

Amendments to Subchapter Governing

Home and Community-based Services (HCS) Program and Community First Choice (CFC)

Chapter 9, Subchapter D

EFFECTIVE DATE: March 20, 2016

DADS maintains the formatted version of HCS Program rules on its website to enhance public access to information concerning the programs. The *Texas Register* and the Texas Administrative Code remain the official sources for all DADS rules.

Key Changes in the Subchapter

The amendments implement Community First Choice (CFC) within the HCS Program. CFC services in the HCS Program consist of:

- CFC personal assistance services/habilitation (CFC PAS/HAB), which provides all the activities of HCS supported home living except transportation;
- CFC emergency response services (CFC ERS), which is provided as a distinct CFC service instead of as an adaptive aid; and
- CFC support management.

The amendments give an individual the option to receive CFC PAS/HAB through a program provider or the consumer directed services (CDS) option.

The amendments also require an HCS Program provider or CDS employer to develop a transportation plan if transportation as a supported home living activity is included on the individual plan of care (IPC). The transportation plan is used to document how transportation will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the person-directed plan (PDP). The plan helps ensure that the transportation hours requested are the most appropriate amount, are cost effective, and are necessary to enable an individual's independence and integration in the community.

For consistency with the HCS waiver application, the amendments add to the eligibility criteria for the HCS Program that an applicant or individual must receive:

- at least one HCS program service per month, or at least one monitoring visit by a service coordinator per month; and
- at least one HCS program service per IPC year.

The amendments also increase the dental treatment service limit from \$1,000 to \$2,000 during an IPC year.

Process

The amendments were proposed for public comment in the November 27, 2015, issue of the *Texas Register*. The adoption is published in the March 11, 2016, issue of the *Texas Register*.

Questions

Please direct technical questions concerning this subchapter to:

Sheryl Loera, Center for Policy and Innovation
Texas Department of Aging and Disability
Services
P.O. Box 149030
Austin, Texas 78714-9030
512/438-3693
HCS@dads.state.tx.us

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 HOME AND COMMUNITY-BASED SERVICES (HCS PROGRAM AND COMMUNITY FIRST CHOICE (CFC))

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§9.151. Purpose.

Effective: March 20, 2016

The purpose of this subchapter is to describe:

- (1) the HCS Program eligibility criteria for applicants and individuals;
- (2) the CFC service eligibility criteria for applicants and individuals;
- (3) the process for enrollment of applicants in the HCS Program;
- (4) requirements for reimbursement of a program provider;
- (5) the responsibilities of a program provider;
- (6) the process for certifying and sanctioning a program provider in the HCS Program; and
- (7) the responsibilities of a LIDDA in providing service coordination.

§9.152. Application.

Effective: November 15, 2015

This subchapter applies to:

- (1) LIDDAs;
- (2) program providers;
- (3) applicants and their LARs; and
- (4) individuals and their LARs.

§9.153. Definitions.

Effective: March 20, 2016

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) **ADLs** -- Activities of daily living. Basic personal everyday activities, including tasks

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such as eating, toileting, grooming, dressing, bathing, and transferring.

(3) **Alarm call** -- A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

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

(5) **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.

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

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

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

(9) **CFC** -- Community First Choice.

(10) **CFC ERS** -- CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(11) **CFC ERS provider** -- The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(12) **CFC FMS** -- The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(13) **CFC PAS/HAB** -- CFC personal assistance services/habilitation. A service that:

(A) consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(14) **CFC support consultation** -- The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(15) **CFC support management** -- Training regarding how to select, manage, and

dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS Handbook.

(16) **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.

(17) **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.

(18) **Competitive employment** -- Employment that pays an individual at least minimum wage if the individual is not self-employed.

(19) **Condition of a serious nature** -- Except as provided in paragraph (34) 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.

(20) **Contract** -- A provisional contract or a standard contract.

(21) **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.

(22) **Critical incident** -- An event listed in the HCS Provider User Guide found at www.dads.state.tx.us

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

(24) **DARS** -- The Department of

Assistive and Rehabilitative Services.

