applicant for employment, search the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts; and

(2) not contract with the potential subcontractor or employ the applicant if the potential subcontractor or applicant is listed on the Debarred Vendor List and the period of debarment has not expired.

(f) A contractor must:

(1) before contracting with a potential subcontractor that is required to pay Texas franchise tax, search the Franchise Tax Account Status maintained by the Texas Comptroller of Public Accounts; and
(2) not contract with the potential subcontractor if the potential subcontractor’s right to transact business status with the Texas Comptroller of Public Accounts is not “active.”

(g) A contractor must develop and implement a policy that requires an employee, volunteer, or subcontractor to report to the contractor if any of the information obtained in accordance with subsection (b)(1), (c)(1), (d)(1) or (e)(1) of this section has changed. If a contractor becomes aware that information the contractor obtained in accordance with subsection (b)(1), (c)(1), (d)(1), or (e)(1) of this section was erroneous or has subsequently changed so the contractor would not be allowed to employ the person, contract with the person, or accept the person for volunteer status in accordance with subsection (b)(3) or (4), (c)(2), (d)(2), or (e)(2) of this section, the contractor must terminate the person’s employment, volunteer status, or contract.

(h) A contractor must:

(1) review the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General, and the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General:

(A) before hiring an applicant for employment or contracting with a potential subcontractor; and

(B) at least monthly, for each employee and subcontractor;

(2) not employ an applicant for employment or contract with a potential subcontractor to perform any duties that may be paid for directly or indirectly through a contract if the applicant or potential subcontractor is listed on either LEIE described in paragraph (1) of this subsection;

(3) prohibit an employee or subcontractor listed on either LEIE described in paragraph (1) of this subsection from performing any duties that may be paid for directly or indirectly through a contract; and

(4) if an employee or subcontractor is listed on either LEIE described in paragraph (1) of this subsection, immediately report to the Texas Health and Human Services Commission, Office of Inspector General, the identify of an excluded employee or subcontractor and amount paid by the contractor to the employee or subcontractor for services provided under a contract in accordance with the self-reporting protocol of the Texas Health and Human Services Commission, Office of Inspector General.

§49.305 Records.

(a) A contractor must develop and maintain records in accordance with its contract, this subchapter, and DADS rules governing services provided under the contract.

(b) A contractor must:

(1) use forms required by DADS or, if a specific form is not required by DADS, develop records that include elements required by DADS; and

(2) ensure that:

(A) a beginning time for a service is not documented until after the service being documented has been initiated; and

(B) an ending time or a time period for a service is not documented until after the service has been provided.

(c) A contractor’s records must support a claim for services submitted under
its contract.
(d) A contractor’s records must be maintained in accordance with generally accepted accounting principles, referred to as GAAP, established by the Financial Accounting Standards Board.
(e) A contractor must develop and maintain records that:
   (1) document the extent of services provided;
   (2) document compliance with this chapter; and
   (3) include records required by rules governing services provided under its contract.
(f) A contractor must develop and maintain records for an employee, subcontractor, or volunteer that include:
   (1) a description of the employee, subcontractor, or volunteer’s responsibilities;
   (2) the employee’s completed application;
   (3) records that the employee, subcontractor, or volunteer is qualified for the position for which the person is employed, contracting, or volunteering, in accordance with rules governing services provided under the contract;
   (4) records that the contractor conducted the reviews described in §49.304 of this subchapter (relating to Background Checks);
   (5) records that the employee, subcontractor, or volunteer received any training required by rules governing services provided under the contract; and
   (6) records of any disciplinary action.
(g) For purposes of subsection (f)(4) of this section, records maintained to show compliance with §49.304(h) of this subchapter must include:
   (1) documentation of the first and last name, date of birth, and social security or employer identification number of an employee or subcontractor required to be the subject of a review described in §49.304(h)(1) of this subchapter;
   (2) the printed first and last name and signature of the person conducting the review;
   (3) documentation of the date the review was conducted;
   (4) documentation of whether the employee and subcontractor who was the subject of the review was listed on either of the LEIEs described in §49.304(h)(1) of this subchapter; and
   (5) a copy of the report made in accordance with §49.304(h)(4) of this subchapter;
(h) A contractor must develop and implement written procedures to:
   (1) prevent falsification or unauthorized access, disclosure, modification, or destruction of records and data;
   (2) ensure the availability, integrity, authenticity, completeness, and confidentiality of records and data; and
   (3) ensure that appropriate audit trails and sufficiently complete transaction histories are maintained to identify the person or position that makes an entry, modification, or correction to records or data that supports a claim for services under its contract.
(i) If a contractor uses paper records related to service delivery, the contractor
must:

(1) ensure records are completed in ink;
(2) except as provided in DADS rules governing services provided under the contract, ensure records are signed and dated by the person making the entry;
(3) ensure a stamped signature is not used; and
(4) ensure that if a correction to records is necessary, the correction is made by:

(A) marking a single line through the error;
(B) adding the date the correction was made and the initials of the person who made the correction; and
(C) not using correction fluid or tape or otherwise obliterating the original entry.

(j) If a contractor uses electronic records, the contractor must:

(1) develop and implement written procedures, which must include maintaining current virus protection software, to prevent the loss or corruption of data due to malicious code;
(2) develop and implement written procedures governing the use of electronic signatures that:

(A) require electronic signature authentication;
(B) describe the method of authentication used, such as password, personal identification number, digital signature, or other unique identifier, by document type;
(C) identify the person or position who is authorized to sign electronically by document type; and
(D) describe security measures used to prevent unauthorized use of electronic signatures; and
(3) use an electronic record system that documents:

(A) any change in content that was made to the electronic record;
(B) the date the change was made; and
(C) the name of the person who made the change.

