§9.151. Purpose.

The purpose of this subchapter is to describe:

(1) the HCS Program eligibility criteria for applicants and individuals;

(2) the process for enrollment of applicants in the HCS Program;

(3) requirements for reimbursement of a program provider;

(4) the responsibilities of a program provider;

(5) the process for certifying and sanctioning a program provider in the HCS Program; and

(6) the responsibilities of a LIDDA [an MRA] in providing service coordination.

§9.152. Application.

This subchapter applies to:

(1) [all] LIDDAs; [MRAs and]

(2) HCS Program [Program] providers;

(3) persons applying for HCS Program services and their LARs; and

(4) persons receiving HCS Program services and their LARs.


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

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

(A) interactions with the applicant or individual;

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

(2) Applicant--A Texas resident seeking services in the HCS Program.

(3) Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

   (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

   (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

   (C) is not addressed in a written behavior support plan; and

   (D) does not occur during a medical or dental procedure.

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

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

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

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

(8) [7] Cognitive rehabilitation therapy--A service that:

   (A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

   (B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(9) [8] Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(10) [9] Condition of a serious nature--Except as provided in paragraph (23) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving
services from the program provider.

(11) Contract--A provisional contract or a standard contract.

(12) CRCG--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at www.hhsc.state.tx.us.


(14) DADS--The Department of Aging and Disability Services.

(15) DARS--The Department of Assistive and Rehabilitative Services.

(16) DFPS--The Department of Family and Protective Services.

(17) Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(18) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(19) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(20) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(21) FMSA--Financial management services agency. As defined in §41.103 of this
title, an entity that provides financial management services to an individual participating in the CDS option.

(22) Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(23) GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(24) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(25) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(26) HHSC--The Texas Health and Human Services Commission.

(27) ICAP--Inventory for Client and Agency Planning.

(28) ICF/IID--Intermediate care facility for individuals with an intellectual disability
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or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC [Texas Health and Safety Code], Chapter 252; or

(B) certified by DADS.

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

(30) [(28)] ICF/MR--ICF/IID.

(31) [(29)] ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS for LOC determination and LON assignment.

(32) [(30)] Implementation Plan--A written document developed by the program provider that, for each HCS Program service on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of HCS Program units of HCS Program services needed to complete each objective;

(E) the frequency and duration of HCS Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(33) [(31)] Individual--A person enrolled in the HCS Program.

(34) [(32)] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(35) [(33)] Intellectual disability--Significant sub-average general intellectual functioning
existing concurrently with deficits in adaptive behavior and manifested during the developmental period[, referred to in some sections as mental retardation].

(36) [34] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service to be provided to the individual during an IPC year; and

(ii) the services and supports to be provided to the individual through non-HCS Program resources, including natural supports, medical services, and educational services; and

(B) is authorized by DADS.

(37) [35] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(38) [36] IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(39) [37] Large ICF/IID--A non-state operated ICF/IID with a Medicaid certified capacity of 14 or more.

(40) [38] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(41) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC, §533A.035.

(42) [39] LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(43) [40] Local authority--An entity to which the Health and Human Services Commission's authority and responsibility, as described in Texas Health and Safety Code, §531.002(11), has been delegated.

(44) [41] LON--Level of need. An assignment given by DADS to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(45) [42] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.
(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(46) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

(47) Military family member--An applicant who is the spouse or child (regardless of age) of:

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

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

(i) who was killed in action; or

(ii) who died while in service.

[(45) MRA--Local authority.]

[(46) MR/RC Assessment--An ID/RC Assessment.]

(48) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

[(48) Non-routine circumstances--An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a vacation, an illness, an injury, a hospitalization, or a funeral.]

[(49) Nursing facility--A facility licensed in accordance with THSC [Texas Health and Safety Code], Chapter 242.

(50) PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS [HCS] Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's
health and safety.

(51) Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(52) [§51] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(53) [§52] Permanency Planning Review Screen--A screen in the DADS data system, completed by a LIDDA [local authority], that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(54) [§50] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

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

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

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

(D) accommodates the applicant's or individual's style of interaction and preferences.

(55) Post-move monitoring visit--As described in §17.503 of this title, relating to Transition Planning for a Designated Resident, a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(56) Pre-enrollment minor home modifications--Minor home modifications, as described in the HCS Program Billing Guidelines, completed before an applicant is discharged from a nursing
facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(57) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed or certified professional as required by the HCS Program Billing Guidelines to determine the need for pre-enrollment minor home modifications.

(58) Pre-move site review--As described in §17.503 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

[(53) Primary correspondent--A person who may request that a local authority place an applicant's name on the HCS Program interest list.]

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

(60) [(55)] Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(61) [(56)] Related condition--A severe and chronic disability that:

(A) is attributed to:

   (i) cerebral palsy or epilepsy; or

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

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

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

   (i) self-care;
(ii) understanding and use of language;
(iii) learning;
(iv) mobility;
(v) self-direction; and
(vi) capacity for independent living.

(62) [§57] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the HCS Program Billing Guidelines.

(63) [§58] Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(64) [§59] Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

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

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(65) [§60] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(66) [§61] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter [or §9.168(h) of this subchapter (relating to CDS Option)] to add a new HCS Program service or change the amount of an existing service.

(67) [§62] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(68) [§63] Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(69) [§64] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).
(70) Service coordinator--An employee of a LIDDA [local authority] who provides service coordination to an individual.

(71) Service planning team--One of the following: [A]

   (A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

   ______ (i) an applicant or individual and [ ] LAR; [ ]

   ______ (ii) service coordinator; [ ] and

   ______ (iii) other persons chosen by the applicant or individual or LAR, [on behalf of the applicant or individual ( ) for example, a staff member of the program provider [representative], a family member, a friend, or a teacher; [ ).]

   (B) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the HCS Program, a planning team consisting of:

   ______ (i) the applicant and LAR;

   ______ (ii) service coordinator;

   ______ (iii) a staff member of the program provider;

   ______ (iv) providers of specialized services;

   ______ (v) a nursing facility staff person who is familiar with the applicant's needs;

   ______ (vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

   ______ (vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

   (C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

   ______ (i) the individual and LAR;

   ______ (ii) service coordinator;

   ______ (iii) a staff member of the program provider;

   ______ (iv) other persons chosen by the individual or LAR, for example, a family member, a
friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(72) Service provider--A person, who may be a staff member, who directly provides an HCS Program service to an individual.

(73) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(74) SSI--Supplemental Security Income.

(75) Staff member--An employee or contractor of an HCS Program provider.

(76) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(77) State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(78) State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(79) Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(80) TANF--Temporary Assistance for Needy Families.

(81) TAS--Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home:
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(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(82) [759] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(83) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(84) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the HCS Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(85) [769] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.
§9.154. Description of the HCS Program.

(a) The HCS Program is a Medicaid waiver program approved by CMS pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to the ICF/IID Program. The HCS Program is operated by DADS under the authority of HHSC.

(b) Enrollment in the HCS Program is limited to the number of individuals in specified target groups and to the geographic areas approved by CMS.

(c) HCS Program services listed in this subsection are selected for inclusion in an individual's IPC to ensure the individual's health, safety, and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following HCS Program services are defined in Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us. Services available under the HCS Program are:

1. (1) TAS;
2. (2) professional therapies provided by appropriately licensed or certified professionals as follows:
   (A) physical therapy, including a pre-enrollment minor home modifications assessment;
   (B) occupational therapy, including a pre-enrollment minor home modifications assessment;
   (C) speech and language pathology;
   (D) audiology;
   (E) social work;
   (F) behavioral support, including a pre-enrollment minor home modifications assessment;
   (G) dietary services; and
   (H) cognitive rehabilitation therapy;
3. (3) nursing provided by an RN or LVN;
4. (4) residential assistance, excluding room and board, provided in one of the following three ways:
(A) host home/companion care;

(B) supervised living; or

(C) residential support;

(5) supported home living, which is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;

(6) respite, which includes room and board when provided in a setting other than the individual's home, but is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;

(7) day habilitation, provided exclusive of any other separately funded service, including public school services, rehabilitative services for persons with mental illness, other programs funded by DADS, or programs funded by DARS;

(8) employment assistance;

(9) supported employment;

(10) adaptive aids;

(11) minor home modifications, including pre-enrollment minor home modifications;

(12) dental treatment; and

(13) if the individual is participating in the CDS option:

(A) FMS; and

(B) support consultation.

(d) DADS has grouped Texas counties into geographical areas, referred to as "local service areas," each of which is served by a LIDDA [local authority]. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is found at www.dads.state.tx.us.

(1) A program provider may provide HCS Program services only to persons residing in the counties specified for the program provider in DADS automated enrollment and billing system.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.
(3) A program provider may have a contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract [program provider agreement].

(4) A program provider may not have more than one contract per waiver contract area.

(e) A program provider must comply with:

(1) all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services); and

(2) DADS Information Letters regarding the HCS Program found at www.dads.state.tx.us.

(f) The CDS option is a service delivery option, described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR directs the HCS Program services that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).


(a) An applicant or individual is eligible for HCS Program services if he or she:

(1) meets the financial eligibility criteria as described [defined] in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us [subsection (b) of this section];

(2) meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter (relating to LOC Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria);

(B) as determined by DADS in accordance with §9.161 of this subchapter, qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter or ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria), and has been determined by DADS:

(i) to have an intellectual disability or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Chapter 17 of this
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title (relating to Preadmission Screening and Resident Review (PASRR)); or

(C) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter;

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the HCS Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS;

and

(iii) is offered [an] HCS Program services [vacancy] designated for a member of the reserved [reserve] capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) has an [authorized] IPC cost that [for which the IPC cost] does not exceed:

(A) $167,468 for an applicant or individual with an LON 1, LON 5, or LON 8;

(B) $168,615 for an applicant or individual with an LON 6; or

(C) $305,877 for an applicant or individual with an LON 9;

[200% of the annual ICF/IID reimbursement rate paid to a small ICF/IID, as defined in 1 TAC §355.456 (relating to Reimbursement Methodology) for the individual's level of need as it would be assigned under §9.240 of this chapter (relating to Level of Need) or 200% of the estimated annualized per capita cost for ICF/IID services, whichever is greater;]

(4) is not enrolled in another waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table in Appendix II of the HCS Program Handbook available at www.dads.state.tx.us [under §1915(b) or (c) of the Social Security Act];

and

(5) does not reside in:
(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with THSC [Texas Health and Safety Code], Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC [Texas Health and Safety Code], Chapter 247;

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

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

(F) a facility operated by DARS;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

[(b) An applicant or individual is financially eligible for the HCS Program if he or she:]

[(1) is categorically eligible for SSI benefits;]

[(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;]

[(3) is under 18 years of age and:]

[(A) resides with a parent or spouse;]

[(B) is eligible for Medicaid benefits only, if institutionalized;]
[(C) meets the SSI criteria for disability;]

[(D) meets the SSI criteria for institutional deeming; and]

[(E) has income and resources that meet the requirements of the SSI program;]

[(4) is under 20 years of age and:]

[(A) is financially the responsibility of DFPS in whole or in part; and]

[(B) is being cared for in a foster home or group home:]

[(i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and]

[(ii) in which a foster parent is the primary caregiver residing in the home;]

[(S) is a member of a family who receives full Medicaid benefits as a result of qualifying for TANF; or]

[(6) is eligible for SSI benefits in the community, except on the basis of income, and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income.]

(b) [(c)] For applicants or individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.

(c) [(d)] If an individual is temporarily admitted to one of the following settings, the individual's HCS Program services are suspended during that admission:

1. a hospital;
2. an ICF/IID;
3. a nursing facility licensed or subject to being licensed in accordance with THSC [Texas Health and Safety Code], Chapter 242;
4. a residential child-care operation licensed or subject to being licensed by DFPS;
5. a facility licensed or subject to being licensed by the DSHS;
6. a facility operated by DARS; or

7. a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or
8. an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247.

§9.157. HCS Interest List

(a) A LIDDA must maintain an up-to-date interest list of applicants interested in receiving HCS Program services for whom the LIDDA is the applicant's designated LIDDA in DADS data system.

(b) A person may request that an applicant's name be added to the HCS interest list by contacting the LIDDA serving the Texas county in which the applicant or person resides.

(c) If a request is made in accordance with subsection (b) of this section, a LIDDA adds an applicant's name to the HCS interest list:

(1) if the applicant resides in Texas; and

(2) with an interest list request date of the date the request is received.

(d) DADS adds an applicant's name to the HCS interest list with a request date as follows:

(1) for an applicant under the age of 22 and residing in an ICF/IID or nursing facility located in Texas, based on the date of admission to the ICF/IID or nursing facility; or

(2) for an applicant determined diagnostically or functionally ineligible for another DADS waiver program, one of the following dates, whichever is earlier:

(A) the request date of the interest list for the other waiver program; or

(B) an existing request date for the HCS Program for the applicant.

(e) DADS or the LIDDA removes an applicant's name from the HCS interest list if:

(1) the applicant or LAR requests in writing that the applicant's name be removed from the interest list, unless the applicant is under 22 years of age and residing in an ICF/IID or nursing facility;

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

(3) the applicant declines the offer of HCS Program services or an offer of HCS Program services is withdrawn as described in §9.158 of this subchapter (relating to Process for Enrollment of Applicants), unless:
(A) the applicant is a military family member temporarily living outside of Texas; or

(B) the applicant is under 22 years of age and residing in an ICF/IID or nursing facility;

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

(5) the applicant is deceased; or

(6) DADS has denied the applicant enrollment in the HCS Program and the applicant or LAR has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §9.169 of this subchapter (relating to Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

(f) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(1)-(4) of this section and, within 90 calendar days after the name was removed, receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list based on the original request date described in subsection (c) or (d) of this section; and

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

(g) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(1)-(4) of this section and, more than 90 calendar days after the name was removed, receives an oral or written request from a person to reinstate the applicant's name on the interest list:

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

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

(h) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(6) of this section and receives an oral or written request from a person to reinstate the applicant's name on the interest list:

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

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

(a) DADS notifies a LIDDA [local authority], in writing, of the availability of [an] HCS Program services [vacancy] in the LIDDA's [local authority's] local service area and directs the LIDDA [local authority] to offer HCS Program services [the program vacancy] to an applicant:

(1) whose interest list request [registration] date [, assigned in accordance with §9.157(a)(1) of this subchapter (relating to Maintenance of HCS [Program] Interest List),] is earliest on the statewide interest list for the HCS Program as maintained by DADS; or

[(2) whose registration date, assigned in accordance with §9.157(a)(1) of this subchapter is earliest on the local service area interest list for the HCS Program as maintained by the local authority, in accordance with §9.157 of this subchapter, or]

(2) [3] who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA [local authority] must make the offer of HCS Program services [program vacancy] in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The LIDDA [local authority] must make the offer of HCS Program services [program vacancy] to an applicant described in subsection (a)(2) [(a)(3)] of this section [who is currently receiving services in a state supported living center or a state mental health facility as defined by §2.253 of this title (relating to Definitions)] in accordance with DADS procedures.

(d) The LIDDA [local authority] must include in a written offer that is made in accordance with subsection (a)(1) [(a)(2), or (a)(3)] of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of HCS Program services [the program vacancy] within 30 calendar days after the LIDDA's [local authority's] written offer, the LIDDA [local authority] withdraws the offer; and [of the program vacancy, and:] [i] for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter and places the applicant's name on the HCS Program interest list with a new registration date that is the date of the LIDDA's [local authority's] notification; or

[(ii) for an applicant other than one described in clause (i) of this subparagraph, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter, and] [B] if the applicant is currently receiving services from the LIDDA [local authority]
that are funded by general revenue and the applicant or LAR declines the offer of HCS Program services [the program vacancy], the LIDDA [local authority] terminates those services that are similar to services provided under the HCS Program; and

(2) information relating to the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of HCS Program services [program vacancy], the LIDDA [local authority] must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The LIDDA [local authority] must use the Explanation of Services and Supports document, which is found at www.dads.state.tx.us; and

(2) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at www.dads.state.tx.us, to document the applicant's choice regarding the HCS Program and ICF/IID Program.

(f) The LIDDA [local authority] must withdraw an offer of HCS Program services [a program vacancy] made to an applicant or LAR and remove the applicant's name from the HCS Program interest list if:

(1) within 30 calendar days after the LIDDA's [local authority's] offer made to the applicant or LAR in accordance with subsection (a)(1) [(2), or (3)] of this section, the applicant or LAR does not respond to the offer of HCS Program services [the program vacancy];

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the LIDDA [local authority] in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID Program using the Verification of Freedom of Choice, Waiver Program form; or

(3) within 30 calendar days after the applicant or LAR receives [has received] the contact information for [regarding] all program providers in the LIDDA's [local authority's] local service area in accordance with subsection (j)(3) [(4)(i)] of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form; or [•]

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process.

