

16R13 draft amendments to §§49.531 and 4.534 and new §49.535 to address administrative penalties in HCS and TxHmL

§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 in accordance with §49.532 of this division (relating to Vendor Hold);

(2) recoup funds in accordance with §49.533 of this division (relating to Recoupment); ~~and~~

(3) terminate the contract in accordance with §49.534 of this division (relating to Termination of Contract by DADS); and

(4) in addition to the sanctions described in paragraphs (1) - (3) of this subsection, for a contractor that has a contract for the HCS Program or TxHmL Program, impose an administrative penalty in accordance with §49.535 of this division (relating to Administrative Penalties in the HCS and TxHmL Programs).

(b) For a sanction described in subsection (a)(1) and (3) of this section, 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.

§49.534. Termination of Contract by DADS.

(a) DADS may propose to terminate a contract:

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(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 percent, as described in §49.411(e) of this chapter (relating to Contract and Fiscal 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 (relating to Application), the contractor's overall compliance score from a financial monitoring is less than 90 percent, 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 (relating to 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;

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(F) the contractor or a controlling person of the contractor is ineligible to contract with DADS in accordance with §49.206 of this chapter (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;

(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 HHSC, 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

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(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); or

~~[(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(e) and §9.577(e) of this title; or]~~

(T) ~~[(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 notifies individuals receiving services from the contractor and the individual's LARs that:

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(1) DADS has proposed to terminate the contract and has placed the contractor's payments on a vendor hold; and

(2) 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).

§49.535 Administrative Penalties in the HCS and TxHmL Programs.

DADS may impose an administrative penalty:

(1) for a contractor that has a contract for the HCS Program, in accordance with §9.181 of this title (relating to Administrative Penalties); and

(2) for a contractor that has a contract for the TxHmL Program, in accordance with §9.581 of this title (relating to Administrative Penalties).