(k) A contractor must:

(1) ensure records are available for review in accordance with the contract; and
(2) as requested by DADS or any federal or state agency authorized to have access to records:

(A) provide, at no charge, a copy of any records to DADS and the federal or state agency; or
(B) allow DADS and the federal or state agency to make a copy of any records, at no charge.

§49.306 Electronic Visit Verification System.

A contractor using an electronic visit verification system must comply with Chapter 68 of this title (concerning Electronic Visit Verification (EVV) System).
§49.307 Record Retention and Disposition.
   (a) Unless a contractor is required to retain records for a longer period by the contract or rules governing services provided under the contract, a contractor must retain records in the form in which they were created until the latest of the following occurs:
      (1) six years elapse from the date the records were created;
      (2) all litigation, claims, and audit findings involving the records are resolved; or
      (3) the individual about whom the records relate becomes 21 years of age.
   (b) If a contractor destroys records containing confidential information, the records must be destroyed in a manner that makes the confidential information unusable, as follows:
      (1) for paper, film, and other hard copy records, shredding, pulping, or burning; and
      (2) for electronic records, disintegration, degaussing, digital shredding, or using specialized software to copy over the data.

§49.308 Subcontracts.
   If a contractor uses a subcontractor, the contractor must:
      (1) have a written agreement with the subcontractor that requires the subcontractor and any of its subcontractors to comply with applicable provisions of the contract, this subchapter, and DADS rules governing services provided under the contract, as if the subcontractor and its subcontractors were the contractor;
      (2) monitor the subcontractor to ensure that the subcontractor is in compliance with the written agreement referenced in paragraph (1) of this subsection; and
      (3) maintain records of its monitoring of the subcontractor.

§49.309 Complaint Process.
   (a) A contractor must develop and implement written procedures for investigating and resolving a complaint about services provided under a contract, other than an allegation of abuse, neglect, or exploitation, that:
      (1) allow a complaint to be submitted to the contractor:
         (A) either orally or in writing; and
         (B) anonymously; and
      (2) require the contractor to:
         (A) request the name, mailing address, and telephone number of a complainant;
         (B) investigate and resolve a complaint within 30 days after the complaint is received by the contractor;
         (C) document the name of the person who conducted the investigation;
         (D) document the name of persons contacted during an investigation;
         (E) obtain written statements from persons contacted during an investigation or document conversations with those persons; and
         (F) provide the following information to the complainant
within 30 days after a complaint is received by the contractor:

(i) the findings of the investigation;
(ii) the contractor’s resolution of the complaint;
(iii) the telephone number of the DADS Consumer Rights and Services hotline (1-800-458-9858); and
(iv) an explanation that the DADS hotline may be used if the complainant is not satisfied with the contractor’s resolution of the complaint.

(b) The contractor must give the information described in subsection (a)(2)(F) of this section as follows:

(1) in person, if the complainant is the individual receiving services; or
(2) if the complainant is not the individual receiving services:
    (A) by mail, if the contractor knows the complainant’s mailing address; or
    (B) by telephone, if the contractor does not know the complainant’s mailing address, but knows the complainant’s telephone number.

(c) A contractor must maintain a written log that contains the following information:

(1) the date the contractor received a complaint;
(2) a description of the complaint;
(3) the findings of the investigation;
(4) the contractor’s resolution of the complaint and the date of resolution; and
(5) the date the contractor provided information to the complainant in accordance with subsection (b) of this section.

(d) A contractor must provide the following information to an individual and LAR:

(1) a description of the contractor’s complaint process;
(2) the telephone number of the DADS Consumer Rights and Services hotline (1-800-458-9858); and
(3) an explanation that the DADS hotline may be used to file a complaint with DADS.

(e) A contractor must provide the information described in subsection (d) of this section orally and in writing, as follows:

(1) before or at the time the individual begins receiving program services from the contractor; and
(2) at least once every 12 months thereafter.

§49.310 Abuse, Neglect, and Exploitation Allegations.

A contractor must develop and implement written procedures for reporting and investigating an allegation of abuse, neglect or exploitation regarding an individual that:

(1) comply with applicable laws and rules governing services provided under the contract;
(2) require the contractor to report an allegation of abuse, neglect, or
exploitation to the appropriate investigative authority;

(3) ensure that the contractor’s employees, subcontractors, and volunteers:

(A) are knowledgeable of:

(i) acts that constitute abuse, neglect, or exploitation of an individual;

(ii) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts to the appropriate investigative authority;

(iii) how to report allegations of abuse, neglect, or exploitation to the appropriate investigative authority; and

(iv) methods to prevent the occurrence of abuse, neglect, and exploitation; and

(B) report suspected abuse, neglect, or exploitation as instructed by the contractor;

(4) ensure that individuals and LARs are informed, orally and in writing, of how to report allegations of abuse, neglect, or exploitation:

(A) before or at the time the individual begins receiving program services from the contractor; and

(B) at least once every 12 months thereafter;

(5) if the contractor suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, require the contractor to:

(A) take necessary actions to secure the safety of the alleged victim; and

(B) notify, as soon as possible but no later than 24 hours after the contractor reports or is notified of an allegation, the alleged victim, or the alleged victim's LAR of the allegation report and the actions that have been or will be taken;

(6) if abuse, neglect, or exploitation is confirmed by the investigative authority, require the contractor to take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against the employee, subcontractor, or volunteer confirmed to have committed abuse, neglect, and exploitation;

(7) at least annually, require the contractor to review incidents of confirmed abuse, neglect, or exploitation and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery; and

(8) prohibit the contractor from discharging or otherwise retaliating against:

(A) an employee, subcontractor, volunteer, individual, or other person because the employee, subcontractor, volunteer, individual, or other person files a complaint, presents a grievance, or otherwise provides good faith information relating to possible abuse, neglect, or exploitation of an individual; or

(B) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to possible abuse, neglect, or exploitation of the individual.
§49.311 Claims Payment

(a) DADS pays a contractor for a claim for services that meets the requirements described in subsection (b) of this section.

(b) A contractor must ensure a claim for services is:

(1) for a service that has been provided by a contractor;
(2) a clean claim;
(3) complete and accurate;
(4) submitted within 12 months after one of the following, whichever is later:
   (A) the last day of the month in which the service was provided, the adaptive aid or medical supply delivered, or the minor home modification completed; or
   (B) the date the individual’s eligibility for the service was determined;
(5) for a type and amount of service that is authorized by DADS;
(6) for a service provided to an individual who is eligible for the service;
(7) except as provided in DADS rules governing services provided under the contract, for a service provided to an individual whose authorization for services has not been suspended or terminated by DADS;
(8) for a service provided during a time period authorized by DADS;
(9) for a service provided during the term of, and in accordance with, the contract, this subchapter, and DADS rules governing services provided under the contract;
(10) supported by records required by the contract and DADS rules governing services provided under the contract;
(11) for a service provided by a qualified service provider in accordance with DADS rules governing services provided under the contract;
(12) for a service ordered by a qualified practitioner, if required by the contract or DADS rules governing services provided under the contract;
(13) submitted in accordance with procedures required by DADS rules governing services provided under the contract and by the claims administrator; and
(14) not for a service that a source other than DADS would have paid for if the contractor had submitted a proper, complete, and timely request for payment to the other source.

(c) As used in subsections (b)(11) and (12) of this section, the terms “qualified service provider” and “qualified practitioner” do not include a person whose health-related license has been suspended or revoked or who has been excluded from participation in a program administered under Title V, XVIII, XIX, or XX of the Social Security Act.

(d) DADS denies a claim for services that does not meet the requirements in subsection (b) of this section and DADS rules governing services provided under the contract. If DADS denies a claim for services, a contractor may request and receive an administrative hearing.
(e) If a contractor or DADS determines that the contractor received payment for a claim for services that does not meet the requirements in subsection (b) of this section and DADS rules governing services provided under the contract:

(1) the contractor may submit a corrected claim for services to allow DADS to adjust amounts paid to a contractor, even if it is after the 12-month period described in subsection (b)(4) of this section; or

(2) DADS recoups funds paid to the contractor in accordance with §49.533 of this chapter (relating to Recoupment).

(f) If a claim for services is denied by DADS, the contractor that submitted the claim may submit a corrected claim within the 12-month period described in subsection (b)(4) of this section.

(g) DADS may adjust amounts paid to a contractor after the 12-month period described in subsection (b)(4) of this section.

§49.312 Personal Attendants.

(a) A contractor, other than a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), must:

(1) pay a personal attendant a base wage of at least $7.86 per hour; and

(2) notify a person who becomes employed or contracts as a personal attendant within three days after the person accepts the offer of employment or enters into the contract that the contractor is required to pay the wage described in paragraph (1) of this subsection.

(b) A contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter must ensure that an employer or designated representative pays a personal attendant in accordance with a budget that meets the requirements of §41.505(a)(1) of this title (relating to Payroll Budgeting).

SUBCHAPTER D
MONITORING AND INVESTIGATION OF A CONTRACTOR

DIVISION 1
APPLICABILITY OF SUBCHAPTER

§49.401 Contractors Not Subject to Subchapter D.

This subchapter does not apply to a contractor that has a contract for the HCS Program, TxHmL Program, or Hospice.
DIVISION 2
MONITORING AND INVESTIGATION

§ 49.411 Contract and Fiscal Monitoring.
(a) DADS conducts contract and fiscal monitoring:
   (1) to determine if:
      (A) a contractor is in compliance with its contract, which requires compliance with applicable federal and state laws, rules, and regulations, provider manuals and handbooks, billing guidelines, and communications promulgated by DADS, including information letters;
      (B) a contractor is in compliance with a corrective action plan as described in §49.522 of this chapter (relating to Corrective Action Plan) or an immediate protection plan as described in §49.511 of this chapter (relating to Immediate Protection and Immediate Protection Plan);
   (2) for purposes described in paragraph (1)(A) of this subsection, at least once during the term of a provisional contract and periodically after the effective date of a standard contract, on a schedule determined by DADS;
   (3) by evaluating standards in accordance with a program-specific DADS contract and fiscal compliance monitoring tool; and
   (4) at a location identified by DADS, which may include a location where the contractor conducts business or provides contracted services.
(b) To conduct contract and fiscal monitoring, DADS:
   (1) notifies a contractor in writing of the date the monitoring will begin;
   (2) conducts an on-site entrance conference with the contractor;
   (3) performs other activities, which may include:
      (A) reviewing the contractor’s records;
      (B) reviewing the contractor’s policies and procedures;
      (C) reviewing consumer satisfaction surveys;
      (D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor’s employee; and
      (E) observing an individual receiving services;
   (4) conducts an on-site exit conference with the contractor, at which DADS reports the compliance score for each standard reviewed and an overall compliance score; and
   (5) notifies the contractor, in writing, of the results of the monitoring.
(c) A contractor must provide records requested by DADS to DADS immediately after the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, DADS conducts contract monitoring with any records provided.
(d) If DADS determines that a contractor’s compliance score for a standard is less than 90%, DADS requires the contractor to submit an acceptable corrective action plan to DADS in accordance with §49.522 of this chapter.
(e) If DADS determines that a contractor’s overall compliance score is less than 90%, DADS considers the contractor out of substantial compliance with the contract and may:

1. determine that a contractor does not qualify for a standard contract;

2. impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);

3. conduct additional monitoring in accordance with this section; or

4. take a combination of the actions described in paragraphs (1)-(3) of this subsection.

(f) If, during a contract and fiscal monitoring, DADS determines that the contractor is not protecting an individual’s health and safety, DADS may require the contractor to:

1. immediately protect the individual’s health and safety; and

2. submit an immediate protection plan in accordance with §49.511 of this chapter.

§49.412 Financial Monitoring of FMSAs

(a) In addition to the contract and fiscal monitoring described in §49.411 of this division (relating to Contract and Fiscal Monitoring), DADS conducts financial monitoring of contractors that have an FMSA contract listed in §49.101(a)(5) of this chapter (related to Application):

1. to determine if:

   (A) an FMSA contractor is in compliance with its contract, which requires compliance with applicable federal and state laws, rules, and regulations, provider manuals and handbooks, billing guidelines, and communications promulgated by DADS, including information letters;

   (B) an FMSA contractor is in compliance with a corrective action plan as described in §49.522 of this chapter (relating to Corrective Action Plan);

2. for purposes described in paragraph (1)(A) of this subsection, at least once during the term of a provisional contract and periodically after the effective date of a standard contract, on a schedule determined by DADS;

3. by evaluating standards in accordance with a program-specific DADS financial compliance monitoring tool; and

4. at a location identified by DADS, which may include a location where the FMSA contractor conducts business or provides contracted services.

(b) To conduct financial monitoring, DADS:

1. notifies an FMSA contractor in writing of the date the monitoring will begin;

2. conducts an on-site entrance conference with the FMSA contractor;
(3) performs other activities, which may include:

(A) reviewing the FMSA contractor’s records;
(B) reviewing the FMSA contractor’s policies and procedures;
(C) reviewing consumer satisfaction surveys; and
(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor’s employee;

(4) conducts an on-site exit conference with the FMSA contractor, at which DADS reports the compliance score for each standard reviewed and an overall compliance score; and

(5) notifies the FMSA contractor, in writing, of the results of the monitoring.

(c) An FMSA contractor must provide records requested by DADS to DADS immediately after the entrance conference described in subsection (b)(2) of this section. If a contractor does not provide records in accordance with this subsection, DADS conducts financial monitoring with any records provided.

(d) If DADS determines that an FMSA contractor’s overall compliance score is less than 90%, DADS considers the contractor out of substantial compliance with the contract and may:

(1) determine that a contractor does not qualify for a standard contract;

(2) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);

(3) conduct additional monitoring in accordance with this section; or

(4) take a combination of the actions described in paragraphs (1)-(3) of this subsection.

§49.413 Investigation.

(a) If DADS receives an oral or written allegation that indicates a contractor may have violated a contract or program requirement, DADS conducts an unannounced investigation of the contractor. The investigation is conducted on-site or by a desk review.

(b) To conduct an investigation, DADS:

(1) conducts an entrance conference with the contractor if the investigation is conducted on-site;

(2) performs other activities, which may include:

(A) reviewing the contractor’s records;
(B) reviewing the contractor’s policies and procedures;
(C) reviewing consumer satisfaction surveys;
(D) interviewing a person with knowledge relevant to the contract, including an individual receiving services or the contractor’s employee; and

(E) observing an individual receiving services.

(c) A contractor must provide records requested by DADS as follows:

(1) for an investigation conducted on-site, the contractor must provide the records to DADS within one hour after the entrance conference described in subsection (b)(1) of this section; and
(2) for an investigation conducted by a desk review, the contractor must provide the records to DADS within one business day after DADS request.

(d) DADS notifies the contractor, in writing, of the results of the investigation.

(e) If, based on an investigation, DADS determines that the contractor is out of compliance with the contract, DADS may:

(1) impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor);

(2) conduct additional monitoring in accordance with §49.411 of this division (relating to Contract and Fiscal Monitoring) or §49.412 of this division (relating to Financial Monitoring of FMSAs); or

(3) take a combination of the actions described in paragraphs (1) and (2) of this subsection.

(f) If, during an investigation, DADS determines that the contractor is not protecting an individual’s health and safety, DADS may require the contractor to:

(1) immediately protect the individual’s health and safety; and

(2) submit an immediate protection plan in accordance with §49.511 of this chapter (relating to Immediate Protection and Immediate Protection Plan).

§49.414 Financial Review.

(a) DADS may conduct a financial review, including an audit, of a contractor at any time. The review is conducted on-site or by a desk review.