(g) If the LIDDA [local authority] withdraws an offer of HCS Program services [a program vacancy] made to an applicant [and removes the applicant's name from the HCS Program interest
The LIHD [local authority] must notify the applicant or LAR of such actions, in writing, by certified United States mail, and:

(1) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, include a statement that the applicant's name will be placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification; or

(2) for an applicant other than one described in paragraph (1) of this subsection, include a statement that the applicant or the applicant's primary correspondent may request, orally or in writing, to have the applicant's name placed on the HCS Program interest list with a new registration date that is the date the applicant or LAR makes the request.

(h) If the applicant is currently receiving services from the LIHD [local authority] that are funded by general revenue and the applicant declines the offer of HCS Program services [the program vacancy], the LIHD [local authority] must terminate those services that are similar to services provided under the HCS Program.

(i) If the LIHD [local authority] terminates an applicant's services in accordance with subsection (h) of this section, the LIHD [local authority] must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

[If the local authority notifies an applicant under 22 years of age or the applicant's LAR in accordance with subsection (g)(1) of this section, the local authority must coordinate with DADS to ensure the applicant's name is placed on the HCS Program interest list with a new registration date that is the date the applicant or LAR makes the request.]

(j) If the applicant or LAR accepts the offer of HCS Program services, on the applicant's behalf, chooses to enroll in the HCS Program, the LIHD [local authority] must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIHD [local authority] must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIHD [local authority] must complete an ID/RC Assessment [if an LOC determination is necessary] in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The LIHD [local authority] must:

(i) perform or endorse a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related...
Conditions; or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The Lidda [local authority] must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS [DADS] Review of LON).

(C) The Lidda [local authority] must electronically transmit the completed ID/RC Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.

(3) The Lidda must provide names and contact information to the applicant or LAR for all program providers in the Lidda's local service area.

(4) [3] The Lidda [local authority] must assign a service coordinator who, together with other members of the applicant's service planning team [applicant and LAR], must develop:

(A) a PDP; and [-]

(B) [4] The service coordinator must develop a proposed initial IPC [with the applicant or LAR] in accordance with §9.159(c) of this subchapter (relating to IPC).

(5) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).

(k) [4] The service coordinator must:

[1] provide names and contact information to the applicant or LAR regarding available program providers in the local authority's local service area (that is, program providers operating below their service capacity as identified in the DADS data system);

(1) [2] arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(2) [3] review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(3) [4] ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(4) [5] negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;
(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not previously received TAS; and

(C) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each TAS identified, which must be within the service limit described in §9.192(a)(5) of this subchapter (relating to Service Limits);

(B) submit the completed form to DADS for authorization;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC;

(7) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not met the maximum service limit for minor home modifications as described in §9.192(a)(3)(A) of this subchapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, a Pre-enrollment Minor Home Modifications/Assessments Authorization form found at www.dads.state.tx.us in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;
(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider as required by §9.174(h)(1)(A) of this subchapter (relating to Certification Principles: Service Delivery);

(iii) based on documentation provided by the program provider as required by the HCS Program Billing Guidelines, stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to DADS for authorization;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by DADS on the applicant's proposed initial IPC;

(9) [(6)] if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, or day habilitation, [a service,] ensure that the initial proposed IPC includes a sufficient number of RN nursing units for a program provider nurse to perform an initial nursing assessment unless, as described in §9.174(c) of this subchapter [(relating to Certification Principles: Service Delivery)]:

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that an unlicensed service provider will not perform a nursing task as documented on DADS form "Nursing Task Screening Tool"; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(10) [(7)] if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (9) [(6)] of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported
employment, or day habilitation from the program provider, will result in the individual not receiving that service unless, as described in §9.174(d)(2) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record;

(11) ensure that the applicant or LAR signs and dates the proposed initial IPC;

(12) ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the services will be provided to the applicant;

(13) sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met; and

(14) inform the applicant or LAR, orally and in writing, of the following reasons an individual's HCS Program services may be terminated:

(A) the individual no longer meets the eligibility criteria described in §9.155(a) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services); or

(B) the individual or LAR requests termination of HCS Program services.

(m) A LIDDA [The local authority] must:

(1) conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning); and

(2) discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).]

(m) After the proposed initial IPC is finalized and signed in accordance with subsection (k) of this section, the LIDDA [local authority] must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information
identical to that on the original proposed initial IPC; and

(2) submit other required enrollment information to DADS.

(n) [o] DADS notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA [local authority] of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the DADS data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) [p] Prior to the applicant's service begin date, the LIDDA [local authority] must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed initial IPC, and the applicant's PDP.

(p) [q] Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, as required by §9.174(g) and (h) of this subchapter, the selected program provider must not initiate services until notified of DADS approval of the applicant's enrollment.

(q) [r] The selected program provider must develop an implementation plan for HCS Program services that is based on the individual's PDP and authorized IPC.

(r) [s] The LIDDA [local authority] must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of HCS Program services [a program vacancy].

(s) [t] Copies of the following forms [and letters] referenced in this section are available at www.dads.state.tx.us [by contacting the Department of Aging and Disability Services, Provider Services Division, P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030]:

(1) Verification of Freedom of Choice, Waiver Program form;

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

(3) Deadline Notification form;
(4) Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form; and

(5) Pre-enrollment Minor Home Modifications/Assessments Authorization form.

§9.159. IPC.

(a) A service coordinator [local authority] must initiate development of a proposed initial IPC for an applicant as required by §9.158(j)(4)(B) [§9.158(k)(4)] of this subchapter (relating to Process for Enrollment of Applicants).

(b) A program provider must initiate development of a proposed renewal and proposed revised IPC for an individual as required by §9.166 of this subchapter (relating to Renewal and Revision of an IPC).

(c) An IPC must be based on the PDP and specify the type and amount of each HCS Program service to be provided to an individual, as well as services and supports to be provided by other sources during the IPC year. The type and amount of each [Each] HCS Program service in the IPC:

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

   (2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

   (3) must be the most appropriate type and amount to meet the individual's needs;

   (4) must be cost effective;

   (5) must be necessary to enable community integration and maximize independence;

   (6) if an adaptive aid or minor home modification, must:

      (A) be included on DADS approved list in the HCS Program Billing Guidelines; and

      (B) be within the service limit described in §9.192 of this subchapter (relating to Service Limits);

   (7) if an adaptive aid costing $500 or more, must be supported by a written assessment from a licensed or certified professional specified by DADS in the HCS Program Billing Guidelines;

   (8) if a minor home modification costing $1,000 or more, must be supported by a written assessment from a licensed or certified professional specified by DADS in the HCS Program Billing Guidelines; [and]
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(9) if dental treatment, must be within the service limit described in §9.192 of this subchapter;

(10) if respite, must be within the service limit described in §9.192 of this subchapter;

(11) if TAS, must be:

(A) supported by a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; and

(B) within the service limit described in §9.192(a)(5)(A) or (B) of this subchapter;

(12) if pre-enrollment minor home modifications, must be:

(A) supported by a written assessment from a licensed or certified professional if required by the HCS Program Billing Guidelines;

(B) supported by a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS; and

(C) within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS.

[(d) With the exception of an HCS program service provided through the CDS option, a program provider must:

[(1) provide an HCS Program service in accordance with an individual's authorized IPC; and]

[(2) retain in an individual's record, results and recommendations of individualized assessments that support the individual's current need for each service included in the IPC.]

§9.160. **DADS [DADS²]** Review of a Proposed IPC.

(a) DADS reviews a proposed IPC to determine whether to authorize the IPC.

(b) The service coordinator's agreement or disagreement, as required by §9.166(e)(3) of this subchapter (relating to Renewal and Revision of an IPC), with the proposed renewal or revised IPC will be considered in DADS [DADS²] review of the proposed IPC.

(c) DADS may review supporting documentation specified in §9.159(c) of this subchapter (relating to IPC) at any time to determine if the type and amount of HCS Program services specified in a proposed IPC are appropriate. If requested by DADS:
(1) the LIDDA [MRA] must submit to DADS documentation supporting a proposed initial IPC; and

(2) the program provider must submit to DADS documentation supporting a proposed renewal or revised IPC.

(d) Before authorizing a proposed IPC that exceeds 100 percent [%] of the estimated annualized average per capita cost for ICF/IID Program [ICF/MR] services, DADS reviews the IPC to determine if the type and amount of HCS Program services specified in the proposed IPC are appropriate and supported by documentation specified in §9.159(c) of this subchapter. A proposed IPC with such an IPC cost must be submitted to DADS with documentation supporting the IPC, as described in §9.159(c) of this subchapter, before the electronic transmission of the IPC. After reviewing the supporting documentation, DADS may request additional documentation. DADS reviews any additional documentation submitted in accordance with its request and, for an applicant or individual who is eligible for the HCS Program, electronically authorizes the proposed IPC or sends written notification that the proposed IPC has been authorized with modifications.

§9.161. LOC Determination.

(a) A LIDDA [local authority] must request an LOC from DADS for an applicant at the time the applicant is enrolled into the HCS Program. The LOC is requested by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LOC, signed and dated by the service coordinator. The electronically transmitted ID/RC Assessment must contain information identical to the information on the signed and dated ID/RC Assessment.

(b) A program provider must request an LOC for an individual from DADS in accordance with this subsection.

(1) Before the expiration of an ID/RC Assessment, the program provider must electronically transmit to DADS a completed ID/RC Assessment, indicating the recommended LOC, that is signed and dated by the program provider.

(2) The program provider must ensure the electronically transmitted ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment.

(3) The program provider must, within three calendar days after transmission, provide the service coordinator with a paper copy of the signed and dated ID/RC Assessment.

(c) For an LOC requested in accordance with subsection (b) of this section, within seven calendar days after the ID/RC Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC Assessment in the DADS data system and:

(1) enter the service coordinator's name and date in the DADS data system;
(2) enter in the DADS data system whether the service coordinator agrees or disagrees with the ID/RC Assessment; and

(3) if the service coordinator disagrees with the ID/RC Assessment, notify the individual, LAR, DADS, and the program provider of the service coordinator's disagreement in accordance with DADS instructions.

(d) The service coordinator's agreement or disagreement will be considered in DADS review of an ID/RC Assessment transmitted in accordance with subsection (b) of this section.

(e) For an LOC requested under subsection (a) or (b) of this section, DADS makes an LOC determination in accordance with §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria) and §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria) based on DADS [DADS] review of information reported on the applicant's or individual's ID/RC Assessment.

(f) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors. The signed and dated ID/RC Assessment and documentation supporting the recommended LOC must be maintained in the individual's record.

(g) DADS approves the LOC or sends written notification:

(1) to the applicant or LAR that the applicant is not eligible for HCS Program services and provides the applicant or LAR with an opportunity to request a fair hearing in accordance with §9.169 of this subchapter (relating to Fair Hearing); and

(2) to the LIDDA [local authority] and program provider that the LOC has been denied.

(h) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

(i) If the LON of an individual receiving HCS Program services changes from a LON 5, LON 8, LON 6, or LON 9 to a LON 1, DADS notifies the LIDDA [local authority] of the change using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

(1) The LIDDA [local authority] must, within 30 business days after receiving the notification:

(A) assess the individual in-person and complete a new Determination of Intellectual Disability (DID) in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports–Intellectual Disability Priority Population and Related Conditions);

(B) complete the LIDDA [local authority] section of DADS Form 1597, HCS Level of Care Redetermination Cover Sheet, and return the form to DADS; and
(C) submit a copy of the results of the new DID and any other pertinent information regarding the reassessment of the individual to DADS.

(2) If the LIDDA [local authority] is unable to complete the requirements described in paragraph (1) of this subsection within the 30 business day timeframe, the LIDDA [local authority] must notify DADS of the reasons for the delay.

(3) DADS reviews the information submitted by the LIDDA [local authority] regarding the redetermination and notifies the LIDDA [local authority] and the HCS Program provider of the review decision using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

§9.162. Lapsed LOC.

(a) DADS does not pay the program provider for HCS Program services provided during a period of time in which the individual's LOC has lapsed unless a reinstatement of the LOC determination is requested and granted in accordance with this section. DADS does not grant a request for reinstatement of an LOC determination to:

(1) establish program eligibility;

(2) renew an LOC determination;

(3) obtain an LOC determination for a period of time for which an LOC has been denied;

(4) revise an LON; or

(5) obtain an LON determination for a period of time for which an individual's IPC is not current.

[(b) The program provider must request reinstatement of an LOC determination within 180 calendar days after the end of any month during which services were provided to the individual while the individual's LOC was lapsed.]

(b) The program provider must request reinstatement of an LOC determination in accordance with this subsection.

(1) The program provider must:

(A) complete an ID/RC Assessment signed and dated by the program provider;

(B) include on the ID/RC Assessment an end date of the LOC period that is not later than 365 calendar days after the end date of the previously authorized LOC period; and

(C) within 180 calendar days after the end date of the previously authorized LOC period, electronically transmit to DADS the [a] completed ID/RC [MR/RC] Assessment [that is signed and dated by the program provider that includes:]
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[(A) a code "E" in the "Purpose" section; and]

[(B) the beginning and ending dates of the period of time for which the individual's LOC lapsed].

(2) The program provider must ensure that the electronically transmitted ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment.

(3) The program provider must, within three calendar days after submission, provide the service coordinator with a paper copy of the signed and dated ID/RC Assessment.

c) Within seven calendar days after the ID/RC Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC Assessment in the DADS data system CARE and:

(1) enter the service coordinator's name and date in the DADS data system CARE;

(2) enter in the DADS data system CARE whether the service coordinator agrees or disagrees with the ID/RC Assessment; and

(3) if the service coordinator disagrees with the ID/RC Assessment, notify the individual, LAR, DADS, and the program provider of the service coordinator's disagreement in accordance with DADS instructions.

d) The service coordinator's agreement or disagreement is considered in DADS review of an ID/RC Assessment transmitted in accordance with subsection (c) of this section.

e) DADS notifies the program provider of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives receipt of the ID/RC Assessment from the program provider in accordance with subsection (b)(1) of this section [provider's request].

(f) If DADS grants a reinstatement, the period of reinstatement will be for a period of not more than 180 calendar days after the end date of the previously authorized LOC period.

§9.163. LON Assignment.

(a) A LIDDA [An MRA] must request an LON for an applicant from DADS at the time an applicant is enrolled into the HCS Program. The LON is requested by electronically transmitting to DADS a completed ID/RC Assessment [MR/RC], indicating the recommended LON, is signed and dated by the service coordinator. The electronically transmitted ID/RC Assessment must contain information identical to the information on the signed and dated ID/RC Assessment.
(b) A program provider must request an LON for an individual from DADS in accordance with this subsection.

(1) Before the expiration of an ID/RC [MR/RC] Assessment, the program provider must electronically transmit to DADS a completed ID/RC [MR/RC] Assessment, indicating the recommended LON, that is signed and dated by the program provider.

(2) The program provider must ensure the electronically transmitted ID/RC [MR/RC] Assessment contains information that is identical to the information on the signed and dated ID/RC [MR/RC] Assessment.

(3) The program provider must, within three calendar days after submission, provide the service coordinator with a paper copy of the signed and dated ID/RC [MR/RC] Assessment.

(4) If applicable, the program provider must submit supporting documentation to DADS as required by §9.164(c) of this subchapter (relating to DADS [DADS'] Review of LON).

(c) For an LON requested in accordance with subsection (b) of this section, within seven calendar days after the ID/RC [MR/RC] Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC [MR/RC] Assessment in DADS data system [CARE] and:

(1) enter the service coordinator's name and date in DADS data system [CARE];

(2) enter in DADS data system [CARE] whether the service coordinator agrees or disagrees with the ID/RC [MR/RC] Assessment; and

(3) if the service coordinator disagrees with the ID/RC [MR/RC] Assessment, notify the individual, LAR, DADS, and the program provider of the service coordinator's disagreement in accordance with DADS instructions.

(d) The service coordinator's agreement or disagreement is considered in DADS [DADS'] review of an ID/RC [MR/RC] Assessment transmitted in accordance with subsection (b) of this section.

(e) The program provider must maintain documentation supporting the recommended LON in the individual's record.

(f) DADS assigns an LON to an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC [MR/RC] Assessment, and required supporting documentation. Documentation supporting a recommended LON must be submitted to DADS in accordance with DADS [DADS'] guidelines.