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

(26) **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.

(27) **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).

(28) **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.

(29) **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.

(30) **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.

(31) **Former military member** -- A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(32) **Four-person residence** -- A residence:

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(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 and of CFC Services).

(33) **Good cause** -- As used in §9.174(j) of this subchapter, a reason outside the control of the CFC ERS provider, as determined by DADS.

(34) **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.

(35) **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.

(36) **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.

(37) **Health-related tasks** -- Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health

maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(38) **HHSC** -- Health and Human Services Commission.

(39) **IADLs** -- Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(40) **ICAP** -- Inventory for Client and Agency Planning.

(41) **ICF/IID** -- Intermediate care facility for individuals with an intellectual disability 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, Chapter 252; or

(B) certified by DADS, including a state supported living center.

(42) **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.

(43) **ID/RC Assessment** -- Intellectual Disability/Related Conditions Assessment. A form used by DADS for LOC determination and LON assignment.

(44) **Implementation Plan** -- A written document developed by the program provider that, for each HCS Program service, except for transportation provided as a supported home living activity, and CFC service, except for CFC support management, 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 and CFC services;

(B) specific objectives to address the

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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 units of HCS Program services and CFC services needed to complete each objective;

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

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

(45) **Individual** -- A person enrolled in the HCS Program.

(46) **Initial IPC** -- The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(47) **Intellectual disability** -- Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(48) **IPC** -- Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by DADS.

(49) **IPC cost** -- Estimated annual cost of HCS Program services included on an IPC.

(50) **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.

(51) **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.

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

(53) **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.

(54) **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.

(55) **LVN** -- Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(56) **Managed care organization** -- This term has the meaning set forth in Texas Government Code, §536.001.

(57) **MAO Medicaid** -- Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive SSI benefits.

(58) **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 HCS Program services or CFC 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 or CFC services; and

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

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

active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(60) **Military family member** -- A person who is the spouse or child (regardless of age) of:

- (A) a military member; or
- (B) a former military member.

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

(62) **Nursing facility** -- A facility licensed in accordance with THSC, Chapter 242.

(63) **PDP (person-directed plan)** -- A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS 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.

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

(65) **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.

(66) **Permanency Planning Review Screen** -- A screen in the DADS data system, completed by a LIDDA, 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.

(67) **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.

(68) **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.

(69) **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.

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

(71) **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.

(72) **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.

(73) **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.

(74) **Public emergency personnel** -- Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(75) **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.

(76) **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*.

(77) **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).

(78) **Responder** -- A person designated to respond to an alarm call activated by an individual.

(79) **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.

(80) **RN** -- Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(81) **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 to add a new HCS Program service or CFC service or change the amount of an existing service.

(82) **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.

(83) **Service backup plan** -- A plan that ensures continuity of critical program services if service delivery is interrupted.

(84) **Service coordination** -- A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(85) **Service coordinator** -- An employee of a LIDDA who provides service coordination to an individual.

(86) **Service planning team** -- One of the following:

(A) for an applicant or individual

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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, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and 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 365 calendar 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) with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(87) **Service provider** -- A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an

individual.

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

(89) **SSI** -- Supplemental Security Income.

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

(91) **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.

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

(93) **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.

(94) **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.

(95) **System check** -- A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(96) **TANF** -- Temporary Assistance for Needy Families.

(97) **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;

(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.

(98) **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.

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

(100) **Transition plan** -- As described in §17.503 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and 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.

(101) **Transportation plan** -- A written plan, based on person-directed planning and developed with an applicant or individual using DADS Individual Transportation Plan form found at www.dads.state.tx.us. A transportation plan is used to document how transportation as a supported home living activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(102) **Vendor hold** -- A temporary suspension of payments that are due to a program provider under a contract.

§9.154. Description of the HCS Program and CFC.