(b) To conduct a financial review, DADS:

(1) conducts an entrance conference with the contractor; and

(2) performs other activities, which may include:

(A) reviewing the contractor’s records;

(B) reviewing the contractor’s policies and procedures; or

(C) interviewing a person with knowledge relevant to the contract.

(c) If, based on a financial review, DADS determines that the contractor is out of compliance with the contract, DADS may impose an action or sanction in accordance with Subchapter E of this chapter (relating to Enforcement by DADS and Termination by Contractor).
SUBCHAPTER E
ENFORCEMENT BY DADS AND TERMINATION BY CONTRACTOR

DIVISION 1
APPLICABILITY OF SUBCHAPTER

§ 49.501 Contractors Not Subject to Certain Portions of Subchapter E.

(a) Divisions 2 and 3 of this subchapter (relating to Immediate Protection; and Actions) do not apply to a contractor that has a contract for the HCS Program or the TxHmL Program.

(b) Section 49.523 of this subchapter (relating to Referral Hold) does not apply to a contractor that has a contract for Hospice.

DIVISION 2
IMMEDIATE PROTECTION

§49.511 Immediate Protection and Immediate Protection Plan.

(a) DADS requires a contractor to immediately protect an individual’s health and safety if DADS determines that:

(1) the contractor is not complying with its contract; and

(2) the contractor’s failure to comply with its contract jeopardizes the health and safety of the individual.

(b) If DADS requires immediate protection in accordance with subsection (a) of this section, DADS notifies the contractor of the requirement orally or in writing.

(c) If DADS notifies the contractor in accordance with subsection (b) of this section:

(1) the contractor must immediately protect an individual’s health and safety; and

(2) DADS also notifies the contractor in writing that the contractor must submit and implement a written immediate protection plan.

(d) If DADS notifies the contractor in accordance with subsection (c)(2) of this section, the contractor must submit a written immediate protection plan to DADS within three business days after the date of the notice from DADS. The plan must:

(1) describe the non-compliance that jeopardized the health and safety of an individual;

(2) describe the immediate protection taken by the contractor;

(3) describe the activities the contractor will perform to prevent the non-compliance described in paragraph (1) of this subsection from reoccurring;

(4) include a schedule for performing the activities described in paragraph (3) of this subsection; and

(5) include:

(A) the title of the person who ensured completion of the immediate protection; and
(B) the title of the person responsible for completion of the activities described in paragraph (3) of this subsection.

DIVISION 3
ACTIONS

§49.521 Action by DADS.
(a) DADS may take one or more of the following actions against a contractor in accordance with §49.522 and §49.523 of this division (relating to Corrective Action Plan; Referral Hold):
   (1) require the development of and compliance with a corrective action plan; and
   (2) impose a referral hold.
(b) DADS may consider the following factors in determining the action to be taken:
   (1) the extent and seriousness of the contractor’s non-compliance with the contract that is the subject of the action;
   (2) the contractor’s history of previous non-compliance with:
       (A) the contract that is the subject of the action;
       (B) a contract other than the one that is the subject of the action;
       (C) another contractual agreement with DADS; and
       (D) a contractual agreement with a governmental entity;
   (3) previous action taken or sanctions imposed against the contractor by DADS; and
   (4) the contractor’s written response to DADS finding that the contractor is not in compliance with the contract.

§49.522 Corrective Action Plan.
(a) DADS requires a contractor to develop and comply with a corrective action plan if the contractor’s compliance score for a standard is less than 90% as described in §49.411(d) of this chapter (relating to Contract and Fiscal Monitoring).

(b) DADS may require a contractor to develop and comply with a corrective action plan if DADS determines the contractor has not complied with its contract including because of a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring), §49.412(d) of this chapter (relating to Financial Monitoring of FMSAs), or §49.413(e) of this chapter (relating to Investigation). DADS may require that the contractor pay or ensure payment to a personal attendant who was not paid the wage required by §49.312 of this chapter (relating to Personal Attendants) the difference between the amount required and the amount paid to the personal attendant.
(c) If DADS requires a contractor to develop and comply with a corrective action plan in accordance with subsection (a) or (b) of this section, DADS notifies the contractor of the requirement in writing.

(d) If DADS notifies the contractor in accordance with subsection (c) of this section, the contractor must submit a written corrective action plan to DADS within 10 business days after the date of the notice from DADS. The corrective action plan must:

1. describe the non-compliance that DADS identified from the monitoring or investigation resulting in the corrective action plan;
2. describe the activities the contractor will perform to correct or prevent the non-compliance described in paragraph (1) of this subsection from reoccurring;
3. include the title of the person responsible for completion of the activities described in paragraph (2) of this subsection; and
4. include a schedule for accomplishing the activities described in paragraph (2) of this subsection.

§49.523 Referral Hold.

(a) DADS may place a contractor on a referral hold if:

1. DADS has proposed to terminate the contract;
2. the contractor has not complied with the contract, including because of a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring), §49.412(d) of this chapter (relating to Financial Monitoring of FMSAs), or §49.413(e) of this chapter (relating to Investigation);
3. the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);
4. the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this division (relating to Corrective Action Plan); or
5. the contractor’s application packet:
   (A) contained incorrect information; or
   (B) contains information that has become incorrect and the contractor has not notified DADS in accordance with §49.302(i)-(q) of this chapter (relating to General Requirements).