(g) DADS assigns one of five LONs as follows:
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(1) an intermittent LON (LON 1) is assigned if the individual's ICAP service level score equals 7, 8, or 9;

(2) a limited LON (LON 5) is assigned if the individual's ICAP service level score equals 4, 5, or 6;

(3) an extensive LON (LON 8) is assigned if the individual's ICAP service level score equals 2 or 3;

(4) a pervasive LON (LON 6) is assigned if the individual's ICAP service level score equals 1; and

(5) regardless of an individual's ICAP service level score, a pervasive plus LON (LON 9) is assigned if the individual meets the criteria set forth in subsection (i) of this section.

(h) An LON 1, 5, or 8, determined in accordance with subsection (g) of this section, is increased to the next LON by DADS, due to an individual's dangerous behavior, if supporting documentation submitted to DADS proves that:

(1) the individual exhibits dangerous behavior that could cause serious physical injury to the individual or others;

(2) a written behavior support plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) more service providers are needed and available than would be needed if the individual did not exhibit dangerous behavior;

(4) service providers are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(5) the individual's ID/RC [MR/RC] Assessment is correctly scored with a "1" in the "Behavior" section.

(i) DADS assigns an LON 9 if supporting documentation submitted to DADS proves that:

(1) the individual exhibits extremely dangerous behavior that could be life threatening to the individual or to others;

(2) a written behavior support plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;
(3) management of the individual's behavior requires a service provider to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the service provider assigned to supervise the individual has no other duties during such assignment; and

(5) the individual's ID/RC [MR/RC] Assessment is correctly scored with a "2" in the "Behavior" section.

(j) A [The] program provider must re-administer the ICAP to an individual under a circumstance described in paragraphs (1)-(3) of this subsection and must submit a completed ID/RC [MR/RC] Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results and the ID/RC [MR/RC] Assessment indicate a revision of the individual's LON assignment may be appropriate. The ICAP must be re-administered:

(1) within three years after the individual's enrollment and every third year thereafter;

(2) if changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(3) if the individual's skills and behavior are inconsistent with the individual's assigned LON.

§9.166. Renewal and Revision of an IPC.

(a) Renewal of the IPC. At least annually and before the expiration of an individual's IPC, the individual's IPC must be renewed in accordance with this subsection and with DADS instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must:

(A) notify the service planning team that the individual's PDP must be reviewed and updated; and [·]

(B) convene the service planning team to review and update the individual's PDP.

(2) The service coordinator must send a copy of the updated PDP to the program provider within 10 calendar days after the PDP is updated.

[2) Upon notification in accordance with paragraph (1) of this subsection, the service planning team must review and update the individual's PDP. The service coordinator must send a copy of the updated PDP to the program provider within 10 calendar days after the PDP is updated.]

(3) The program provider must ensure that a meeting between the service planning team
and the program provider occurs at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to review the PDP and develop the proposed renewal IPC in accordance with §9.159(c) of this subchapter (relating to IPC), including completion of the CDS option portion of the proposed renewal IPC, if applicable, and the non-HCS Program services.

(4) The program provider must, before the effective date of the proposed renewal IPC, develop an implementation plan for HCS Program services that is based on the individual's PDP and proposed renewal IPC.

(5) Within seven calendar days after development of the proposed renewal IPC as required by paragraph (3) of this subsection, the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(6) Within seven calendar days after the program provider electronically transmits the proposed renewal IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(7) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and authorized renewal IPC.

(b) Revisions to the IPC. The service coordinator or the program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate, and if the PDP is not revised, the service coordinator must document the reasons for the proposed IPC revision;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(4) Within seven calendar days after the program provider electronically transmits the
proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(5) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(c) Revision of IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or change the amount of an existing service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of the IPC.

(1) If an emergency necessitates the provision of an HCS Program service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

   (i) the circumstances that necessitated providing the new HCS Program service or the increase in the amount of the existing HCS Program service; and

   (ii) the type and amount of the service provided;

   (B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

   (C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

   (A) the service planning team and the program provider must develop a proposed revised IPC;

   (B) the service planning team must revise the PDP, if appropriate;

   (C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

   (D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(3) Within seven calendar days after the program provider electronically transmits the
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proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(4) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(e) Submitting a proposed renewal and revised IPC to DADS. A proposed renewal or revised IPC must be submitted to DADS for authorization in accordance with this subsection.

(1) The program provider must:

(A) sign and date the proposed renewal or revised IPC demonstrating agreement that the services will be provided to the individual; and

(B) ensure that a proposed renewal or revised IPC is signed and dated by the individual or LAR.

(2) The program provider must:

(A) electronically transmit a proposed renewal or revised IPC to DADS;

(B) keep the original proposed renewal or revised IPC in the individual's record and, within three calendar days after electronic transmission, ensure the service coordinator receives a copy of the signed proposed renewal or revised IPC; and

(C) ensure the electronically transmitted proposed renewal or revised IPC contains information identical to that on the original proposed renewal or revised IPC.

(3) The service coordinator must review the electronically transmitted proposed renewal or revised IPC and:

(A) enter the service coordinator's name and date in the DADS data system;

(B) enter in the DADS data system whether the service coordinator agrees or disagrees that the requirements described in §9.159(c) of this subchapter have been met; and

(C) if the service coordinator disagrees that the requirements described in §9.159(c) of this subchapter have been met, notify the individual or LAR, the program provider, and DADS of the service coordinator's disagreement in accordance with DADS instructions.

(f) Renewal and revision of IPC when all services are through the CDS option. For an individual who is receiving all HCS Program services through the CDS option and, therefore does not have a program provider, the service coordinator must perform the functions of the program provider described in this section.

§9.167 Permanency Planning.
(a) Permanency planning at enrollment. The provisions contained in this subsection apply to an applicant under 22 years of age moving from a family setting and requesting supervised living or residential support.

(1) Information. A LIDDA [The MRA] must, before enrollment, inform the applicant and LAR:

(A) of the benefits of living in a family or community setting;

(B) that the placement of the applicant is considered temporary; and

(C) that an ongoing permanency planning process is required.

(2) Permanency planning activities.

(A) A LIDDA [The MRA] must convene a permanency planning meeting with the LAR and, if possible, the applicant, before enrollment.

(B) Before the permanency planning meeting, the LIDDA [MRA] must review the applicant's records, and, if possible, meet the applicant.

(C) During the permanency planning meeting, the meeting participants must discuss and choose one of the following goals:

(i) for an applicant under 18 years of age:

   (I) to live in the applicant's family home where the natural supports and strengths of the applicant's family are supplemented, as needed, by activities and supports provided or facilitated by the LIDDA [MRA] or program provider; or

   (II) to live in a family-based alternative in which a family other than the applicant's family:

   (-a-) has received specialized training in the provision of support and in-home care for an individual under 18 years of age with an intellectual disability [mental retardation] or a related condition;

   (-b-) will provide a consistent and nurturing environment in a family home that supports a continued relationship with the applicant's family to the extent possible; and

   (-c-) will provide an enduring, positive relationship with a specific adult who will be an advocate for the applicant; or

(ii) for an applicant 18-21 [18-22] years of age to live in a setting chosen by the applicant or LAR in which the applicant's natural supports and strengths are supplemented by activities and supports provided or facilitated by the LIDDA [MRA] or program provider, and to
achieve a consistent and nurturing environment in the least restrictive setting, as defined by the applicant and LAR.

(D) To accomplish the goal chosen in accordance with subparagraph (C) of this paragraph, the meeting participants must discuss and identify:

(i) the problems or issues that led the applicant or LAR to request supervised living or residential support;

(ii) the applicant's daily support needs;

(iii) for the applicant under 18 years of age:

(I) barriers to having the applicant reside in the family home;

(II) supports that would be necessary for the applicant to remain in the family home; and

(III) actions that must be taken to overcome the barriers and provide the necessary supports;

(iv) for an applicant 18-21 [18-22] years of age, the barriers to moving to a consistent and nurturing environment as defined by the applicant and LAR;

(v) the importance for the applicant to live in a long-term nurturing relationship with a family;

(vi) alternatives to the applicant living in an institutional setting;

(vii) the applicant's and LAR's need for information and preferences regarding those alternatives;

(viii) how, after the applicant's enrollment, to facilitate regular contact between the applicant and the applicant's family, and, if desired by the applicant and family, between the applicant and advocates and friends in the community to continue supportive and nurturing relationships;

(ix) natural supports and family strengths that will assist in accomplishing the identified permanency planning goal;

(x) activities and supports that can be provided by the family, [LIDDA] [MRA], or program provider to achieve the permanency planning goal;

(xi) assistance needed by the applicant's family:

(I) in maintaining a nurturing relationship with the applicant; and
(II) preparing the family for the applicant's eventual return to the family home or move to a family-based alternative; and

(xii) action steps, both immediate and long term, for achieving the permanency plan goal.

(E) A LIDDA [The MRA] must make reasonable accommodations to promote the participation of the LAR in a permanency planning meeting, including:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the LIDDA [MRA] and LAR;

(ii) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the LIDDA [MRA] and LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate.

(F) A LIDDA [The MRA] must develop a permanency plan using, as appropriate:

(i) the Permanency Planning Instrument for Children Under 18 Years of Age, found at www.dads.state.tx.us; or

(ii) the Permanency Planning Instrument for Individuals 18-21 [18-22] Years of Age, found at www.dads.state.tx.us.

(G) A LIDDA [The MRA] must:

(i) complete the Permanency Planning Review Screen in DADS data system [CARE] before enrollment;

(ii) keep a copy of the Permanency Planning Review Approval Status View Screen from DADS data system [CARE] in the applicant's record; and

(iii) provide a copy of the permanency plan to the program provider, the applicant, and the LAR.

(3) Volunteer advocate.

(A) A LIDDA [The MRA] must inform the applicant and LAR that they may request a volunteer advocate to assist in permanency planning. The applicant or LAR may:
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(i) select a person who is not employed by or under contract with the LIDDA [MRA] or a program provider; or

(ii) request the LIDDA [MRA] to designate a volunteer advocate.

(B) If an applicant or LAR requests that the LIDDA [MRA] designate a volunteer advocate or the LIDDA [MRA] cannot locate the applicant's LAR, the LIDDA [MRA] must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:

(i) an adult relative who is actively involved with the applicant;

(ii) a person who:

(I) is part of the applicant's natural supports; and

(II) is not employed by or under contract with the LIDDA [MRA] or a program provider; or

(iii) a person or a child advocacy organization representative who:

(I) is knowledgeable about community services and supports;

(II) is familiar with the permanency planning philosophy and processes; and

(III) is not employed by or under contract with the LIDDA [MRA] or a program provider.

(C) If a LIDDA [the MRA] is unable to locate a volunteer advocate locally, the LIDDA [MRA] must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in subparagraph (B)(iii) of this paragraph. If the statewide advocacy organization is unable to assist the LIDDA [MRA] in identifying a volunteer advocate, the LIDDA [MRA] must document all efforts to designate a volunteer advocate in accordance with subparagraph (B) of this paragraph.

(b) Permanency planning reviews. A LIDDA [An MRA] must, within six months after the initial permanency planning meeting and every six months thereafter until an individual either turns 22 years of age or is no longer receiving supervised living or residential support:

(1) provide written notice to the LAR of a meeting to conduct a review of the individual's permanency plan no later than 21 calendar days before the meeting date and include a request for a response from the LAR;

(2) convene a meeting to review the individual's current permanency plan in accordance with subsection (a)(2)(C)-(E) of this section, with an emphasis on changes or additional information gathered since the last permanency plan was developed;
(3) develop a permanency plan in accordance with subsection (a)(2)(F) of this section;

(4) perform actions regarding a volunteer advocate as described in subsection (a)(3) of this section;

(5) complete the Permanency Planning Review Screen in DADS data system [CARE] within 10 calendar days after the meeting;

(6) ensure that approval for the individual to continue to reside in an institution is obtained every six months from the DADS commissioner and the HHSC executive commissioner;

(7) keep a copy of the Permanency Planning Review Approval Status View Screen from DADS data system [CARE] in the individual's record;

(8) provide a copy of the permanency plan to the program provider, the individual, and the LAR; and

(9) if the LIDDA [MRA] determines it is unable to locate the parent or LAR, notify the service coordinator of such determination.

(c) Provision of supervised living or residential support after enrollment. If a LIDDA [an MRA] receives information that an individual under 22 years of age who has been enrolled in the HCS Program moved from a family setting and started receiving supervised living or residential support, the LIDDA [MRA] must, within the timeframes described in the performance contract between DADS and the LIDDA [MRA]:

(1) provide an explanation of services and supports and other information in accordance with §9.158(e)(1) of this subchapter (relating to Process for Enrollment of Applicants); and

(2) take actions to conduct permanency planning as described in subsection (a) of this section.

§9.168. CDS Option.

(a) If supported home living, respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy is included in an applicant's PDP, and the applicant's PDP does not include residential support, supervised living, or host home/companion care, the service coordinator [local authority] must:

(1) inform the applicant or LAR of the applicant's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);

(2) inform the applicant or LAR that the applicant or LAR may choose to have supported home living, respite, nursing, employment assistance, supported employment, or cognitive
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rehabilitation therapy provided through the CDS option;

   (3) provide the applicant or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including a description of FMS and support consultation;

   (4) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

   (5) provide the applicant or LAR the opportunity to choose to participate in the CDS option and document the applicant's or LAR's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(b) If an applicant or LAR chooses to participate in the CDS option, the service coordinator must:

   (1) provide names and contact information to the applicant or LAR regarding all FMSAs providing services in the LIDDA's [local authority's] local service area;

   (2) document the applicant's or LAR's choice of FMSA on the Consumer Participation Choice form;

   (3) document, in the individual's PDP, a description of the service provided through the CDS option; and

   (4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title (relating to Consumer Directed Services Option).

(c) For an individual who is receiving supported home living, respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy, and is not receiving residential support, supervised living, or host home/companion care, the service coordinator must, at least annually:

   (1) inform the individual or LAR of the individual's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title;

   (2) provide the individual or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at www.dads.state.tx.us and which contain information about the CDS option, including FMS and support consultation;

   (3) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

   (4) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

   (5) provide the applicant or LAR the opportunity to choose to participate in the CDS option and document the applicant's or LAR's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.
Services Option Overview, Consumer Directed Services Responsibilities and Employee Qualification Requirements forms to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in the CDS option and document the individual's choice on the Consumer Participation Choice form, which is found at www.dads.state.tx.us.

(d) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's local service area;

(2) document the individual's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title; and

(5) notify the program provider of the individual's or LAR's decision to participate in the CDS option.

(e) The service coordinator must document in the individual's PDP that the information described in subsections (c) and (d)(1) of this section was provided to the individual or LAR.

(f) For an individual participating in the CDS option, the service coordinator must recommend that DADS terminate the individual's participation in the CDS option (that is, terminate FMS and support consultation) if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health or safety; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(g) If the service coordinator makes a recommendation in accordance with subsection (f) of this section, the service coordinator must:

(1) document:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;
(C) a description of the attempts to resolve the issues before recommending termination;

(2) obtain other supporting documentation, as appropriate; and

(3) notify the program provider that the IPC needs to be revised.

(h) Within seven calendar days after notification in accordance with subsection (g)(3) of this section:

(1) the service coordinator and the program provider must comply with the requirements described in §9.166(d)(2)(A) - (D) of this subchapter (relating to Renewal and Revision of an IPC); and

(2) the service coordinator must send the documentation described in subsection (g)(1) of this section to DADS.


Program provider reimbursement.

(1) A program provider is paid for services as described in this paragraph.

(A) DADS pays for supported home living, professional therapies, nursing, respite, employment assistance, and supported employment in accordance with the reimbursement rate for the specific service.

(B) DADS pays for host home/companion care, residential support, supervised living, and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) DADS pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the HCS Program Billing Guidelines, which are available at www.dads.state.tx.us.

(D) DADS pays for TAS based on a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS and the actual cost of the TAS as evidenced by purchase receipts required by the HCS Program Billing Guidelines.

(E) DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment as evidenced by documentation required by the HCS Program Billing Guidelines.
(F) Subject to the requirements in the *HCS Program Billing Guidelines*, DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(2) If an individual's HCS Program services are suspended or terminated the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

(A) day habilitation;
(B) supported home living;
(C) respite;
(D) employment assistance;
(E) supported employment;
(F) professional therapies; and
(G) nursing.

(3) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed or certified professional specified by DADS in the *HCS Program Billing Guidelines* and other documentation as required by the *HCS Program Billing Guidelines*.