Effective: March 20, 2016

(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) TAS;

(2) professional therapies provided by appropriately licensed or certified professionals as follows:

(A) physical therapy, including a pre-enrollment minor home modifications assessment;

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(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) nursing provided by an RN or LVN;

(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's IPC includes at least one HCS Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(d) A program provider may only provide and bill for supported home living if the activity provided is transportation as described in §9.174(a)(33)(C) of this subchapter (relating to Certification Principles: Service Delivery).

(e) CFC is a state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subchapter K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to individuals:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

(f) DADS has grouped Texas counties into geographical areas, referred to as "local service areas," each of which is served by a LIDDA. 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 and CFC 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.

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

(g) 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.

(h) 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 employs and retains service providers and directs the delivery of a service through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

§9.155. Eligibility Criteria and Suspension of HCS Program Services and of CFC Services.

Effective: March 20, 2016

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

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

(2) meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC, 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 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, 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 HCS Program services designated for a member of the reserved 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 IPC cost that 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;

(4) is not enrolled in another waiver program and is not receiving a service that may not be received if the individual is enrolled in the HCS Program as identified in the Mutually Exclusive Services table in Appendix II of the HCS Handbook available at www.dads.state.tx.us;

(5) does not reside in:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, 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; and

(6) requires the provision of:

(A) at least one HCS Program service per month or a monthly monitoring visit by a service coordinator as described in §9.190(e)(41) of this subchapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program); and

(B) at least one HCS Program service per IPC year.

(b) 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) Except as provided in subsection (d), an applicant or individual is eligible for a CFC service under this subchapter if the applicant or individual:

(1) meets the criteria described in subsection (a) of this section;

(2) requires the provision of the CFC service; and

(3) is not receiving host home/companion care, supervised living, or residential support.

(d) To be eligible for a CFC service under this subchapter, an applicant or individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (c) of this section, receive an HCS Program service at least monthly, as required by 42 CFR §441.510(d), which may not be met by a monthly monitoring visit by a service coordinator as described in §9.190(e)(41) of this subchapter.

(e) If an individual is temporarily admitted to one of the following settings, the individual's HCS Program services and CFC services are suspended during that admission:

(1) a hospital;

(2) an ICF/IID;

(3) a nursing facility;

(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;

(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.

§9.156. Calculation of Co-payment.

Effective: June 1, 2006

(a) Individuals and eligible couples determined to be financially eligible based on the special institutional income limit may be required to share in the cost of HCS Program services. The method for determining the individual's or couple's co-payment is described in subsections (b) and (c) of this section and documented on the HHSC Waiver Program Co-Pay Worksheet.

(b) The co-payment amount as determined by HHSC is the individual's or couple's remaining income after all allowable expenses have been deducted. The co-payment amount is applied only to the cost of home and community-based services funded through the HCS Program and specified on each individual's IPC. The co-payment must not exceed the cost of services actually delivered. The co-payment must be paid by the individual or couple, authorized representative, or trustee directly to the program provider in accordance with the HHSC determination. When calculating the co-payment amount for an individual or a couple whose income exceeds the maximum personal needs allowance, the following are deducted:

(1) the cost of the individual's or couple's maintenance needs, which must be equivalent to the special institutional income limit for eligibility under the Texas Medicaid program;

(2) the cost of the maintenance needs of the individual's or couple's dependent children, which is an amount equivalent to the TANF basic monthly grant for children or a spouse with children, using the recognizable needs amounts in

the TANF Budgetary Allowances Chart; and

(3) the costs incurred for medical or remedial care that are necessary but are not subject to payment by Medicare, Medicaid, or any other third party, which include the costs of health insurance premiums, deductibles, and co-insurance.

(c) When calculating the co-payment amount for individuals with community spouses, HHSC determines the amount of the recipient's income applicable to payment in accordance with §1924 of the Social Security Act and 42 CFR §435.726.

§9.157. HCS Interest List.

