Date: September 1, 2005

To: Home and Community-Based Services (HCS) Program Providers

Subject: Information Letter #05-36 New Statutory Requirements effective September 1, 2005

This letter is written to advise you of new statutory requirements for HCS Program providers recently enacted by the Texas Legislature. The new requirements were effective September 1, 2005 and are set forth in Senate Bill (SB) 40 and House Bill (HB) 2579. A description of the requirements contained in each of these bills and related actions you must take is set forth below.

**SB 40**

SB 40 amended Subchapter D-1 of Chapter 531 of the Government Code by amending §§531.153 and 153.161, and by adding §§531.1531 and 531.1532. These sections all relate to permanency planning for individuals under the age of 22 years residing in certain “institutions,” including a three-person or four-person residence operated under the HCS Program (HCS residence). Section 531.153 was amended to require the permanency plan for an individual under the age of 22 years who resides in an HCS residence or is seeking care in an HCS residence be developed by a local mental retardation authority (MRA), by a private entity other than an entity that provides long-term institutional care under, or by personnel of the Department of Aging and Disability Services (DADS).

Effective September 1, 2005, an HCS Program provider is no longer required to perform some of the permanency planning activities described in 40 TAC, Chapter 9, Subchapter D. Regarding §9.175(b), an HCS Program provider is still required to “ensure that at a minimum, the individual’s IDT consists of the individual and his or her LAR or family member, the HCS case manager, and a nurse; and when necessary to the service planning process, the team includes other persons who may be assigned to provide or who are currently providing direct services to the individual, a physician and other professional personnel, and other persons chosen by the individual or LAR.” An HCS Program provider is no longer required, however, to perform the activities described in §9.174(60) or those described in paragraphs (1)-(4) of §9.175(b). Instead, an MRA will perform these activities. The MRA responsible for permanency planning for an individual will be determined based on the county of residence of the individual’s family or legally authorized representative. If, however, the responsible MRA is the individual’s HCS Program provider, the MRA must enter into an agreement with another MRA to perform permanency planning activities on its behalf for that individual. The MRA must notify DADS of its agreement with another MRA.

Please be aware that effective September 1, 2005, the HCS Program provider will no longer be prevented from entering an MR/RC assessment if a current permanency plan is not entered into
CARE.
An HCS Program provider remains an important part of the permanency planning process, however. Specifically, new §531.1531 requires an HCS Program provider to:

- cooperate with the MRA responsible for developing an individual’s permanency plan; and
- participate in meetings to review the individual’s permanency plan, as requested by the MRA.

Furthermore, new §531.1532 prohibits an entity that provides information to an individual’s parent or guardian relating to permanency planning from providing inaccurate or misleading information regarding the risks of moving the individual to another facility or community setting.

In addition, §531.161, as amended by SB 40, requires an HCS Program provider to allow the following entities to have access to the individual’s records to assist in complying with the permanency planning requirements:

- the Health and Human Services Commission;
- the Department of Aging and Disability Services;
- other appropriate state agencies; and
- to the extent not prohibited by other law, the individual’s MRA.

To facilitate the transition of permanency planning responsibilities to MRAs, an HCS Program provider must complete all permanency planning efforts required as of August 31, 2005 or before, and enter related information into the CARE system no later than September 30, 2005. An HCS Program provider will receive requests from MRAs to send the MRAs copies of existing permanency plans, current family/legally authorized representative contact information, and other information necessary for an MRA to complete the permanency planning process. Please respond to these requests in a timely manner so MRAs can ensure the permanency planning process is not unnecessarily interrupted. The MRA will mail or fax an individual’s permanency plan to the HCS Program provider serving the individual.

**HB 2579**

HB 2579 amended Subchapter D-1 of Chapter 531 of the Government Code by adding §§531.1521, 531.1532, 531.1591, and 531.164-531.167. The purpose of this bill is to help ensure that a parent or guardian of an individual under the age of 22 living in an “institution,” including a three-person or four-person residence operated under the HCS Program (HCS residence), is involved in the individual’s life. This bill creates requirements that pertain to such an individual residing in an institution on or after September 1, 2005. The requirements for HCS
Program providers are described below.