(4) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service is, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment; [

_______ (i) the service is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

_______ (ii) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;
(iii) the service is provided during a period of time for which the individual did not have an LOC determination;

(iv) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) of this subchapter (relating to IPC);

(v) the service is not provided in accordance with the individual's PDP or implementation plan;

(vi) the service is provided before the individual's enrollment date into the HCS Program; or

(vii) the service is not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);

(C) the service provided does not meet the service definition or is not provided in accordance with the HCS Program Billing Guidelines;

(D) the program provider provides the supervised living or residential support service in a residence in which four individuals or other person receiving similar services live without DADS approval as required in §9.188 of this subchapter (relating to DADS Approval of Residences);

(E) the service is not documented in accordance with the HCS Program Billing Guidelines;

(F) the claim for the service does not meet the requirements in §49.311 of this title (relating to Claims Payment) or the HCS Program Billing Guidelines;

(G) the program provider does not have the documentation described in paragraph (3) of this section;

(H) DADS determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

(I) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(J) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).
Disabilities Education Act (20 U.S.C. §1401 et seq.);

[(L) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;]

[(M) the service is provided during a period of time for which the individual did not have an LOC determination;]

(K) [N] the service is provided by a service provider who does not meet the qualifications to provide the service as described [delineated] in the HCS Program Billing Guidelines;

[(O) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) of this subchapter (relating to IPC);]

[(P) the service is not provided in accordance with the individual's PDP or implementation plan;]

(L) [(Q)] the service of host home/companion care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;

[(R) the service is provided before the individual's enrollment date into the HCS Program; or]

(M) [(S)] the service was paid at an incorrect LON because the ID/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC Assessment;

(N) for TAS, the service is not provided in accordance with a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; or

(O) for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, the service is not provided in accordance with a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS.

(5) The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(6) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the HCS Program Billing Guidelines. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the HCS Program Billing Guidelines. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and
(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(7) A corrective action plan required by DADS in accordance with paragraph (6)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(8) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(9) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (6)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(10) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (7) of this section, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(11) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (10) of this section, DADS may terminate the contract.

(a) The program provider must be in continuous compliance with the HCS Program certification principles contained in §§9.172 - 9.174 and §§9.177 - 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions).

(b) DADS conducts on-site certification reviews of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on a review, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive HCS Program services from the provider under the provisional contract.

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days.

(e) DADS may conduct reviews of the program provider at any time.

(f) During any review, DADS may review the HCS Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the exit conference gives the program provider a written preliminary review report.

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

   (1) To request an informal review of any of the findings in the preliminary review report, the program provider must:

   (A) complete DADS Form 3610 "Informal Review Request" as instructed on the form; and

   (B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

   (2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

   (3) If DADS receives a timely request for an informal review, DADS:
(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(j) In addition to the on-site certification reviews described in subsection (b) of this section, DADS conducts, at least annually, unannounced visits of each residence in which host home/companion care, residential support, or supervised living is provided to verify that the residence provides an environment that complies with DADS Waiver Survey and Certification Residential Checklist, which is found at www.dads.state.tx.us.

(k) Based on the information obtained from a visit described in subsection (j) of this section, DADS may:

(1) require the program provider to complete corrective action before the residential visit ends;

(2) require the program provider to submit evidence of corrective action within a time period determined by DADS [14 calendar days after the date of the residential visit]; or

(3) conduct a review of the program provider in accordance with this section.


(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system;

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services;

(4) ensure that each applicant or individual, or LAR [on behalf of the applicant or individual], chooses [has chosen] where the individual or applicant will [is to] reside from available options consistent with the applicant's or individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age
receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) of this subchapter (relating to LIDDA [Local Authority] Requirements for Providing Service Coordination in the HCS Program) and §9.189 of this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings
conducted by the program provider;

(B) take the following actions to assist a LIDDA [Local Authority] in conducting permanency planning:

(i) cooperate with the LIDDA [Local Authority] responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's LIDDA [Local Authority], activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA [Local Authority] to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;
(12) ensure that the IPC for each individual is renewed, revised, and authorized by DADS in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC) and §9.160 of this subchapter (relating to DADS [DADS'] Review of a Proposed IPC);

(13) ensure that HCS Program services identified in the individual's implementation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

   (A) accurate recordings of individual production or performance;

   (B) valid and current time studies or monitoring as appropriate; and

   (C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;
(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

(B) the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) there is an adequate supply of hot water at all times at sinks and in bathing facilities;

(D) the temperature of the hot water at sinks and bathing facilities does not exceed 117 degrees Fahrenheit unless the program provider, in accordance with subsection (i) of this section, conducts a competency-based skills assessment evidencing that all individuals in the residence can independently regulate the temperature of the hot water from the sinks and bathing facilities;

(E) unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(F) the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(G) unless contraindications are documented with justification by the service planning team, the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR; and

(H) the door lock installed in accordance with subparagraph (G) of this paragraph:

(i) is a single-action lock;

(ii) can be unlocked with a key from the outside of the door by the program provider; and

(iii) is not purchased and installed at the individual's or LAR's expense;
(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that:

   (A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us:

       (i) audiology services;

       (ii) speech/language pathology services;

       (iii) occupational therapy services;

       (iv) physical therapy services;

       (v) dietary services;

       (vi) social work services;

       (vii) behavioral support; and

       (viii) cognitive rehabilitation therapy; and

   (B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

       (i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and

       (ii) has a qualified professional as described in §9.177(q) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements) provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph;
(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any professional therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, limited to the following categories [including]:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; [and]
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(D) specialized accessibility and safety adaptations or additions; and [including repair and maintenance;]

(E) repair and maintenance of minor home modifications not covered by a warranty;

(31) ensure that nursing is provided in accordance with the individual's PDP; IPC; implementation plan; Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and consists of performing health care activities and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations
Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

(-a-) an oral medication;

(-b-) a topical medication; or

(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and
(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition;

(32) ensure that supported home living is available to an individual living in his or her own home or the home of his or her natural or adoptive family members, or to an individual receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(34) ensure that HCS host home/companion care is provided:

(A) by a host home/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:
(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

   (A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) or a three-person residence;

   (B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

   (C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

   (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

   (B) assistance with meal planning and preparation;

   (C) securing and providing transportation;
(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;

(B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

(C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

(D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us, and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;
(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

(A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us and:

(A) includes:

(i) training in self-help and independent living skills;

(ii) providing room and board when respite is provided in a setting other than the individual's normal residence;

(iii) assisting with:

(I) ongoing provision of needed waiver services [excluding supported home living]; and

(II) securing and providing transportation; and

(B) is only provided [to individuals who are]:

(i) to individuals who are not receiving residential support, supervised living, or host home/companion care; and
(ii) [in need of emergency or planned short-term care] when the unpaid caregiver is temporarily unavailable to provide supports [due to non-routine circumstances];

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care, supervised living, or residential support is provided or in a respite facility or camp, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which host home/companion care is provided;

(ii) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.

(D) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(E) The program provider must not provide respite in an institution such as an ICF/IID, [skilled] nursing facility, or hospital;

(44) ensure that employment assistance:
(A) is assistance provided to an individual to help the individual locate competitive employment in the community;

(B) consists of a service provider performing the following activities:

(i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(iv) transporting an individual to help the individual locate competitive employment in the community; and

(v) participating in service planning team meetings;

(C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or supported employment is provided; and

(E) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

   (I) to encourage the employer to hire an individual; or

   (II) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying an individual:

   (I) as an incentive to participate in employment assistance activities; or

   (II) for expenses associated with the start-up costs or operating expenses of the individual's business;

(45) ensure that supported employment:
(A) is assistance provided to an individual:

(i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

(ii) in order for the individual to sustain competitive employment; and

(iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us;

(B) consists of a service provider performing the following activities:

(i) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(iii) participating in service planning team meetings;

(C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or supported employment is provided; and

(D) does not include:

(i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(ii) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(I) paying an employer:

(-a-) to encourage the employer to hire an individual; or

(-b-) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(II) paying an individual:

(-a-) as an incentive to participate in supported employment activities; or

(-b-) for expenses associated with the start-up costs or operating expenses
of the individual's business;

(46) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(47) maintain a system of delivering HCS Program services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(48) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(49) maintain current information in the DADS data system about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(50) maintain a single record related to HCS Program services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) documentation that describes the individual's progress or lack of progress on the implementation plan;

(F) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(G) the ID/RC Assessment;

(H) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(I) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

(J) documentation concerning any use of restraint as described in §9.179(c)(2) and (3)
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of this subchapter (relating to Certification Principles: Restraint);

(K) documentation related to the individual's suspension from HCS Program service;

[and]

(L) for an individual under 22 years of age, a copy of the permanency plan; and

(M) documentation required by subsections (g)(2)(A) and (h)(2)(A) of this section;

(51) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (50) of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(52) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(53) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or an individual or LAR has requested termination of all HCS Program services;

(54) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual; [and]

(55) for an HCS Program service identified on the PDP as critical to meeting the individual's health and safety:

(A) develop a service backup plan that:

(i) contains the name of the critical service;

(ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

(iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describes the actions the program provider will take to ensure the individual's health and safety;
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(B) ensure that:

(i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

(C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

(i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(ii) document whether or not the plan was effective; and

(iii) revise the plan if the program provider determines the plan was ineffective;

(56) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the HCS Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(57) for 180 days after an individual 21 years of age or older has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and
(D) notify the service planning team of any event or condition that may put the individual at risk of admission or readmission to a nursing facility within one calendar day after becoming aware of the event or condition.

(b) A program provider may suspend HCS Program services because an individual is temporarily admitted to a setting described in §9.155(c) [§9.155(d)] of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(1) If a program provider suspends HCS Program services, the program provider must:

(A) notify DADS of the suspension by entering data in the DADS data system in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

e) If an individual or LAR refuses a nursing assessment and the program provider
determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (c) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

(g) The program provider must provide TAS in accordance with this subsection.

(1) The program provider must:

(A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS, as described in §9.158(l)(6)(C) of this subchapter (relating to Process for Enrollment of Applicants);

(B) purchase TAS for the applicant within the monetary amount identified on the form;

(C) deliver to the applicant the specific TAS identified on the form;

(D) ensure TAS is provided in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(E) complete the delivery of TAS at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not deliver TAS in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending TAS;

(ii) the reason for the delay;
(iii) the date the program provider anticipates it will deliver the pending TAS or specific reasons why the program provider cannot anticipate a delivery date; and

(iv) a description of the program provider's ongoing efforts to deliver the TAS; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after the TAS has been delivered, the program provider must notify the service coordinator and the applicant or LAR that the TAS has been delivered.

(h) The program provider must provide pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment in accordance with this subsection.

(1) The program provider must:

(A) complete a pre-enrollment minor home modifications assessment in accordance with the HCS Program Billing Guidelines;

(B) provide pre-enrollment minor home modifications to an applicant for whom the program provider receives from the service coordinator a completed Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS, as described in §9.158(l)(8)(C) of this subchapter;

(C) provide to the applicant the specific pre-enrollment minor home modifications identified on the form;

(D) provide the pre-enrollment minor home modifications for the applicant within the monetary amount identified on the form;

(E) ensure pre-enrollment minor home modifications and pre-enrollment minor home modifications assessments are provided in accordance with Appendix C of the HCS Program waiver application approved by CMS and found at www.dads.state.tx.us; and

(F) complete the pre-enrollment minor home modifications at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not complete pre-enrollment minor home modifications in accordance with paragraph (1) of this subsection, the program provider must:
(A) document the following:

(i) a description of the pending modifications;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will complete the pending modifications or specific reasons why the program provider cannot anticipate a completion date; and

(iv) a description of the program provider's ongoing efforts to complete the modifications; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after completion of the pre-enrollment minor home modifications, the program provider must notify the service coordinator and the applicant or LAR that the modifications have been completed.

(i) If the program provider conducts the competency-based skills assessment described in subsection (a)(23)(D) of this section:

(1) the assessment must:

(A) be conducted by a staff person other than a service provider of residential support, supervised living, or host home/companion care who works or lives in the residence;

(B) be conducted for each individual;

(C) evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance from each sink and bathing facility in the residence; and

(D) be based on a face-to-face demonstration by the individual; and

(2) the program provider must:

(A) complete the assessment at least annually;

(B) document the results of the assessment; and
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(C) keep a copy of the results in the residence.

§9.177. Certification Principles: Staff Member and Service Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) provides the service at or below the direct services portion of the applicable HCS Program rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) The requirement in paragraph (1)(B) of this subsection does not prohibit the program provider and the person or entity from agreeing to payment for the service in an amount that is more than the direct services portion of the applicable HCS Program rate.

(4) If a program provider contracts with a person or entity to provide TAS, the person or entity must have a contract to provide TAS in accordance with Chapter 49 of this title (relating to Contracting for Community Services).

(c) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) The program provider must conduct initial and periodic training that ensures:

(1) staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and
(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to or prevention of an individual's access to the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who oversees the provision of HCS Program services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing HCS Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to HCS Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the
person is a member of the microboard.

(h) The program provider must ensure that a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite services is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) meets one of the following:

   (A) [(4)] is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

   (B) [(2)] is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

   (C) [(3)] has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

   (D) [(4)] is certified by DADS as described in §5.161 of this title (relating to DADS-certified Authorized Provider [TDMHMR-Certified Psychologist]);

   (E) [(5)] is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

   (F) [(6)] is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

   (G) [(7)] is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.; and
(2) completes training required by DADS as described in the HCS Handbook.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(n) The program provider must comply with §49.304 of this title (relating to Background Checks).

(o) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(p) If the service provider of supported home living is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (o) of this section as if the contractor were the program provider.

(q) The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not (A) the spouse of the individual; or (B) receiving employment assistance or supported employment from the service provider, and has
(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) [44] a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) [22] an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) [44] a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(t) A program provider must ensure that a service provider of TAS:

(1) is at least 18 years of age;

(2) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;

(3) is not a relative of the applicant;

(4) is not the LAR of the applicant;

(5) does not live with the applicant; and

(6) is capable of providing TAS and complying with the documentation requirements described in §9.174(g)(2)(A) of this subchapter (relating to Certification Principles: Service Delivery).


(a) In the provision of HCS Program services to an individual, the program provider must promote the active and maximum cooperation with generic service agencies, non-HCS Program
service providers, and advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability.

(c) Before providing services to an individual in a residence in which host home/companion care, supervised living, or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate, and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

(2) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure completion of any action identified in the on-site inspection for a residence in which host home/companion care will be provided to ensure that the residence meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which host home/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies are maintained in each residence.

(e) A program provider must comply with the requirements in this subsection regarding a four-person residence.

(1) Before providing residential support in a four-person residence, the program provider must:
(A) ensure that the four-person residence meets one of the following:

(i) is certified by:

(I) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the National Fire Protection Association 101: Life Safety Code (Life Safety Code) as determined by the local fire safety authority;

(II) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the International Fire Code (IFC) as determined by the local fire safety authority; or

(III) the Texas State Fire Marshal's Office as being in compliance with the applicable portions of the Life Safety Code as determined by the Texas State Fire Marshal's Office; or

(ii) as described in paragraph (2) of this subsection, is certified by DADS as being in compliance with the portions of the Life Safety Code applicable to small residential board and care facilities and most recently adopted by the Texas State Fire Marshal's Office; and

(B) obtain DADS approval of the residence in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences).

(2) DADS inspects for certification as described in paragraph (1)(A)(ii) of this subsection only if the program provider submits to DADS Architectural Unit:

(A) one of the following:

(i) if the four-person residence is located in a jurisdiction with a local fire safety authority:

(I) a completed DADS Form 5606 available at www.dads.state.tx.us documenting that the local fire safety authority having jurisdiction refused to inspect for certification using the code (i.e. the Life Safety Code or IFC) for that jurisdiction; and

(II) written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; or

(ii) if the four-person residence is located in a jurisdiction without a local fire safety authority, written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; and

(B) a completed DADS form "Request for Life Safety Inspection-HCS Four-Person Home" available at www.dads.state.tx.us.
(3) The program provider must:

(A) obtain the certification required by paragraph (1)(A) of this subsection annually; and

(B) ensure that a four-person residence:

(i) contains a copy of the most recent inspection of the residence by the local fire safety authority, Texas State Fire Marshal's Office, or DADS; and

(ii) is in continuous compliance with all applicable local building codes and ordinances and state and federal laws, rules, and regulations.

(f) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee:

(1) at least annually, reviews the information provided to the committee by the program provider in accordance with subsection (p)(6) of this section; and

(2) based on the information reviewed, makes recommendations to the program provider for improvements to the processes and operations of the program provider.

(g) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services as requested by DADS, other authorized agencies, or CMS [the Centers for Medicare and Medicaid Services] and deliver such items, as requested, to a specified location.

(h) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(i) The program provider must comply with §49.309 of this title (relating to Complaint Process).