Effective: November 15, 2015

(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 must add 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 22 years of age 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:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the applicant declines the offer of HCS Program services or, as described in §9.158(f) of this subchapter (relating to Process for Enrollment of Applicants), an offer of HCS Program services is withdrawn, unless:

(A) the applicant is a military family member living outside of Texas:

(i) while the military member is on active duty, or

(ii) for less than one year after the former military member's active duty ends; 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 former 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, the LIDDA receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the LIDDA must notify DADS of the request; and

(2) DADS:

(A) 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

(B) notifies the applicant or LAR in

writing that the applicant's name has been reinstated to the interest list in accordance with subparagraph (A) of this paragraph .

(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, the LIDDA receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the applicant's name is placed on the interest list:

(A) by the LIDDA based on the date the LIDDA receives the oral or written request; or

(B) by DADS based on the original request date described in subsection (c) or (d) of this section because of extenuating circumstances as determined by DADS; 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 the LIDDA subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the LIDDA must add 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.

§9.158. Process for Enrollment of Applicants.

Effective: March 20, 2016

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

(1) whose interest list request date, assigned in accordance with §9.157(c)(2) and (d) of this subchapter (relating to HCS Interest List), is earliest on the statewide interest list for the HCS Program as maintained by DADS; or

(2) 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 must make the offer of HCS Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The LIDDA must make the offer of HCS Program services to an applicant described in subsection (a)(2) 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 HCS Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer; 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 HCS Program services, the LIDDA terminates those services that are similar to services provided under the HCS Program; and

(2) information regarding 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, 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 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 must use the Explanation of Services and Supports document, which is found at www.dads.state.tx.us;

(2) using a DADS form, provide the applicant and LAR both an oral and a written explanation of all HCS Program services and CFC services; and

(3) 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 must withdraw an offer of HCS 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 HCS Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the LIDDA in accordance with subsection (e)(3) 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;

(3) within 30 calendar days after the applicant or LAR receives the contact information for all program providers in the LIDDA's local service area in accordance with subsection (j)(3) 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 and DADS has approved the withdrawal of the offer.

(g) If the LIDDA withdraws an offer of HCS Program services made to an applicant, the LIDDA must notify the applicant or LAR of such action, 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 HCS Program services, the LIDDA must terminate those services that are similar to services provided under the HCS 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) If the applicant or LAR accepts the offer of HCS Program services, the LIDDA 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 LIDDA must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA must complete an ID/RC Assessment in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The LIDDA 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 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 Review of LON).

(C) The LIDDA 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) The LIDDA must assign a service coordinator who, together with other members of the applicant's service planning team, must:

(A) develop a PDP;

(B) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the applicant needs; and

(C) develop a proposed initial IPC in accordance with §9.159(c) of this subchapter (relating to IPC).

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(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) The service coordinator must:

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

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

(3) 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) 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; and

(B) 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, DADS 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 to determine if TAS is authorized;

(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, DADS Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request 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 to determine if pre-enrollment minor home modification and pre-enrollment minor home modifications assessments are authorized;

(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) if an applicant or LAR chooses a program provider to deliver supported home

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living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB, 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:

(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) 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) 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, day habilitation, or CFC PAS/HAB 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;

(14) using a DADS form, provide an oral and written explanation to the applicant or LAR of:

(A) the eligibility requirements for HCS Program services as described in §9.155(a) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services); and

(B) if the applicant's PDP includes CFC services:

(i) the eligibility requirements for CFC services as described in §9.155(c) of this subchapter to applicants who do not receive MAO Medicaid; and

(ii) the eligibility requirements for CFC services as described in §9.155(d) of this subchapter to applicants who receive MAO Medicaid; and

(15) inform the applicant or LAR, orally and in writing:

(A) that HCS Program services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §9.155(a) of this subchapter;

(ii) the individual or LAR requests termination of HCS Program services; and

(B) if the applicant's PDP includes CFC services, that CFC services may be terminated if:

(i) the individual no longer meets the eligibility criteria described in §9.155(c) or (d) of this subchapter; or

(ii) the individual or LAR requests termination of CFC services.

(l) A LIDDA must conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning).

