



COMMISSIONER
Jon Weizenbaum

February 19, 2016

To: Deaf Blind with Multiple Disabilities (DBMD) Providers
Financial Management Services Agencies (FMSAs)

Subject: Information Letter No. 16-07
Legally Responsible Person Restrictions, Service Planning Team Members and
Cardiopulmonary Resuscitation Training

Effective November 15, 2015, Deaf Blind with Multiple Disabilities (DBMD) rules, Title 40 Texas Administrative Code (TAC) Chapter 42, were amended to clarify:

- restrictions on a legally authorized representative (LAR) or a legally responsible person (LRP) providing employment assistance or supported employment services;
- the composition of the service planning team (SPT); and
- the service providers required to receive cardiopulmonary resuscitation (CPR), first aid, and choking prevention training.

A Financial Management Services Agency (FMSA) must inform a Consumer Directed Services employer about the information provided in this information letter (IL).

Supported Employment and Employment Assistance

The DBMD waiver application states that an LRP is prohibited from providing any services in the DBMD program, including employment assistance and supported employment services.

The Centers for Medicare and Medicaid Services defines an LRP as:

- a parent of a child under the age of 18 (natural or adopted); or
- the spouse (regardless of age) of an individual receiving waiver services.

An LRP does not include the parent or legal guardian of an adult (18 years of age or older) receiving services. An LRP also does not include the guardian of a minor.

In Title 40 of the Texas Administrative Code (TAC) §42.103, DBMD defines an LAR as a person authorized by law to act on behalf of an individual regarding a matter described in 40 TAC Chapter 42 and may include:

- a parent, guardian or managing conservator of a minor; or
- the guardian of an adult.

- The DBMD rules were amended to be consistent with the DBMD waiver application. The amended rule in 40 TAC §42.402(g) states employment assistance and supported employment services cannot be provided by someone who is the parent of a minor or spouse of the individual (i.e., an LRP).

Also 40 TAC §42.402(k)(1) states that a service provider must not be:

- The parent of an individual under 18 years of age; or
- The spouse of an individual.

In 40 TAC §42.402(k)(3), a relative or guardian of an adult is allowed to provide employment assistance and supported employment. However, due to the restriction in §42.402(k)(1) the relative must not be the spouse of the individual.

Service Planning Team

The amended definition of “service planning team” at 40 TAC §42.103(81) clarifies that the DBMD Program case manager, in addition to convening and facilitating the SPT, is a member of the team. The program director or a registered nurse (RN) designated by the program provider also is a member of the team. The amendment clarifies that if the DBMD Program case manager and the program director are the same person, the program provider must designate an RN to serve on the SPT, in addition to the DBMD Program case manager. This means that if the DBMD Program case manager is a program director or an RN or both, the program provider must designate a different program director or RN to serve on the SPT with the DBMD Program case manager.

The SPT process ensures there is no conflict of interest between a provider who monitors and assists in development of the Individual Plan of Care (IPC) and also provides other direct services. The intent of the SPT definition is to include a team comprised of a case manager and a program director or an RN to collaborate with the individual receiving services to develop an IPC.

Service Provider Training

The amended training rule at 40 TAC §42.403(b) specifically identifies who must receive CPR, first aid, and choking prevention training rather than prior rule language that required all persons to be trained, except for persons specifically identified in the rule. A program provider will be cited during a contract-monitoring visit only if a person identified in the amended rule has not received the training.

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If you have any questions about this IL, please contact the DBMD mailbox at:
dbmd@dads.state.tx.us

Sincerely,

[signature on file]

S. Michelle Martin
Director
Center for Policy and Innovation

[signature on file]

Elisa J. Garza
Assistant Commissioner
Access and Intake