(j) The program provider must:

(1) ensure that the individual and LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing;

(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) ensure that all staff members, service providers, and volunteers:

(A) are instructed to report to DFPS immediately, but not later than one hour after
having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited;

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) comply with §49.310(3)(B) of this title.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, the program provider must take necessary actions to secure the safety of the individual, including:

(1) obtaining immediate and ongoing medical or psychological services for the individual as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual, the individual's LAR, and the service coordinator of the allegation report and the actions that have been or will be taken.

(l) Staff members, service providers, and volunteers must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(m) The program provider must:

(1) promptly, but not later than five calendar days after the program provider's receipt of a DFPS investigation report:

(A) notify the individual, the LAR, and the service coordinator of:

(i) the investigation finding; and

(ii) the corrective action taken by the program provider in response to the DFPS investigation; and
(B) notify the individual or LAR of:

(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas); and

(ii) the process for requesting a copy of the investigative report from the program provider;

(2) report to DADS in accordance with DADS instructions the program provider's response to the DFPS investigation that involves a staff member or service provider within 14 calendar days after the program provider's receipt of the investigation report; and

(3) upon request of the individual or LAR, provide to the individual or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(n) If abuse, neglect, or exploitation is confirmed by the DFPS investigation, the program provider must take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against or termination of the employment of a staff member confirmed by the DFPS investigation to have committed abuse, neglect, and exploitation.

(o) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

(p) At least annually, the program provider must:

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review complaints, as described in §49.309 of this title, and identify program process improvements to reduce the filing of complaints;

(3) review incidents of abuse, neglect, or exploitation and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery;

(4) review the reasons for terminating HCS Program services [to individuals] and identify any related need for program process improvements;
(5) evaluate critical incident data described in subsection (y) of this section and compare its use of restraint to aggregate data provided by DADS at www.dads.state.tx.us and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (f) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (f)(2) of this section and implement the recommendations approved by the program provider.

(q) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider must comply with this subsection regarding charges against an individual's personal funds.

(1) The program provider must, in accordance with this paragraph, collect a monthly amount for room from an individual who lives in a three-person or four-person residence. The cost for room must consist only of:

(A) an amount equal to:

   (i) rent of a comparable dwelling in the same geographical area that is unfurnished; or

   (ii) the program provider's ownership expenses, limited to the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance; and

(B) the cost of:

   (i) shared appliances, electronics, and housewares;

   (ii) shared furniture;

   (iii) monitoring for a security system;
(iv) monitoring for a fire alarm system;

(v) property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;

(vi) utilities, limited to electricity, gas, water, garbage collection, and a landline telephone; and

(vii) shared television and Internet service used by the individuals who live in the residence.

(2) Except as provided in subparagraphs (B) and (C) of this paragraph, a program provider must collect a monthly amount for board from an individual who lives in a three-person or four-person residence.

(A) The cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products.

(B) A program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

(C) A program provider must not collect a monthly amount for board from an individual if the individual chooses to purchase the individual's own food, as documented in the individual's implementation plan.

(3) To determine the maximum room and board charge for each individual, a program provider must:

(A) divide the room cost described in paragraph (1) of this subsection by the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who live in the residence;

(B) divide the board cost described in paragraph (2) of this subsection by the number of persons consuming the food; and

(C) add the amounts calculated in accordance with subparagraphs (A) and (B) of this paragraph.

(4) A program provider must not increase the charge for room and board because a resident moves from the residence.

(5) A program provider:
(A) must not charge an individual a room and board amount that exceeds an amount determined in accordance with paragraphs (1) - (3) of this subsection; and

(B) must maintain documentation demonstrating that the room and board charge was determined in accordance with paragraphs (1) - (3) of this subsection.

(6) Before an individual or LAR selects a residence, a program provider must provide the room and board charge, in writing, to the individual or LAR.

(7) Except as provided in paragraph (8) of this subsection, a program provider may not charge or collect payment from any person for room and board provided to an individual receiving host home/companion care.

(8) If a program provider makes a payment to an individual's host home/companion care provider while waiting for the individual's federal or state benefits to be approved, the program provider may seek reimbursement from the individual for such payments.

(9) A program provider who manages personal funds of an individual who receives host home/companion care:

(A) may pay a room and board charge for the individual that is less than the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion care provider's home;

(B) must pay the host home/companion care provider directly from the individual's account; and

(C) must not pay a host home/companion care provider a room and board charge that exceeds the host home/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion care provider's home.

(10) For an item or service other than room and board, the program provider must apply a consistent method in assessing a charge against the individual's personal funds that ensures that the charge for the item or service is reasonable and comparable to the cost of a similar item or service generally available in the community.

(s) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(t) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.
(u) At the written request of an individual or LAR, the program provider must manage the individual's personal funds entrusted to the program provider, without charge to the individual or LAR in accordance with this subsection.

(1) The program provider must not commingle the individual's personal funds with the program provider's funds.

(2) The program provider must maintain a separate, detailed record of:

(A) all deposits into the individual's account; and

(B) all expenditures from the individual's account that includes:

(i) the amount of the expenditure;

(ii) the date of the expenditure;

(iii) the person to whom the expenditure was made;

(iv) except as described in clause (vi) of this subparagraph, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for;

(v) if the statement described in clause (iv) of this subparagraph documents an expenditure for more than one individual, the amount allocated to each individual identified on the statement; and

(vi) if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received.

(3) The program provider may accrue an expense for necessary items and services for which the individual's personal funds are not available for payment, such as room and board, medical and dental services, legal fees or fines, and essential clothing.

(4) If an expense is accrued as described in paragraph (3) of this subsection, the program provider must enter into a written payment plan with the individual or LAR for reimbursement of the funds.

(v) If the program provider determines that an individual's behavior may require the implementation of behavior management techniques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this subsection.

(1) The program provider must:

(A) obtain an assessment of the individual's needs and current level and severity of the behavior; and
(B) ensure that a service provider of behavioral support services:

(i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

(ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

(2) The behavior support plan must:

(A) describe how the behavioral data concerning the behavior is collected and monitored;

(B) allow for the decrease in the use of the techniques based on the behavioral data; and

(C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

(3) Before implementation of the behavior support plan, the program provider must:

(A) obtain written consent from the individual or LAR to implement the plan;

(B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

(C) notify the individual's service coordinator of the plan.

(4) The program provider must, at least annually:

(A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and

(B) notify the service coordinator if the plan needs to be continued.

(w) The program provider must report the death of an individual to DADS and the service coordinator by the end of the next business day following the death or the program provider's learning of the death and, if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(x) A program provider must not discharge or otherwise retaliate against:

(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the:
(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual; or

(2) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual.

(y) A program provider must enter critical incident data in the DADS data system no later than 30 calendar days after the last day of the month being reported in accordance with the HCS Provider User Guide.

(z) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (k) - (n) of this section.


(a) A program provider may request an administrative hearing if DADS takes or proposes to take the following action:

(1) vendor hold;

(2) contract termination [of the program provider agreement];

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's claim for payment, including denial of a retroactive LOC and denial of a recommended LON.
(b) If the basis of an administrative hearing requested under this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with §9.165 of this subchapter (relating to Reconsideration of LON Assignment).

§9.188. DADS Approval of Residences.

(a) A program provider must obtain DADS written approval in accordance with subsection (b) of this section before providing residential support in a four-person residence.

(b) To obtain approval of a four-person residence, the program provider must submit the following written documentation to DADS:

(1) the address and county of the residence;

(2) certification from the program provider that the program provider intends to provide residential support to one or more individuals who will live in the residence;

(3) one of the certifications required by §9.178(e)(1)(A) of this subchapter (relating to Certification Principles: Quality Assurance); and

(4) written certification from the program provider that the residence to be approved is not the residence of any person except a person permitted to live in the residence as described in §9.153(22)(D) [§9.153(22)] of this subchapter (relating to Definitions).

(c) DADS notifies the program provider in writing of its approval or disapproval of the four-person residence within 14 calendar days after DADS receives the documentation specified in subsection (b) of this section.

§9.189. Referral to DFPS.

If, within one year after the date DADS receives the notification described in §9.190(e)(35) or (36) of this subchapter (relating to LIDDA [Local Authority] Requirements for Providing Service Coordination in the HCS Program), DADS is unable to locate the parent or LAR, DADS refers the case to:

(1) the Child Protective Services Division of DFPS if the individual is under 18 years of age; or

(2) the Adult Protective Services Division of DFPS if the individual is 18-21 [18-22] years of age.

§9.190. LIDDA [Local Authority] Requirements for Providing Service Coordination in the HCS Program.

(a) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating
to Service Coordination for Individuals with an Intellectual Disability), a **LIDDA [local authority]** must, in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title (relating to Consumer Directed Services Option).

(b) A **LIDDA [local authority]** must employ service coordinators who:

1. meet the minimum qualifications and **LIDDA [local authority]** staff training requirements specified in Chapter 2, Subchapter L of this title; and

2. have received training about:

   (A) the HCS Program, including the requirements of this subchapter and the HCS Program services specified in §9.154 of this subchapter (relating to Description of the HCS Program); and

   (B) Chapter 41 of this title.

(c) A **LIDDA [local authority]** must have a process for receiving and resolving complaints from a program provider related to the **LIDDA's [local authority's]** provision of service coordination or the **LIDDA's [local authority's]** process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the **LIDDA [local authority]** must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The **LIDDA [local authority]** may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

1. assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

2. provide an applicant or individual, LAR, or family member with a written copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at www.dads.state.tx.us.) and an oral explanation of such rights:

   (A) upon enrollment in the HCS Program;

   (B) upon revision of the booklet;

   (C) upon request; and

   (D) upon change in an individual's legal status (that is when the individual turns 18.
years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the following processes for filing complaints:

(A) processes for filing complaints with the LIDDA [local authority] about the provision of service coordination; and

(B) processes for filing complaints about the provision of HCS Program services including:

(i) the telephone number of the LIDDA [local authority] to file a complaint;

(ii) the toll-free telephone number of DADS to file a complaint; and

(iii) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate person-directed planning, including scheduling service planning team meetings;

(7) develop for an individual a full range of services and resources using generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons to meet the needs of the individual as those needs are identified;
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(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §9.158(j)(4)(A) [§9.158(k)(3)] of this subchapter (relating to Process for Enrollment of Applicants);

(ii) §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(iii) §2.556 of this title (relating to MRA's Responsibilities);

(B) states, for each HCS Program service, other than supervised living and residential support, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 and §9.166 of this subchapter;

(10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;

(11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);

(12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and

(B) revise the PDP as necessary;

(13) provide an individual's program provider a copy of the individual's current PDP;

(14) monitor the delivery of HCS Program services and non-HCS Program services to an individual;

(15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;

(16) together with the program provider, ensure the coordination and compatibility of HCS Program services with non-HCS Program services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as described in §9.174(a)(27)(B) of
this subchapter (relating to Certification Principles: Service Delivery);

(17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;

(19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(20) if informed by the program provider that an individual's HCS Program services have been suspended:

(A) request the program provider enter necessary information in the DADS data system to inform DADS of the suspension;

(B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and

(C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;

(21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(c) [§9.155(d)] of this subchapter.
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(relating to Eligibility Criteria and Suspension of HCS Program Services);

(23) if the service coordinator determines that HCS Program services provided to an
individual should be terminated, including for a reason described in §9.158(k)(14)(A) or (B)
[§9.158(l)(11)] of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that
services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written request to terminate the individual's HCS Program services to
DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written request and the documentation required by
subsection (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services, the service
coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services; and

(iii) possible service resources upon termination; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information
required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) in accordance with DADS instructions, manage the process to transfer an
individual's HCS Program services from one program provider to another or transfer from one
FMSA to another [in accordance with DADS instructions], including:

(A) informing the individual or LAR who requests a transfer to another program
provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:
(i) to receive HCS Program services from any [available] program provider that is in the geographic location preferred by the individual or LAR and [(that is, a program provider] whose enrollment has not reached its service capacity in the DADS data system; [)] or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing [provide] the individual or LAR with a list of and contact information for [available] HCS Program providers and FMSAs [and contact information] in the geographic location [locations] preferred by the individual or LAR;

(26) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(27) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;
(34) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the LIDDA [local authority] notifies the service coordinator that the LIDDA [local authority] is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) request from and encourage the parent or LAR of an individual under the age of 22 years requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;
(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see www.hhsc.state.tx.us for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the residence is located, if the individual is less than three years of age (see http://www.dars.state.tx.us/ecis/searchprogram.asp to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

(i) the individual's full name;

(ii) the individual's gender;

(iii) the individual's ethnicity;

(iv) the individual's birth date;

(v) the individual's social security number;
(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information; [and]

(39) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-21 [18-22] years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and
(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record; [.]

(40) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility; and

(41) at least monthly, have one face-to-face contact with an individual, whose HCS Program services have not been suspended, to provide service coordination.


(a) DADS conducts a compliance review of each LIDDA [MRA], at least annually, to determine if the LIDDA [MRA] is in compliance with:

(1) Chapter 2, Subchapter L, of this title (relating to Service Coordination For Individuals with an Intellectual Disability [Mental Retardation]);

(2) §9.190 of this subchapter (relating to LIDDA [MRA] Requirements for Providing Service Coordination in the HCS Program); and

(3) other requirements for the LIDDA [MRA] as described in this subchapter.

(b) If any item of noncompliance remains uncorrected by the LIDDA [MRA] at the time of the review exit conference, the LIDDA [MRA] must submit to DADS a plan of correction in accordance with the performance contract [between DADS and the MRA]. DADS may take action as specified in the performance contract if the LIDDA [MRA] fails to submit or implement an approved plan of correction.

§9.192. Service Limits.

(a) The following limits apply to an individual's HCS Program services:

(1) for adaptive aids, $10,000 during an IPC year;

(2) for dental treatment, $1,000 during an IPC year;

(3) for minor home modifications and pre-enrollment minor home modifications combined:

(A) $7,500 during the time the individual is enrolled in the HCS Program, which may
be paid in one or more IPC years; and

(B) after reaching the $7,500 limit described in subparagraph (A) of this paragraph, a maximum of $300 for repair and maintenance during the IPC year; [and]

(4) for respite, 300 hours during an IPC year; and [.]

(5) for TAS:

(A) $2,500 if the applicant's proposed initial IPC does not include residential support, supervised living, or host home/companion care; or

(B) $1,000 if the applicant's proposed initial IPC includes residential support, supervised living, or host home/companion care.

(b) An individual may receive TAS only once in the individual's lifetime.

(c) A program provider may request, in accordance with the HCS Program Billing Guidelines, authorization of a requisition fee:

(1) for dental treatment that is in addition to the $1,000 service limit described in subsection (a)(2) of this section; or

(2) for a minor home modification that is in addition to the $7,500 service limit described in subsection (a)(3)(A) of this section.


(a) An MRA must maintain an up-to-date interest list of applicants waiting to receive HCS Program services for whom the MRA is the designated MRA in CARE.

(1) If an applicant's name is placed on the HCS Program interest list, the MRA must assign the applicant a registration date that is:

(A) the date of receipt by an MRA of a written or oral request for HCS Program services;

(B) the date of receipt of notification given to the MRA in accordance with Texas Government Code, §531.154, that an individual under 22 years of age has been admitted to one of the following institutions, as defined in Texas Government Code, §531.151:

(i) an ICF/MR;

(ii) a nursing home;

(iii) an institution for the mentally retarded licensed by DFPS;
(iv) a foster group home licensed by DFPS; or

(v) another residential arrangement that provides care to four or more individuals under 22 years of age who are unrelated to each other; or

(C) the date of an MRA's notification to an applicant under 22 years of age as described in §9.158(g)(1) of this subchapter (relating to Process for Enrollment of Applicants).

(2) The MRA must provide written notification to program providers in its local service area of the process that program providers should use to refer applicants who express a desire to be placed on the HCS Program interest list.

(3) Except as specified in paragraph (4) of this subsection, the MRA must remove an applicant's name from the HCS Program interest list if it is documented that:

(A) written permission has been obtained from the applicant or the primary correspondent to remove the applicant's name from the waiting list;

(B) the applicant is deceased;

(C) the applicant has moved out of Texas;

(D) the applicant's name has been added to another MRA's interest list in accordance with paragraph (6) of this subsection;

(E) the applicant or LAR has not responded to the MRA's notification of a program vacancy within 30 calendar days after the date of the MRA's notification;

(F) the applicant or LAR has declined HCS Program services;

(G) the applicant or LAR has not responded to the MRA's attempts to contact the applicant or LAR during its annual update of the interest list;

(H) the applicant or LAR has not documented the choice of HCS Program services over the ICF/MR Program using the Verification of Freedom of Choice, Waiver Program form within the time frames described in §9.158(f)(2) of this subchapter; or

(I) the applicant or LAR has not documented the choice of a program provider using the Documentation of Provider Choice form within the time frames described in §9.158(f)(3) of this subchapter.