Please be advised that this bill also creates requirements that pertain to an individual under the age of 22 admitted to an institution, including an HCS residence, on or after September 1, 2006 but those requirements are not discussed in this letter. Rules pertaining to the requirements of HB 2579 regarding individuals admitted to an institution on or after September 1, 2006, will be adopted by September 1, 2006.

**HCS Program Provider Requirements for an Individual Under the Age of 22 Residing in an HCS Residence on or after September 1, 2005**

In accordance with Section 4(b) of HB 2579 and §531.1532 of the Government Code, effective September 1, 2005, an HCS Program provider must encourage the parent or guardian of an individual under the age of 22 residing in an HCS residence to:

- include the following contact information on the individual’s admission form:
  - the parent’s or guardian’s:
    - name, address, and telephone number;
    - driver’s license number and state of issuance or personal identification card number issued by the Department of Public Safety; and
    - place of employment and the employer’s address and telephone number; and
  - the name, address, and telephone number of a relative of the individual or other person that DADS or the HCS Program provider may contact in an emergency, a statement indicating the relationship between the person and the individual, and at the parent’s or guardian’s option, that person’s:
    - driver’s license number and the name of the state issuing the license or personal identification card number issued by the Texas Department of Public Safety; and
    - place of employment and the employer’s address and telephone number; and
  - sign an acknowledgement of responsibility stating that the parent or guardian agrees to:
    - notify the HCS Program provider of any changes to the contact information described above; and
    - make reasonable efforts to participate in the individual’s life and planning activities for the individual.

For assistance in documenting the additional contact information and acknowledgments from
parents or guardians described above, please refer to the last page of the permanency planning instrument which is available at: [http://www.dads.state.tx.us/business/pi/permanency/index.html](http://www.dads.state.tx.us/business/pi/permanency/index.html)

Section 4(b) of HB 2579 also states that if the parent or guardian of an individual provides the contact information and acknowledgement of responsibility described above, new §§531.164-531.166 of the Government Code apply to that individual. The requirements of §531.164(c) and (d) and §531.166 are described below. Section 531.164(a), (b), and (e)-(h) and §531.165 do not require any action by HCS Program providers.

**HCS Program Provider Requirements Under §531.164(c) and (d)**

- An HCS Program provider must make reasonable accommodations to promote the participation of the parent or guardian of the individual in all planning and decision-making regarding the individual’s care, including participation in:
  - initial development and annual review and reauthorization of the individual’s individual service plan;
  - decision-making regarding the individual’s medical care;
  - routine interdisciplinary team meetings; and
  - decision-making and other activities involving the individual’s health and safety.

- As stated in this new section, reasonable accommodations include:
  - conducting a meeting in person or by telephone, as mutually agreed upon by the HCS Program provider and the parent or guardian;
  - conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the HCS Program provider and the parent or guardian;
  - if the parent or guardian has a disability, providing reasonable accommodations in accordance with the American’s with Disabilities Act, including, but not limited to, providing an accessible meeting location or a sign language interpreter, as applicable; and
  - providing a language interpreter, if applicable.

**HCS Program Provider Requirements Under §531.166**

Before an individual who is 17 years of age or younger, or who is 18 years of age or older and for whom a guardian has been appointed, is transferred to another HCS residence (including another residence operated by the HCS Program provider transferring the individual) the transferring HCS Program provider must attempt to obtain consent for the transfer from the individual’s parent or guardian unless the transfer is in response to an emergency situation.

Please be aware that II.S. of the HCS Medicaid Provider Agreement requires an HCS Program
provider to comply with applicable state laws. Therefore, failure to comply with these new requirements could result in placement of a vendor hold on Medicaid payments or termination of the agreement.

If you have any questions regarding these new requirements, please contact Christy Dees in the Center for Policy and Innovation at (512) 438-3162 or by email at christy.dees@dads.state.tx.us

Sincerely,

Barry Waller
Assistant Commissioner
Provider Services