(b) If DADS places a contractor on a referral hold in accordance with subsection (a) of this section, DADS notifies the contractor of the referral hold in writing.

(c) A contractor may request that DADS conduct an informal review of a referral hold. The request must be in writing and received by DADS within 20 days after the date of the notice of the referral hold from DADS. The contractor must include in the written request:

1. the reasons the contractor believes the referral hold was improper;
2. documentation to support the reasons; and
3. a copy of the notice from DADS of the referral hold.
(d) DADS releases a referral hold:
   (1) imposed in accordance with subsection (a)(1) of this section if:
       (A) DADS withdraws the proposed contract termination;
       (B) the contractor appeals the proposed contract termination
       and the final decision from the administrative hearing is favorable to the contractor; or
       (C) the contractor requests an informal review in accordance
       with subsection (c) of this section and, as a result of the review, DADS determines that
       the referral hold was improper;
   (2) imposed in accordance with subsection (a)(2)-(5) of this section if:
       (A) a period of time determined by DADS has elapsed; or
       (B) the contractor requests an informal review in accordance
       with subsection (c) of this section and, as a result of the review, DADS determines that
       the referral hold was improper.

DIVISION 4
SANCTIONS

§49.531 Sanction by DADS.
(a) DADS may take one or more of the following sanctions against a
contractor in accordance with §§49.532 – 49.534 of this division (relating to Vendor
Hold; Recoupment; and Termination of Contract by DADS):
   (1) impose a vendor hold;
   (2) recoup funds; and
   (3) terminate the contract.
(b) DADS may consider factors in determining the sanction to be taken
including the following:
   (1) the extent and seriousness of the contractor’s non-compliance with
the contract that is the subject of the sanction;
   (2) the contractor’s history of previous non-compliance with:
       (A) the contract that is the subject of the sanction;
       (B) a contract other than the one that is the subject of the
sanction;
       (C) another contractual agreement with DADS; and
       (D) a contractual agreement with a governmental entity;
       (3) previous action taken or sanctions imposed against the contractor
by DADS; and
       (4) the contractor’s written response to DADS finding that the
contractor is not in compliance with the contract.

§49.532 Vendor Hold.
(a) DADS imposes a vendor hold on a contractor if:
(1) DADS has proposed to terminate the contract and the contractor participates in attendant compensation rate enhancement as described in §355.112 of Title 1 (relating to Attendant Compensation Rate Enhancement); or

(2) DADS is notified by HHSC Office of Inspector General (OIG) that a vendor hold must be imposed in accordance with 42 CFR §455.23(a) due to a credible allegation of fraud for which an investigation is pending under the Medicaid Program.

(b) DADS may impose a vendor hold on a contractor:

(1) if DADS has proposed to terminate the contract and the contractor does not participate in attendant compensation rate enhancement as described in §355.112 of Title 1;

(2) if the contractor does not qualify for a standard contract at the expiration of a provisional contract;

(3) if the contractor qualifies for a standard contract at the expiration of a provisional contract but refuses a standard contract;

(4) if the contractor terminates the contract;

(5) if the contractor has not complied with the contract, including because of a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring), §49.412(d) of this chapter (relating to Financial Monitoring of FMSAs), or §49.413(e) of this chapter (relating to Investigation);

(6) if the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(7) if the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan);

(8) if the contractor’s application packet described in §49.203(a)(4) of this chapter (relating to Provisional Contract Application Process):

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified DADS in accordance with §49.302(i)-(q) of this chapter (relating to General Requirements)

(9) for a contractor that has a contract for the HCS Program, in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action); or

(10) for a contractor that has a contract for the TxHmL Program, in accordance with §9.577 of this title (relating to Program Provider Compliance and Corrective Action).

(c) If DADS imposes a vendor hold on a contractor in accordance with subsection (a) or (b) of this section, DADS notifies the contractor of the vendor hold in writing. DADS may impose a vendor hold pending an administrative hearing appealing the vendor hold.

(d) DADS releases a vendor hold less any amounts being recouped by DADS:

(1) imposed in accordance with subsection (a)(1) and (b)(1)-(4) of this section if:

(A) the contract has been terminated or expires and any amounts owed to individuals and LARs have been paid by the contractor;
(B) DADS withdraws the proposed contract termination; or
(C) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor;

(2) imposed in accordance with subsection (a)(2) of this section, if the HHSC OIG notifies DADS that it must resume payment under the contract;
(3) imposed in accordance with subsection (b)(5)-(8) of this section, if DADS determines the contractor has resolved the reason for the vendor hold; or
(4) imposed in accordance with subsection (b)(9)-(10) of this section if DADS determines it may be released as described in §9.185 or §9.577 of this title.

§49.533 Recoupment.

(a) A contractor is liable to DADS for amounts paid to the contractor for a service if the contractor has not complied with contract requirements regarding a service claim or payment for a service, including §49.311 of this chapter (relating to Claims Payment) and other DADS rules governing services provided under the contract.

(b) If a contractor is liable to DADS in accordance with subsection (a) of this section, DADS may propose to recoup funds for the amount due to DADS.

(c) If DADS proposes to recoup funds paid to a contractor in accordance with subsection (b) of this section, DADS notifies the contractor of the proposed recoupment in writing before the effective date of recoupment.

(d) DADS recoups funds paid to contractor on the date given in DADS notice of proposed recoupment if:

(1) the contractor does not appeal the proposed recoupment; or
(2) the contractor appeals the proposed recoupment and the final decision from the administrative hearing is favorable to DADS.