(4) For an applicant under 22 years of age whose name was placed on the HCS Program interest list in accordance with Texas Government Code, §531.157, an MRA may remove the applicant's name from the interest list only if the applicant is deceased or the applicant's name has been transferred in accordance with paragraph (6) of this subsection.
(5) If an applicant's name is removed from an interest list in accordance with paragraph (3) or (4) of this subsection, and if the applicant, LAR, or the MRA wants the name reinstated to the interest list, the applicant, LAR, or MRA may request that DADS review the circumstances under which the applicant's name was removed from the MRA's interest list. At its discretion, DADS may reinstate the applicant's name to the interest list using the previously assigned registration date.

(6) At the request of an applicant or LAR who moves to the local service area of a different MRA, the original MRA must provide the applicant's name and date of request for HCS Program services to the MRA in the local service area where the applicant has moved. The MRA receiving the information must add the applicant's name to its interest list using the date of the request for HCS Program services provided by the original MRA.

(b) DADS removes an applicant's name from the HCS Program interest list if DADS has denied the applicant enrollment and the applicant or LAR has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §9.169 of this subchapter (relating to Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER N TEXAS HOME LIVING (TXHML) PROGRAM

§9.551. Purpose.

The purpose of this subchapter is to describe:

(1) the eligibility criteria and process for enrollment in the TxHmL Program;

(2) the requirements for TxHmL Program provider certification and process for certifying and sanctioning program providers in the TxHmL Program;

(3) the requirements for reimbursement of program providers; and

(4) the requirements for LIDDA[s] [local authorities] and the process for correcting practices found to be out of compliance with the TxHmL Program principles for a LIDDA [local authority].


This subchapter applies to:

(1) LIDDA[s] [local authorities,]

(2) program providers; [and]

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

(1) Applicant--A Texas resident seeking services in the TxHmL Program.

(2) 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).

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

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

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

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

(7) Condition of a serious nature--Except as provided in paragraph (14) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(8) Contract--A provisional contract or a standard contract.

(9) Critical incident--An event listed in the TxHmL Provider User Guide found at http://www2.mhmr.state.tx.us/655/cis/training/txhmlGuide.html.

(10) DADS--The Department of Aging and Disability Services.

(11) DFPS--The Department of Family and Protective Services.

(12) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(13) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.
(14) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(15) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(16) HHSC--The Texas Health and Human Services Commission.

(17) ICAP--Inventory for Client and Agency Planning.

(18) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a [A] facility in which ICF/IID Program services are provided and that is: [-]

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by DADS.

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

(20) ICF/MR Program--ICF/IID Program.

(21) ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(22) Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service on the individual's IPC to be provided by the program provider [not provided through the CDS option], includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of [TxHmL Program] units of TxHmL Program services [service] needed to complete each objective;
(E) the frequency and duration of TxHmL Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(23) Individual--A person enrolled in the TxHmL Program.

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


(A) states:

(i) the type and amount of each TxHmL Program service to be provided to an individual during an IPC year; and

(ii) the [medical and other] services and supports to be provided to the individual through resources other than TxHmL [non-TxHmL] Program services, including natural supports, medical services, and educational services; and [resources.]

(B) is authorized by DADS.

(26) IPC cost--Estimated annual cost of program services included on an IPC.

(27) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

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

(29) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(30) [Local authority--An entity described in Texas Health and Safety Code, §531.002(11) to which the executive commissioner of HHSC has delegated authority and responsibility in accordance with Texas Health and Safety Code, §533.035(a).]

(31) LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for
(32) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(33) Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(34) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

(35) Military family member--An applicant who is the spouse or child (regardless of age) of:

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

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

(i) who was killed in action; or

(ii) who died while in service.

(36) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(37) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(38) Own home or family home--A residence that is not:
(A) an ICF/IID [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS];

(B) a nursing facility [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242];

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC [Texas Health and Safety Code], Chapter 247;

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

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

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(39) [(36)] Performance contract--A written agreement between DADS and a LIDDA [local authority] for the performance of delegated functions, including those [provision of one or more functions as] described in THSC, §533A.035 [§533.035(b)].

(40) [(37)] PDP--Person-directed plan. A written plan, based on person-directed planning and developed with [for] an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at www.dads.state.tx.us, [§9.567 of this subchapter (relating to Process for Enrollment)] that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety [on behalf of the applicant].
(41) Post-move monitoring visit--As described in §17.503 of this title, a visit conducted by
the service coordinator in the individual's residence and other locations, as determined by the
service planning team, for an individual who enrolled in the TxHmL Program from a nursing
facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility.
The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing
facility, or other negative outcome.

(42) Pre-move site review--As described in §17.503 of this title, (relating to Transition
Planning for a Designated Resident), a review conducted by the service coordinator in the
planned residence and other locations, as determined by the service planning team, for an
applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review
is to ensure that essential services and supports described in the applicant's transition plan are in
place before the applicant moves to the residence or receives services in the other locations.

(43) Program provider--A person, as defined in §49.102 of this title (relating to
Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an
FMSA.

(44) Provisional contract--An initial contract that DADS enters into with a program
provider in accordance with §49.208 of this title (relating to Provisional Contract Application
Approval) that has a stated expiration date.

(45) Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

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

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of
major life activity:
(i) self-care;
(ii) understanding and use of language;
(iii) learning;
(iv) mobility;
(v) self-direction; and
(vi) capacity for independent living.

(46) [44+] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(47) [42] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(48) [43] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(49) [44] Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(50) [45] Service coordinator--An employee of a LIDDA [local authority] who provides service coordination to an individual [is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services].

(51) [46] Service planning team--One of the following: [A]

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team [constituted by a local authority] consisting of:

(i) an applicant or individual and [z] LAR; [z]

(ii) service coordinator; [z] and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher; [z]
(B) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(53) Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service to an individual.

(54) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(55) Staff member--An employee or contractor of a TxHmL Program provider.

(56) Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.
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(57) [§49] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(58) [§51] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.


(60) [§53] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(61) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(62) [§54] TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(63) [§55] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

§9.554. Description of the TxHmL Program.

(a) The TxHmL Program is a Medicaid waiver program approved by [the] CMS pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals who live in their own homes or in their family homes. The TxHmL Program is operated by DADS under the authority of HHSC.

(b) DADS has grouped the counties of the state of Texas into geographical areas, referred to as "local service areas," each of which is served by a LIDDA [local authority]. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is available at www.dads.state.tx.us.

(1) A program provider may provide TxHmL Program services only to persons residing in the counties specified in its contract.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.
(3) A program provider may have a contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract.

(4) A program provider may not have more than one contract per waiver contract area.

(c) A LIDDA [The local authority] must provide service coordination to an individual who is enrolled in the TxHmL Program in accordance with this subchapter.

(d) TxHmL Program services, as defined in §9.555 of this subchapter (relating to Description of TxHmL Program Services), are selected by the service planning team for inclusion in an applicant's or individual's IPC to:

(1) ensure the applicant's or individual's health and welfare in the community;

(2) supplement rather than replace the applicant's or individual's natural supports and other non-TxHmL Program sources for which the applicant or individual may be eligible; and

(3) prevent the applicant's or individual's admission to institutional services.

(e) The CDS option is a service delivery option, as described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR directs the TxHmL Program services [employs and retains service providers and directs the delivery of one or more services] that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

(f) A program provider must comply with all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services).

§9.555. Description of TxHmL Program Services [Service Components].

(a) Community support provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community support provides habilitative or support activities that:

(A) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(B) assist an individual to develop competencies in maintaining the individual's home life;

(C) foster improvement of or facilitate an individual's ability and opportunity to:

(i) participate in typical community activities including activities that lead to successful employment;
(ii) access and use of services and resources available to all citizens in the individual's community;

(iii) interact with members of the community;

(iv) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(v) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network.

(2) Community support, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community support does not include payment for room or board.

(4) Community support may not be provided to the individual at the same time that any of the following services are provided:

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

(b) Day habilitation assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life.

(1) Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver services, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;
(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day habilitation may not be provided at the same time that any of the following services are provided:

(A) respite;

(B) community support;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

(c) Nursing provides treatment and monitoring of health care procedures ordered or prescribed by a practitioner and as required by standards of professional practice or state law to be performed by an RN or LVN. Nursing includes:

(1) administering medication;

(2) monitoring an individual's use of medications;

(3) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(4) assisting an individual or LAR to secure emergency medical services for the individual;

(5) making referrals for appropriate medical services;

(6) performing health care procedures as ordered or prescribed by a practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(7) delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(8) teaching an unlicensed service provider about the specific health needs of an individual;

(9) performing an assessment of an individual's health condition;
(10) an RN doing the following:

(A) performing a nursing assessment for each individual:

(i) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) as determined necessary by an RN, including if the individual's health needs change;

(B) documenting information from performance of a nursing assessment;

(C) if an individual is receiving a service through CDS, providing a copy of the documentation described in subparagraph (B) of this paragraph to the individual's service coordinator;

(D) developing the nursing service portion of an individual's implementation plan required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) in accordance with Texas Human Resources Code, Chapter 161:

(A) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) the medication is:

(I) an oral medication;

(II) a topical medication; or

(III) a metered dose inhaler;

(iii) the medication is administered to the individual for a predictable or stable condition; and

(iv) the unlicensed service provider has been:
(I) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate competitive employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or
(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain competitive employment;

(2) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or employment assistance is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or
(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(f) Behavioral support provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging [maladaptive] or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. Behavioral support includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive aids enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the TxDH Program Billing Guidelines.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

(A) lifts;

(B) mobility aids;
(C) positioning devices;

(D) control switches/pneumatic switches and devices;

(E) environmental control units;

(F) medically necessary supplies;

(G) communication aids;

(H) adapted/modified equipment for activities of daily living; and

(I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of $10,000 per individual per IPC year.

(3) Adaptive aids do not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor home modifications are physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications may be provided up to a lifetime limit of $7,500 per individual. After the $7,500 lifetime limit has been reached, an individual is eligible for an additional $300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor home modifications do not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

(A) purchase and repair of mobility/wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations.

(i) Dental treatment may be provided up to a maximum of $1,000 per individual per IPC year for the following treatments:
(1) emergency dental treatment;

(2) preventive dental treatment;

(3) therapeutic dental treatment; and

(4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite is provided for the [planned or emergency short-term] relief of an [the] unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports [due to non-routine circumstances].

(1) Respite includes:

(A) assistance with activities of daily living and functional living tasks;

(B) assistance with planning and preparing meals;

(C) transportation or assistance in securing transportation;

(D) assistance with ambulation and mobility;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(p) of this subchapter are met, in other locations.

(k) Professional therapies provide assessment and treatment by a licensed or certified professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) and include training and consultation with an
individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are:

(1) audiology services;
(2) speech/language pathology services;
(3) occupational therapy services;
(4) physical therapy services;
(5) dietary services;
(6) social work services; and
(7) behavioral support.

(l) FMS are provided if the individual participates in the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual participates in the CDS option.

§9.556. Eligibility Criteria for TxHmL Program Services.

[(a)] An applicant or individual is eligible for [the] TxHmL Program services if:

(1) the applicant or individual meets the financial eligibility criteria as described in Appendix B of the TxHmL waiver application approved by CMS and found at www.dads.state.tx.us [defined in subsection (b) of this section];

(2) the applicant or individual meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or
(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the TxHMl Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered [a] TxHMl Program services [vacancy] designated for a member of the reserved [reserve] capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the TxHMl Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) the applicant or individual has been assigned an LON 1, 5, 8, or 6 in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment);

(4) the applicant or individual has an IPC cost that does not exceed $17,000 [approved in accordance with §9.558 of this subchapter (relating to Individual Plan of Care (IPC))];

(5) the applicant or individual is not enrolled in another waiver program or receiving a mutually excluded service identified in the Mutually Exclusive Services table in Appendix I of the TxHMl Program Handbook available at www.dads.state.tx.us [under §1915(e) of the Social Security Act];

(6) the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHMl Program over participation in the ICF/IID Program;

(7) the applicant's or individual's service planning team concurs that the TxHMl Program services and, if applicable, non-TxHMl Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community; and

(8) the applicant or individual lives in the applicant's or individual's own home or family home.

[110] An applicant or individual is financially eligible for the TxHMl Program if the applicant or individual:

[(1) is categorically eligible for Supplemental Security Income (SSI) benefits;]

[(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;]

[(3) is under 20 years of age and;]
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[(A) is financially the responsibility of DFPS in whole or in part; and]  
[(B) is being cared for in a foster home or group home:]  
[(i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child-placing agency; and]  
[(ii) in which a foster parent is the primary caregiver residing in the home;]  
[(4) is currently receiving Medicaid for Youth Transitioning Out of Foster Care (Transitional Medicaid) because the applicant or individual formerly received foster care through DFPS and was under the financial responsibility of DFPS; or]  
[(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Assistance for Needy Families:]  


(a) An [initial] IPC must be developed for each applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) An IPC must be based on the PDP and [The IPC must] specify the type and amount of each TxHmL Program service to be provided to the individual, as well as non-TxHmL Program services and supports to be provided [by other non-TxHmL Program sources] during the IPC year. The type and amount of each TxHmL Program service in the IPC must be supported by:

(1) documentation that non-TxHmL Program sources for the service are unavailable and the service supplements rather than replaces natural supports or non-TxHmL Program services;

(2) assessments of the individual that identify specific services necessary for the individual to continue living in the community, to ensure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program services are necessary for the individual to live in the community; are necessary to prevent the individual's admission to institutional services, and are sufficient, when combined with services or supports available from non-TxHmL Program sources (if applicable), to ensure the individual's health and welfare in the community.

(c) Before electronic transmission to DADS, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b) of this section.
(d) DADS reviews an electronically transmitted initial, revised, or renewal IPC and approves, modifies, or does not approve the IPC. [DADS does not approve an IPC having a total cost that exceeds the combined cost limit specified in Appendix C of the TxHml Program waiver application approved by CMS.]

(e) An electronically transmitted IPC must contain information identical to the information contained on the signed copy of the IPC described in subsection (c) of this section.

(f) DADS may review an IPC at any time to determine if the type and amount of each service specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to DADS in accordance with a request from DADS for documentation.

§9.560. Level of Care (LOC) Determination.

(a) A LIDDA [local authority] must request an LOC determination for an applicant or individual by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LOC. The electronically transmitted ID/RC Assessment must contain information identical to that on the signed ID/RC Assessment.

(b) DADS makes an LOC determination in accordance with §9.237(c) of this chapter (relating to Level of Care).

(c) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors.

(d) The LIDDA [local authority] must maintain the signed ID/RC Assessment and documentation supporting the recommended LOC in the applicant's or individual's record.

(e) DADS approves and enters the appropriate LOC into the automated billing and enrollment system or sends written notification to the service coordinator that an LOC has been denied.

(f) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

§9.561. Lapsed Level of Care (LOC).

(a) To reinstate authorization for payment for days when services were delivered to an individual without a current LOC determination, a LIDDA [local authority] must:

(1) electronically transmit to DADS an ID/RC Assessment that is signed and dated by the service coordinator; [for each period of time for which there was a lapsed LOC according to DADS procedures.]

(2) include on the ID/RC Assessment an end date of the LOC period that is not later than
365 calendar days after the end date of the previously authorized LOC period; and

(3) ensure that the electronically transmitted ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment.

(b) DADS notifies the LIDDA of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives the ID/RC Assessment in accordance with subsection (a) of this section.

(c) [The LIDDA] must maintain in the individual's record:

(1) a copy of the individual's most recent ID/RC Assessment approved by DADS; and

(2) an ID/RC Assessment identical to that electronically transmitted in accordance with subsection (a) of this section for each period of time for which there was a lapsed LOC.

(d) [DADS does not grant a request for reinstatement of an LOC determination:

(1) to establish program eligibility;

(2) to renew an LOC determination;

(3) to obtain an LOC determination for a period of time for which an LOC has been denied;

(4) to revise an LON; or

(5) for a period of time for which an individual's IPC is or was not current.

§9.562. Level of Need (LON) Assignment.

(a) A LIDDA must request DADS to assign an LON for an applicant or individual by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LON and, as appropriate, submitting supporting documentation in accordance with §9.563(b) and (c) of this subchapter (relating to DADS Review of Level of Need (LON)).

(b) A LIDDA must maintain the applicant's or individual's Inventory for Client and Agency Planning (ICAP) Assessment Booklet supporting the recommended LON in the applicant's or individual's record and other documentation supporting the requested LON, including:

(1) the individual's PDP, including the deliberations and conclusions of the applicant's or individual's service planning team;

(2) assessments and interventions by qualified professionals; and
(3) behavioral intervention plans.

(c) If an LON 9 is recommended, a LIDDA [the local authority] must maintain documentation that proves:

(1) the applicant or individual exhibits extremely dangerous behavior that could be life threatening to the applicant or individual or to others;

(2) a written behavior intervention plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the extremely dangerous behavior occurs;

(3) management of the applicant's or individual's behavior requires a person to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the person supervising the individual has no other duties or activities during the period of supervision; and

(5) the individual's ID/RC Assessment is correctly scored with a "2" in the Behavior section.

(d) DADS assigns an LON for an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC Assessment, and required supporting documentation.

(e) A LIDDA [local authority] must submit documentation supporting a recommended LON to DADS in accordance with DADS instructions regarding LON packet submission found at www.dads.state.tx.us.

(f) DADS assigns one of five LONs in accordance with §9.161 of this chapter (relating to Level of Need Assignment).

§9.563. DADS Review of Level of Need (LON).

(a) DADS may review a recommended or assigned LON at any time to determine if it is appropriate. If DADS reviews an LON, documentation supporting the LON must be submitted by the LIDDA [local authority] to DADS in accordance with DADS request. Based on its review, DADS may modify an LON.

(b) If an LON 9 is requested, DADS may review documentation supporting the requested LON.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted by the LIDDA [local authority] to DADS in accordance with this
subchapter and received by DADS within seven calendar days after the LIDDA [local authority] has electronically transmitted the recommended LON.

(d) Within 21 calendar days after receiving the supporting documentation, DADS:

(1) requests additional documentation;

(2) electronically approves the recommended LON and establishes the effective date; or

(3) sends written notification that the recommended LON has been denied.

(e) DADS reviews any additional documentation submitted in accordance with DADS request and electronically approves the recommended LON or sends written notification to the LIDDA [local authority] that the recommended LON has been denied.

§9.566 TxHmL Interest List

(a) A LIDDA must maintain an up-to-date interest list of applicants interested in receiving TxHmL Program services for whom the LIDDA is the applicant's designated LIDDA in DADS data system.

(b) A person may request that an applicant's name be added to the TxHmL interest list by contacting the LIDDA serving the Texas county in which the applicant or person resides.

(c) If a request is made in accordance with subsection (b) of this section, a LIDDA adds an applicant's name to the TxHmL interest list:

(1) if the applicant resides in Texas; and

(2) with an interest list request date of the date the request is received.

(d) For an applicant determined diagnostically or functionally ineligible for another DADS waiver program, DADS adds the applicant's name to the TxHmL interest list with a request date based on one of the following, whichever is earlier:

(1) the request date of the interest list for the other waiver program; or

(2) an existing request date for the TxHmL Program for the applicant.

(e) DADS or the LIDDA removes an applicant's name from the TxHmL interest list if:

(1) the applicant or LAR requests in writing that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends;
(3) the applicant declines the offer of TxHmL Program services or an offer of TxHmL Program services is withdrawn as described in §9.567 of this subchapter (relating to Process for Enrollment), unless the applicant is a military family member temporarily living outside of Texas;

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

(5) the applicant is deceased; or

(6) DADS has denied the applicant enrollment in the TxHmL Program and the applicant or LAR has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §9.571 of this subchapter (relating to Fair Hearings) and did not appeal the decision, or appealed and did not prevail.

(f) If DADS or the LIDDA removes an applicant's name from the TxHmL interest list in accordance with subsection (e)(1)-(4) of this section and, within 90 calendar days after the name was removed, receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list based on the original request date described in subsection (c) or (d) of this section; and

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

(g) If DADS or the LIDDA removes an applicant's name from the TxHmL interest list in accordance with subsection (e)(1)-(4) of this section and, more than 90 calendar days after the name was removed, receives an oral or written request from a person to reinstate the applicant's name on the interest list:

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

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

(h) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(6) of this section and receives an oral or written request from a person to reinstate the applicant's name on the interest list:

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

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

(a) DADS notifies a LIDDA, in writing, of the availability of TxHmL Program services in the LIDDA's local service area and directs the LIDDA to offer TxHmL Program services to the applicant:

(1) whose interest list request date, assigned in accordance with §9.566(b)(2) of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by DADS;

(2) whose name is not coded in the DADS data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue in an amount that would allow DADS to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA must make the offer of TxHmL Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) A LIDDA must make the offer of TxHmL Program services to an applicant described in subsection (a)(2) or (3) of this section in accordance with DADS procedures.

(d) The LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of TxHmL Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer of TxHmL Program services; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of TxHmL Program services, the LIDDA terminates those services that are similar to services provided under the TxHmL Program; and

(2) information relating to the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is available at www.dads.state.tx.us.

(e) If an applicant or LAR responds to an offer of TxHmL Program services, the LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one
family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at www.dads.state.tx.us; and

(2) give the applicant or LAR the Verification of Freedom of Choice form, which is available at www.dads.state.tx.us to document the applicant's choice regarding the TxHmL Program and ICF/IID Program.

(f) The LIDDA must withdraw an offer of TxHmL Program services made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of TxHmL Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the Verification of Freedom of Choice form;

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all available program providers in the LIDDA's local service area in accordance with subsection (n)(1) of this section, the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form; or

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process.

(g) If the LIDDA withdraws an offer of TxHmL Program services made to an applicant, the LIDDA must notify the applicant or LAR of such actions, in writing, by certified United States mail.

(h) If the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of TxHmL Program services, the LIDDA must terminate those services that are similar to services provided under the TxHmL Program.

(i) If the LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) The LIDDA must retain in the applicant's record:

(1) the Verification of Freedom of Choice form documenting the applicant's or LAR's
choice of services:

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

(3) any correspondence related to the offer of TxHmL Program services.

(k) [\[(a)\] If an applicant or LAR chooses participation in the TxHmL Program, the LIDDA [local authority] must assign a service coordinator who develops, in conjunction with the service planning team, a PDP. At a minimum, the PDP must include the following:

(1) a description of the services and supports the applicant requires to continue living in the applicant's own home or family home;

(2) a description of the applicant's current existing natural supports and non-TxHmL Program services that will be available if the applicant is enrolled in the TxHmL Program;

(3) a description of individual outcomes to be achieved through TxHmL Program services and justification for each service to be included in the IPC;

(4) documentation that the type and amount of each service included in the applicant's IPC do not replace existing natural supports or non-TxHmL Program sources for the services for which the applicant may be eligible;

(5) documentation for each TxHmL program service of whether the service is critical to the individual's health and safety, as determined by the service planning team;

(6) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion;

(7) a statement that the applicant was provided the information regarding the CDS option as required by subsection \[(l)(1)\] \[(b)\] of this section;

(8) if the applicant chooses to participate in the CDS option, a description of the services provided through the CDS option; and

(9) if the applicant chooses to participate in the CDS option, a description of the applicant's service backup plan.

(l) [\[(b)\] The service coordinator [local authority] must; [\[s\] \]

(1) in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) \[(d)\] inform the applicant or LAR of the applicant's right to participate in the CDS option; and
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(B) [(2)] inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) [(3)] if the applicant or LAR chooses to participate in the CDS option, comply with §9.583(s) of this subchapter (relating to TxHmL Program Principles for LIDDAs) [inform the applicant or LAR of the applicant's right to discontinue participation in the CDS option at any time].

(m) [(c)] The LIDDA [local authority] must compile and maintain information necessary to process the applicant's or LAR's request for enrollment in the TxHmL Program.

(1) The LIDDA [local authority] must complete an ID/RC Assessment.

(A) The LIDDA [local authority] must:

(i) determine or validate a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA [local authority] must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The LIDDA [local authority] must develop a proposed IPC with the applicant or LAR based on the PDP and §9.555 of this subchapter (relating to Description [Definitions] of TxHmL Program Services).

(n) [(d)] If an applicant or LAR chooses to receive a TxHmL Program service provided by a program provider, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all program providers in the LIDDA's [local authority's] local service area;

(2) review the proposed IPC with potential program providers selected by the applicant or the LAR;

(3) arrange for meetings or visits with potential program providers as desired by the applicant or the LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented,
signed by the applicant or LAR, and retained by the LIDDA [local authority] in the applicant's record;

(5) negotiate and finalize the proposed IPC with the selected program provider;

(6) ensure that the proposed IPC includes a sufficient number of RN nursing units for the program provider's RN to perform an initial nursing assessment, unless, as described in §9.578(r) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(7) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC for the program provider's RN to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, or respite from the program provider, will result in the applicant not receiving the service unless, as described in §9.578(s) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record.

(o) [(e)] After the selected program provider agrees to provide the services listed on the IPC, the LIDDA [local authority] must submit enrollment information, including the completed ID/RC Assessment and the proposed IPC to DADS. DADS notifies the applicant or LAR, the selected program provider and FMSA, if applicable, and the LIDDA [local authority] of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter (relating to Eligibility Criteria for TxHmL Program Services).
If a selected program provider initiates services before DADS notification of enrollment approval, the program provider may not be reimbursed in accordance with §9.573(a)(5)(M) of this subchapter (relating to Reimbursement).

§9.568. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and before the expiration of an individual's IPC, the service planning team and the program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, initiates revisions to the IPC in response to changes in the individual's needs and identified outcomes as documented in the current PDP.

(2) The service coordinator must electronically transmit annual renewals and necessary revisions of the IPC to DADS for approval and retain documentation as described in §9.567 of this subchapter (relating to Process for Enrollment) and §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(b) The service coordinator must electronically transmit annual evaluations of LOC or revisions of LOC to DADS for approval in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination).

(c) A LIDDA [The local authority] must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must electronically transmit an ID/RC Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, before that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to DADS in accordance with §9.563 of this subchapter (relating to DADS Review of Level of Need (LON)).

(3) A LIDDA [The local authority] must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.
§9.570. Termination and Suspension of TxHmL Program Services.

(a) DADS may terminate an individual's TxHmL Program services if:

(1) the individual no longer meets the eligibility criteria specified in §9.556 of this subchapter (relating to Eligibility Criteria for TxHmL Program Services);

(2) the individual or LAR requests that TxHmL Program services be terminated; or

(3) the individual or LAR refuses to cooperate in the provision or planning of services and:

   (A) the refusal is documented by the program provider and the service coordinator; and

   (B) the service coordinator has explained to the individual or LAR, in writing, that the refusal may result in termination of TxHmL Program services.

(b) DADS proposed termination of an individual's TxHmL Program services may be based on a LIDDA's recommendation [local authority's request] as described in subsection (c) of this section.

(c) To recommend [request] that DADS terminate an individual's TxHmL Program services, the individual's service coordinator must, within 14 calendar days after determining that one of the reasons in subsection (a) of this section exists, submit a written recommendation [request] containing the following information to DADS and provide a copy of the recommendation [request] to the individual or LAR:

(1) the reason termination is recommended [requested];

(2) a plan documenting [as appropriate]:

   (A) that, before submission of a recommendation [the request] for termination, the individual or LAR was informed of:

      (i) the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future; and

      (ii) the individual's option to transfer to another program provider if the recommendation is based on a reason other than the individual's eligibility [and the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future]; and

   (B) the individual or LAR was informed of the potential service resources to use following termination of the individual's TxHmL Program services; and
(3) if termination is recommended for the reason stated in subsection (a)(3) of this section:

(A) a description of the action by the individual or LAR demonstrating refusal to cooperate in the provision or planning of services and the effect of such action on the planning or provision of services;

(B) a description of the attempts by the program provider and service coordinator, including face-to-face meetings between the service coordinator and individual or LAR, to resolve the circumstances causing the individual's or LAR's refusal to cooperate; and

(C) a copy of a written explanation sent by the service coordinator to the individual or LAR explaining the consequences of the individual's or LAR's refusal to cooperate.

(d) If DADS proposes termination of an individual's TxHmL Program services, DADS sends a written notice of the proposed termination and the right to request a fair hearing required by §9.571 of this subchapter (relating to Fair Hearings) to the individual or LAR, the program provider, and the LIDDA [local authority].

(e) If the reason for the proposed termination is that the individual no longer meets the eligibility criteria described in §9.556(4) and (7) [§9.556(a)(4) and (7)] of this subchapter, the service coordinator must, at DADS request:

(1) inform the individual or LAR that DADS, based on availability, offers the individual a program vacancy in the HCS Program in accordance with §9.158(a)(3) of this chapter (relating to Process for Enrollment of Applicants); and

(2) offer to assist the individual or LAR to apply for other services for which the individual may be eligible including other home and community-based service programs and ICF/IID Program services.

(f) If an individual is temporarily admitted to one of the following settings, DADS suspends TxHmL Program services during that admission:

(1) a hospital;

(2) an ICF/IID [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS];

(3) a nursing facility [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242];

(4) a residential child-care operation licensed or subject to being licensed by DFPS;

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

(a) Program provider reimbursement.

(1) DADS pays a program provider for services as described in this paragraph.

(A) DADS pays for community support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and professional therapies in accordance with the reimbursement rate for the specific service.

(B) DADS pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item or service and, if requested, a requisition fee in accordance with the TxHmL Program Billing Guidelines, which are available at www.dads.state.tx.us.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in §49.311 of this title (relating to Claims Payment) and the TxHmL Program Billing Guidelines.

(3) If an individual's TxHmL Program services are suspended or terminated, the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may submit a claim for a service provided on the first calendar day of the suspension or termination.

(4) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the claim must be supported by a written assessment from a licensed or certified professional specified by DADS in the TxHmL Program Billing Guidelines and other documentation as required by the TxHmL Program Billing Guidelines.

(5) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) the individual receiving the service was, at the time the service was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;
(B) the service was not included on the signed and dated IPC of the individual in effect at the time the service was provided;

(C) the service provided did not meet the service definition [as described in §9.555 of this subchapter (relating to Definitions of TxHmL Program Services)] or was not provided in accordance with the TxHmL Program Billing Guidelines;

(D) the service was not documented in accordance with the TxHmL Program Billing Guidelines;

(E) the claim for the service was not prepared and submitted in accordance with the TxHmL Program Billing Guidelines;

(F) the program provider does not have the documentation described in paragraph (4);

(G) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(H) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) DADS determines that the service would have been paid for by a source other than the TxHmL Program;

(J) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the TxHmL Program Billing Guidelines;

(K) the service was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §9.558 of this subchapter (relating to Individual Plan of Care (IPC));

(L) the service was not provided in accordance with the PDP or [and] the implementation plan;

(M) the service was provided before the individual's enrollment date into the TxHmL Program; or

(N) the service was not provided.

(6) The program provider must refund to DADS any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.
(7) Payments by DADS to a program provider are not withheld in the event the LIDDA [local authority] erroneously fails to electronically transmit a renewal of an enrolled individual's LOC or IPC and the program provider continues to provide services in accordance with the most recent IPC [as] approved by DADS.

(b) Billing and payment reviews.

(1) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the $xHmL Program Billing Guidelines. DADS conducts such reviews in accordance with the $xHmL Billing and Payment Review Protocol set forth in the $xHmL Program Billing Guidelines. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(2) A corrective action plan required by DADS in accordance with paragraph (1)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(3) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if the corrective action plan is approved or if changes to the plan are required.

(4) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (1)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §9.575 of this chapter (relating to
Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(5) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (2) of this subsection, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(6) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (5) of this subsection, DADS may terminate the contract.

§9.574. Record Retention.

(a) A program provider must comply with §49.307 of this title (relating to Record Retention and Disposition).

(b) A LIDDA [local authority] must retain original records described in this subchapter necessary to disclose the extent of the services provided to the individual and, on request, provide DADS, at no cost to DADS, any such records until the latest of the following occurs:

1. six years elapse from the date the records were created;
2. any audit exception or litigation involving the records is resolved; or
3. the individual becomes 21 years of age.


(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.576(b) of this subchapter (relating to DADS Review of a Program Provider), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.576(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:

1. at the time of the certification review, the program provider is not providing TxHmL Program services to any individuals; and
(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide TxHmL Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved, DADS may:

(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;

(2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(3) deny or terminate certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and
(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the LIDDAs [local authorities] the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:

(1) impose a vendor hold against the program provider; or

(2) deny or terminate certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.
(n) If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.


(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP as provided by the LIDDA [local authority];

(2) a copy of the individual's current IPC as provided by the LIDDA [local authority]; and

(3) a copy of the individual's current ID/RC Assessment as provided by the LIDDA [local authority].

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR; and

(2) develop, in conjunction with the individual, the individual's family or LAR a written implementation plan.

(d) The program provider must ensure that service provision is accomplished in accordance with the individual's PDP and the implementation plan described in subsection (c)(2) of this section.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or
communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) The program provider must provide all TxHmL Program services:

(1) authorized in an individual's IPC;

(2) in accordance with the applicable service definition as specified in §9.555 of this subchapter (relating to Description [Definitions] of TxHmL Program Services); and

(3) in accordance with an individual's PDP, the implementation plan, and Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us.