§49.534 Termination of Contract by DADS.

(a) DADS may propose to terminate a contract:

(1) without cause by giving at least 60 days written notice to the contractor as provided by the contract; or
(2) for good cause as determined by DADS, including if:

(A) the contractor has not provided any services under the contract during a period of 12 consecutive months;

(B) the contractor has not complied with the terms of the contract, including:

   (i) the contractor’s overall compliance score from a contract monitoring is less than 90%, as described in §49.411(e) of this chapter (relating to Contract Monitoring);

   (ii) the contractor has not submitted or complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan);

   (iii) the contractor has not submitted or complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);
(iv) DADS has imposed repeated actions or sanctions against the contractor that, when considered cumulatively, constitute significant non-compliance with the contract; or
(v) for a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (related to Application,) the contractor’s overall compliance score from a financial monitoring is less than 90%, as described in §49.412(d) of this chapter (relating to Financial Monitoring for FMSAs);

(C) the contractor undergoes a change of ownership or change of legal entity as described in §49.210(b)(1) or (c)(1) of this chapter (Contractor Change of Ownership or Legal Entity);
(D) the contractor’s application packet described in §49.203(a)(4) of this chapter (relating to Provisional Contract Application Process):
   (i) contained incorrect information: or
   (ii) contains information that has become incorrect and the contractor has not notified DADS in accordance with §49.302(i)-(q) of this chapter (relating to General Requirements);
(E) the contractor or a controlling person of the contractor is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;
(F) the contractor or a controlling person of the contractor is ineligible to contract with DADS in accordance with §49.206 of this subchapter (relating to Ineligibility Due to Criminal History);
(G) the contractor or a controlling person of the contractor is prohibited from contracting with DADS in accordance with Chapter 79, Subchapter S of this title (relating to Contracting Ethics);
(H) the contractor is required to register with the Texas Secretary of State and contractor’s status with the Texas Secretary of State is not “in existence”;
(I) the contractor is required to pay Texas franchise tax and the contractor’s right to transact business status with the Texas Comptroller of Public Accounts is not “active”;
(J) DADS or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, registration held by the contractor;
(K) the contractor no longer has a license, certification, accreditation or other document required by §49.302(a) of this chapter (relating to General Requirements);
(L) the contractor or a controlling person of the contractor is listed on:
   (i) the DADS Employee Misconduct Registry as unemployable;
   (ii) the Nurse Aide Registry as revoked or suspended;
   (iii) the United States System for Award Management maintained by the General Services Administration;
(iv) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;  
(v) the LEIE maintained by the Texas Health and Human Services Commission, Office of Inspector General;  
(vi) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or  
(vii) DADS debarment list;  
(M) the contractor or a controlling person of the contractor has been confirmed by DFPS as having committed abuse, neglect, or exploitation;  
(N) DADS proposed or imposed an action or sanction against:  
(i) another contract of the contractor or a controlling person of the contractor; or  
(ii) a contract of a person for whom the contractor or a controlling person of the contractor was a controlling person;  
(O) a governmental entity other than DADS or a managed care organization contracting with a governmental entity proposed or imposed an action or sanction against:  
(i) a contractual agreement of the contractor or a controlling person of the contractor; or  
(ii) a contractual agreement of a person for whom the contractor or a controlling person of the contractor was a controlling person;  
(P) the contractor or a controlling person of the contractor terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;  
(Q) the contractor or a controlling person of the contractor terminated another contract while an action or sanction was proposed or in effect;  
(R) the contractor or a controlling person of the contractor has an unresolved financial liability with DADS or another governmental entity;  
(S) DADS denies or terminates certification of a contractor that has a contract for the HCS or TxHmL Program, in accordance with §9.185 of this title (relating to Program Provider Compliance and Corrective Action) or §9.577 of this title (relating to Program Provider Compliance and Corrective Action);  
(T) DADS does not certify a contractor that has a contract for the HCS or TxHmL Program for a new certification period as described in §9.185(c) and §9.577(c) of this title; or  
(U) for a contractor that has a contract for Title XIX DAHS, Title XX AFC, RC or DAHS, the contractor does not have a legal right to occupy the facility under the contract.  
(b) If DADS proposes to terminate a contract:  
(1) in accordance with subsection (a)(1) of this section, DADS notifies the contractor of the proposed termination in writing at least 60 days before the effective date of termination; or  
(2) in accordance with subsection (a)(2) of this section, DADS notifies the contractor of the proposed termination in writing, which may be less than 60 days before the effective date of termination.
(c) If DADS proposes to terminate a contract, DADS:
   (1) notifies individuals receiving services from the contractor or LARs that DADS has proposed to terminate the contract and has placed the contractor’s payments on a vendor hold; and
   (2) notifies individuals receiving services or LARs that an individual or LAR may choose to receive services from a contractor listed on the choice list, subject to program-specific requirements.

(d) DADS terminates a contract on the date given in DADS notice of proposed termination if:
   (1) the contractor does not appeal the proposed contract termination; or
   (2) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to DADS.

(e) DADS does not pay a contractor for services provided after the effective date of contract termination.