(o) A program provider must develop a written service backup plan for a TxHmL Program service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:
(A) contain the name of the service;

(B) specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

(C) in the event of a service interruption resulting in an adverse effect as described in subparagraph (B) of this paragraph, describe the actions the program provider will take to ensure the individual's health and safety.

(2) A program provider must ensure that:

(A) if the action in the service backup plan required by paragraph (1) of this subsection identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(B) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter.

(3) If a service backup plan is implemented, a program provider must:

(A) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(B) document whether or not the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(p) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or
persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) Respite must not be provided in an institution such as an ICF/IID, [skilled] nursing facility, or hospital.

(q) The program provider must ensure that nursing is provided in accordance with:

(1) Texas Occupations Code, Chapter 301 (Nursing Practice Act);
(2) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);
(3) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and
(4) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(r) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(s) If an individual or LAR refuses a nursing assessment described in §9.555(c)(10)(A) of this subchapter [(relating to Definitions of TxHmL Program Services)], the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported
employment, or respite to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(t) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (s) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(u) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(j)(6) [§9.583(k)(6)] of this subchapter (relating to TxHmL Program Principles for LIDDAs [Local Authorities]), the program provider must immediately send the written notification described in subsection (t) of this section to DADS.

(v) The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

(w) The program provider must:

(1) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the TxHmL Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(2) for 180 days after an individual 21 years of age or older has enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from
admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

(D) notify the service planning team of any event or condition that may put the individual at risk of admission or readmission to a nursing facility within one calendar day after becoming aware of the event or condition.


(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service if that service provider:

(1) is qualified to provide the service;

(2) provides the service within the direct services portion of the applicable TxHmL Program rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must conduct initial and periodic training that ensures:

(1) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).
(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

(3) abuse, neglect, or exploitation of an individual; and

(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees the provision of TxHmL Program services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:
(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.
(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that a service [the] provider of behavioral support [is]:

(1) meets one of the following:

(A) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(B) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(C) is certified by DADS as described in §5.161 of this title (relating to DADS-certified Authorized Provider [TDMHMR-Certified Psychologist]);

(D) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;

(E) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(F) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or

(G) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; and

(2) completes training required by DADS as described in the TxHmL Handbook.

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed
assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453;

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code, Chapter 701; and

(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.

(r) The program provider must comply with §49.304 of this title (relating to Background Checks).

(s) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(t) If the service provider of community support is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (s) of this section as if the contractor were the program provider.


(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) inform the individual or LAR about the individual's health, mental condition,
related progress;

(7) inform the individual or LAR of the name and qualifications of any person serving the
individual and the option to choose among various available service providers;

(8) provide the individual or LAR access to TxHmL Program records, including, if
applicable, financial records maintained on the individual's behalf, about the individual and the
delivery of services by the program provider to the individual;

(9) assist the individual to communicate by phone or by mail during the provision of
TxHmL Program services unless the service planning team has agreed to limit the individual's
access to communicating by phone or by mail;

(10) assist the individual, as specified in the individual's PDP, to attend religious
activities as chosen by the individual or LAR;

(11) ensure the individual is free from unnecessary restraints during the provision of
TxHmL Program services;

(12) regularly inform the individual or LAR about the individual's or program provider's
progress or lack of progress made in the implementation of the PDP;

(13) receive and act on complaints about the TxHmL Program services provided by the program provider;

(14) ensure that the individual is free from abuse, neglect, or exploitation by program
provider personnel;

(15) provide active, individualized assistance to the individual or LAR in exercising the
individual's rights and exercising self-advocacy, including:

(A) making complaints;

(B) registering to vote;

(C) obtaining citizenship information and education;

(D) obtaining advocacy services; and

(E) obtaining information regarding legal guardianship;

(16) provide the individual privacy during treatment and care of personal needs;

(17) include the individual's LAR in decisions involving the planning and provision of
TxHmL Program services;
(18) inform the individual or LAR of the process for reporting a complaint to DADS or the LIDDA [local authority] when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858) or the LIDDA [local authority] telephone number to initiate complaints;

(19) ensure the individual is free from seclusion;

(20) inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1)-(19) of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1)-(19) of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(21) obtain an acknowledgement stating that the information described in paragraph (20) of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(22) notify the individual's service coordinator of an individual's or LAR's expressed interest in the CDS option and document such notification.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services as requested by DADS, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must comply with §49.309 of this title (relating to Complaint Process).

(e) The program provider must:

(1) ensure that the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing;
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(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) ensure that all staff members, service providers, and volunteers:

   (A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

   (B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

   (C) comply with §49.310(3)(B) of this title.

(f) Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse, neglect or exploitation, the program provider must take necessary actions to secure the safety of the individual, including:

   (1) obtaining immediate and on-going medical and other appropriate supports for the individual, as necessary;

   (2) restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual or other individuals pending investigation of the allegation, when an alleged perpetrator is an employee or contractor of the program provider; and

   (3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual, the individual's LAR, and the LIDDA [local authority] of the allegation report and the actions that have been or will be taken.

(g) The program provider must ensure that staff members, service providers, and volunteers cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

   (1) providing complete access to all TxHmL Program service sites owned, operated, or controlled by the program provider;

   (2) providing complete access to individuals and program provider personnel;

   (3) providing access to all records pertinent to the investigation of the allegation; and

   (4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(h) The program provider must:

   (1) report the program provider's response to the finding of a DFPS investigation of
abuse, neglect, or exploitation to DADS in accordance with DADS procedures within 14 calendar days of the program provider's receipt of the investigation findings;

(2) promptly, but not later than five calendar days from the program provider's receipt of the DFPS investigation finding, notify the individual and LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if DFPS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the individual or LAR, provide to the individual or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the individual.

(i) If the DFPS investigation confirms that abuse, neglect, or exploitation by program provider personnel occurred, the program provider must take appropriate action to prevent the recurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the DFPS investigation to have committed abuse, neglect, or exploitation.

(j) In all respite facilities, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

(k) At least quarterly, the program provider must review incidents of abuse, neglect, or exploitation, complaints, temporary suspensions, terminations, transfers, and critical incidents to assess trends and identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery.

(l) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program, and is otherwise neither directly nor indirectly
used or disclosed unless the written permission of the individual to whom the information applies 
or the individual's LAR is obtained before the use or disclosure.

(m) The program provider must ensure that:

(1) the individual or LAR has agreed in writing to all charges assessed by the program 
provider against the individual's personal funds before the charges are assessed; and 

(2) charges for items or services are reasonable and comparable to the costs of similar 
items and services generally available in the community.

(n) The program provider must not charge an individual or LAR for costs for items or 
services reimbursed through the TxHmL Program.

(o) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's 
funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the 
individual.

(p) When a behavioral support plan includes techniques that involve restriction of individual 
rights or intrusive techniques, the program provider must ensure that the implementation of such 
techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue 
participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior 
targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the 
plan;

(6) a written behavior support plan developed by a psychologist or behavior analyst with 
input from the individual, LAR, the individual's service planning team, and other professional 
personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;
(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(q) The program provider must report the death of an individual to the LIDDA [local authority] and DADS by the end of the next business day following the death of the individual or the program provider's knowledge of the death and, if the program provider reasonably believes that the individual's LAR or family does not know of the individual's death, to the individual's LAR or family as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(r) A program provider must enter critical incident data in the DADS data system no later than 30 calendar days after the last calendar day of the month being reported in accordance with the TxHmL Provider User Guide.

(s) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

   (A) performs the duties of the CEO during the CEO's absence; and

   (B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (f) - (i) of this section.

§9.582. Compliance with TxHmL Program Principles for LIDDA [Local Authorities].

(a) A LIDDA [local authority participating in the TxHmL Program] must be in [continuous] compliance with:

   (1) Chapter 2, Subchapter L, of this title (relating to Service Coordination for Individuals with an Intellectual Disability);

   (2) [the TxHmL Program Principles for Local Authorities as described in] §9.583 of this subchapter (relating to TxHmL Program Principles for LIDDA [Local Authorities]).
(3) other requirements for the LIDDA as described in this subchapter.

(b) DADS conducts a compliance review at least annually of each LIDDA [local authority] participating in the TxHmL Program.

(c) If any item of noncompliance remains uncorrected by the LIDDA [local authority] at the time of the review exit conference, the LIDDA [local authority] must, within 30 calendar days after the exit conference, submit to DADS a plan of correction with timelines to implement the plan after approval by DADS. DADS may take action as specified in the performance contract [between the local authority and DADS] if the LIDDA [local authority] fails to submit or implement an approved plan of correction.

§9.583. TxHmL Program Principles for LIDDAs [Local Authorities].

(a) A LIDDA [local authority] must notify an applicant of a TxHmL Program vacancy in accordance with §9.567 [§9.566] of this subchapter (relating to Process for Enrollment [Notification of Applicants]).

(b) A LIDDA [local authority] must process requests for enrollment in the TxHmL Program in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(c) A LIDDA [local authority] must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all LIDDA [local authority] staff who may assist an individual or LAR in such process.

[(d) A LIDDA [local authority] must ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.]

(d) [ (e)] A LIDDA [local authority] must ensure that an individual or LAR is informed orally and in writing of the following processes for filing complaints [about service provision]:

(1) processes for filing complaints with the LIDDA [local authority] about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the LIDDA [local authority] to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation [file a complaint] of abuse, neglect, or exploitation.

[(e) [(f)] A LIDDA [local authority] must maintain for each individual for an IPC year:}
(1) a copy of the [current] IPC;

(2) the [current] PDP;

(3) a copy of the [current] ID/RC Assessment; [and]

(4) documentation of the activities performed by the service coordinator in providing service coordination; and [current service information.]

(5) any other pertinent information related to the individual.

(f) For an individual receiving TxHmL Program services within a LIDDA's [local authority's] local service area, the LIDDA [local authority] must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) A LIDDA [local authority] must employ service coordinators who:

(1) meet the minimum qualifications and training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability); and

(2) have received training about:

(A) the TxHmL Program, including the requirements of this subchapter and the TxHmL Program services as described [specified] in §9.555 of this subchapter (relating to Description [Definitions] of TxHmL Program Services); and [-]

(B) Chapter 41 of this title (relating to Consumer Directed Services Option).

(h) A LIDDA [local authority] must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

[(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;]

(3) [coordinates and develops an individual's IPC based on the individual's PDP;]
coordinates and monitors the delivery of TxHmL Program services and non-TxHmL Program services;

(6) integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(5) records each individual's progress;

(6) develops a plan required by §9.570(c)(2) of this subchapter (relating to Termination and Suspension of TxHmL Program Services) that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(7) keeps records as they pertain to the implementation of an individual's PDP.

(i) A LIDDA [local authority] must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(ii) A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual's TxHmL Program services may be terminated as described in §9.570(a);

(4) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(t) of this subchapter (relating to Program Provider Certification Principles: Service Delivery) [an individual's health, safety, and welfare in the provision of a service as described in §9.578(t) of this subchapter (relating to Program Provider Certification Principles: Service Delivery)]
(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, employment assistance, supported employment, or respite, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(8) ensure that, if needed, the individual or LAR participates in developing a plan required by §9.570(c)(2) of this subchapter that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(9) in accordance with DADS instructions, manage the process to transfer an individual's TxHmL Program services from one program provider to another or transfer from one FMSA to another [in accordance with DADS instructions], including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:

(i) to receive TxHmL Program services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing [provide] the individual or LAR with a list of and contact information for [available] TxHmL Program providers and FMSAs in the geographic location [locations] preferred by the individual or LAR.

(k) [4] When a change to an individual's PDP or IPC is indicated, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program
At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

1. update the individual's PDP in conjunction with the individual's service planning team; and

2. if the individual receives a TxHmL Program service from a program provider, submit the updated PDP to the program provider for the program provider to complete an implementation plan to accomplish the outcomes identified in the updated PDP.

A service coordinator must:

1. review the status of an individual whose services have been suspended at least every 90 calendar days following the effective date of the suspension and document in the individual's record the reasons for continuing the suspension; and

2. if the suspension continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the suspension status.

A service coordinator must:

1. inform the individual or LAR orally and in writing, of the requirements described in subsection (k) of this section:
   
   A. upon receipt of DADS approval of the enrollment of the individual;
   
   B. if the requirements described in subsection (k) of this section are revised;
   
   C. at the request of the individual or LAR; and
   
   D. if the legal status of the individual changes; and

2. document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

A service coordinator must conduct:

1. a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility; and
(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(p) At least monthly, a service coordinator must have one face-to-face contact with an individual, whose TxHmL Program services have not been suspended, to provide service coordination.

(q) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA must, in the provision of service coordination in the TxHmL Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title.

(r) A service coordinator must:

(1) at least annually, in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(s) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's [local authority's] local service area;

(2) document the individual's or LAR's choice of FMSA on Form 1584;

(3) document, in the individual's PDP, a description of the services provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup plan.

(t) For an individual participating in the CDS option, the LIDDA [local authority] must recommend to DADS that FMS and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to
(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(u) If a LIDDA [local authority] makes a recommendation under subsection (s) (r) of this section, the local authority must:

(1) electronically transmit the individual's IPC to DADS; and

(2) in accordance with Chapter 41, Subchapter D of this title, submit documentation required by DADS in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551, Austin, Texas 78714-9030.


(a) DADS notifies a local authority, in writing, of a TxHmL Program vacancy in the MRA's local service area and directs the local authority to offer the program vacancy to the applicant:

(1) whose name is not coded in the DADS data system as having previously declined an offer to enroll in the TxHmL Program or as having been determined ineligible for the TxHmL Program and:

(A) whose registration date, assigned in accordance with §9.157(a)(1) of this chapter (relating to Maintenance of HCS Program Interest List), is earliest on the statewide waiting list for the HCS Program as maintained by DADS; or

(B) whose registration date, assigned in accordance with §9.157(a)(1) of this chapter, is earliest on the local service area waiting list for the HCS Program as maintained by the local authority in accordance with §9.157 of this chapter; or

(2) whose name is not coded in the DADS data system as having been determined ineligible for the TxHmL Program and who is receiving services from the local authority that are funded by general revenue in an amount that would allow DADS to fund the services through the TxHmL Program.

(b) The local authority must make the offer of program vacancy in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The local authority must include in a written offer that is made in accordance with subsection (a) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of the program vacancy within 30 calendar days after the local authority's written offer:
(i) the local authority withdraws the offer of the program vacancy; and

(ii) the local authority codes the applicant's name in the DADS data system as having "declined" the offer of TxHmL Program enrollment; and

(B) if the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant or LAR declines the offer of the program vacancy, the local authority terminates those services that are similar to services provided under the TxHmL Program;

(2) information relating to the time frame requirements described in subsection (e)(2)-(3) of this section using the Deadline Notification form, which is available at www.dads.state.tx.us; and

(3) a statement that whether the applicant or LAR responds to the offer of program vacancy or chooses or declines participation in the TxHmL Program, the applicant's name remains on the HCS Program waiting list without change to the applicant's registration date.

(d) If an applicant or LAR responds to an offer of program vacancy, the local authority must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at www.dads.state.tx.us; and

(2) give the applicant or LAR the TxHmL Verification of Freedom of Choice form, which is available at www.dads.state.tx.us to document the applicant's choice regarding the TxHmL Program and ICF/IID Program.

(e) The local authority must withdraw an offer of a program vacancy made to an applicant or LAR if:

(1) within 30 calendar days after the local authority's offer made to the applicant or LAR in accordance with subsection (a) of this section, the applicant or LAR does not respond to the offer of the program vacancy;

(2) within seven calendar days after the applicant or LAR receives the TxHmL Verification of Freedom of Choice form from the local authority in accordance with subsection (d)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the TxHmL Verification of Freedom of Choice form; or

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all available program providers in the local authority's local service area in accordance with §9.567(d)(1) of this subchapter (relating to Process for Enrollment), the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice
(f) If the local authority withdraws an offer of a program vacancy made to an applicant, the local authority must notify the applicant or LAR of such actions, in writing, by certified United States mail. After DADS confirms delivery of the certified letter, DADS codes the applicant's name in the DADS data system as having "declined" the offer of TxHmL Program enrollment.

(g) If the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant declines the offer of the program vacancy, the local authority must terminate those services that are similar to services provided under the TxHmL Program.

(h) If the local authority terminates an applicant's services in accordance with subsection (g) of this section, the local authority must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(i) The local authority must retain in the applicant's record:

1. the TxHmL Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services;

2. the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

3. any correspondence related to the offer of a program vacancy.