(f) If a contractor undergoes a change of ownership or change of legal entity and complies with §49.210(a) of this chapter, the date given in DADS notice of proposed termination, as described in subsection (d) of this section, is the day before the date of the change of ownership or change of legal entity. If a contractor undergoes a change of ownership or change of legal entity and does not comply with §49.210(a) of this chapter, the date given in DADS notice of proposed termination as described in subsection (d) of this section, is the date of the change of ownership or change of legal entity.

(g) If DADS terminates a contract, DADS notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(c) or (d) of this chapter (relating to Application Denial Period).

DIVISION 5
APPEALS

§49.541 Contractor’s Right to Appeal.
   (a) A contractor may appeal a sanction, as described in §49.531(a) of this subchapter (relating to Sanction by DADS), proposed or imposed by DADS.
   (b) To appeal a sanction proposed or imposed by DADS, a contractor must request an administrative hearing in accordance with §357.484 of Title 1 (relating to Request for a Hearing).

DIVISION 6
TERMINATION BY CONTRACTOR

§49.551 Termination of Contract by Contractor.
   (a) If a contractor intends to terminate a contract, the contractor must notify DADS of the intended termination. The notification must:
(1) include:
   (A) the contract number,
   (B) the type of program or service; and
   (C) the effective date of the termination; and
(2) be received by DADS at least 60 days before the effective date of the termination.

(b) If a contractor notifies DADS that it intends to terminate a contract, the contractor must:
   (1) cooperate fully with DADS, the local authority if applicable, and other contractors to transfer individuals receiving services from the contractor; and
   (2) submit documentation or take other action as directed by DADS.

(c) If DADS receives notification that a contractor intends to terminate a contract, DADS:
   (1) notifies individuals receiving services from the contractor or LARs that:
      (A) the contractor is terminating the contract and that DADS has placed the contractor’s payments on a vendor hold; and
      (B) that the individuals or LARs may choose to receive services from a contractor listed on the choice list, subject to program-specific requirements; and
   (2) removes the contractor’s name from the appropriate choice list.

(d) If a contractor terminates a contract, DADS notifies the contractor and any controlling person, in writing, of the application denial period set in accordance with §49.702(e) or (f) of this chapter.

SUBCHAPTER F
REVIEW BY DADS OF EXPIRING OR TERMINATED CONTRACT

§49.601 DADS Review and Provider Requirements Related to Expiring or Terminated Contract.

(a) DADS may review a contractor’s records to evaluate billing standards in accordance with program-specific requirements if:
   (1) DADS proposes to terminate a contract;
   (2) a contractor does not qualify for a standard contract at the expiration of a provisional contract;
   (3) a contractor qualifies for a standard contract at the expiration of a provisional contract but refuses a standard contract; or
   (4) a contractor terminates the contract.
(b) If one of the events described in subsection (a)(1)-(4) of this section occurs, a contractor must provide the following information to DADS:
   (1) the location of records related to the contract expiring or being terminated; and
   (2) the name, address, phone number, and e-mail address of a person DADS may contact to arrange access to records.
(c) DADS may recoup funds in accordance with §49.533 of this chapter (relating to Recoupment) based on the results of a review described in subsection (a) of this section.

SUBCHAPTER G
APPLICATION DENIAL PERIOD

§ 49.701 Contractors Not Subject to Subchapter G.

This subchapter does not apply to a contractor that has a contract for:
   (1) CMPAS;
   (2) SSPD;
   (3) SSPD – 24-Hour Shared Attendant Care; or
   (4) Relocation Services.

§49. 702 Application Denial Period.
   (a) If a contractor does not qualify for a standard contract at the expiration of a provisional contract, as described in §49.209 of this chapter (relating to Standard Contract ), DADS sets an application denial period for the contractor or controlling person that applies:
      (1) to all programs and services; and
      (2) for 24 months after the date of expiration.
   (b) If a contractor qualifies for a standard contract at the expiration of a provisional contract, as described in §49.209 of this chapter, but the contractor refuses a standard contract at that time, DADS sets an application denial period for the contractor or controlling person that applies:
      (1) to the same program or service as the provisional contract; and
      (2) for 12 months after the date of expiration.
   (c) If DADS terminates a provisional or standard contract for the contractor’s failure to provide services for 12 consecutive months, as required by §49.534(a)(2)(A) of this chapter (relating to Termination of Contract by DADS), DADS sets an application denial period for the contractor or controlling person that applies:
(1) to the same program or service as the provisional or standard contract; and
(2) for 12 months after the date of termination.

(d) If DADS terminates a provisional or standard contract for a reason other than the one described in subsection (c) of this section, DADS sets an application denial period for the contractor or controlling person that applies:
   (1) to all programs and services; and
   (2) for a period of time determined by DADS, but no less than 12 months after the date of termination.

(e) If a contractor terminates a provisional or standard contract in accordance with the contract, including §49.551 of this chapter (relating to Termination of Contract by Contractor), DADS sets an application denial period for the contractor or controlling person that applies:
   (1) to the same service or program as the provisional or standard contract; and
   (2) for a period of time determined by DADS, but no less than 12 months after the date of termination.

(f) If a contractor terminates a provisional or standard contract not in accordance with the contract, including §49.551 of this chapter, DADS sets an application denial period for the contractor or controlling person that applies:
   (1) to all programs and services; and
   (2) for a period of time determined by DADS, but no less than 12 months after the date of termination.

(g) If a contractor submits a contract application to DADS after the expiration of an application denial period described in subsections (a) through (f) of this section, DADS may deny the contract application for a reason described in §49.207 of this chapter (relating to Provisional Contract Application Denial).