(m) After the proposed initial IPC is finalized

and signed in accordance with subsection (k) of this section, the LIDDA 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) DADS notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA 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) Prior to the applicant's service begin date, the LIDDA 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, the applicant's PDP, and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(p) 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) The selected program provider must develop:

(1) an implementation plan for:

(A) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and IPC; and

(B) CFC services, except for CFC support management, that is based on the individual's PDP, IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS

HCS/TxHmL CFC PAS/HAB Assessment form; and

(2) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(r) The LIDDA 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.

(s) Copies of the following forms referenced in this section are available at www.dads.state.tx.us:

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

(2) Documentation of Provider Choice form;

(3) Deadline Notification form;

(4) Transition Assistance Services (TAS) Assessment and Authorization form; and

(5) Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form.

§9.159. IPC.

Effective: March 20, 2016

(a) A service coordinator must initiate development of a proposed initial IPC for an applicant as required by §9.158(j)(4)(C) 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 and CFC service to be provided to an individual, except for CFC support management, as well as non-HCS Program and non-CFC services and supports to be provided during the IPC year. The type and amount of each HCS

Program service and CFC 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 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 professional specified by DADS in the *HCS Program Billing Guidelines*;

(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 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 professional if required by the *HCS Program Billing Guidelines*;

(B) supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS;

(C) within the service limit described

in §9.192(a)(3)(A) of this subchapter;

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS; and

(14) if CFC PAS/HAB, must be supported by the DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(d) If an applicant's or individual's IPC includes only CFC PAS/HAB to be delivered through the CDS option, the service coordinator must include in the IPC:

(1) CFC FMS instead of FMS; and

(2) if the applicant or individual will receive support consultation, CFC support consultation instead of support consultation.

§9.160. DADS Review of a Proposed IPC.

Effective: March 20, 2016

(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 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 and CFC services specified in a proposed IPC are appropriate. If requested by DADS:

(1) the LIDDA 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 services, DADS reviews the IPC to determine if the type and amount of HCS Program services and CFC 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.

Effective: March 20, 2016

(a) A LIDDA 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 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, individual, or LAR that the applicant or individual is not eligible for HCS Program services or CFC services and provides the applicant, individual, 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 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 of the change using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

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

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

§9.162. Lapsed LOC.

Effective: March 20, 2016

(a) DADS does not pay the program provider for HCS Program services or CFC 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 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 completed ID/RC Assessment.

(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 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 is considered in DADS review of an ID/RC Assessment transmitted in accordance with subsection (b) 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 the ID/RC Assessment from the program provider in accordance with subsection (b)(1) of this section.

(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.

Effective: November 15, 2015

(a) A LIDDA 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, indicating the recommended LON, that 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 Assessment, the program provider must electronically transmit to DADS a completed ID/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 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.

(4) If applicable, the program provider must submit supporting documentation to DADS as required by §9.164(c) of this subchapter (relating to 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 Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC Assessment in DADS data system and:

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

(2) enter in 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 is considered in DADS review of an ID/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 Assessment, and required supporting documentation. Documentation supporting a recommended LON must be submitted to DADS in accordance with DADS guidelines.

(g) DADS assigns one of five LONs as follows:

(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 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 Assessment is correctly scored with a "2" in the "Behavior" section.

(j) A 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 Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results and the ID/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.

§9.164. DADS' Review of LON.

Effective: June 1, 2010

(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 to DADS in accordance with DADS' request. DADS may modify an LON and recoup or deny payment based on its review.

(b) Before assigning an LON, DADS reviews documentation supporting the recommended LON if:

(1) an LON is requested that is an increase from the individual's current LON;

(2) an LON 9 is requested in accordance with §9.163(i) of this subchapter (relating to LON Assignment); or

(3) an LON is requested in accordance with §9.163(h) of this subchapter.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted to DADS and received by DADS within seven calendar days after electronically transmitting the recommended LON.

(1) Within 21 calendar days after receiving the supporting documentation:

(A) DADS requests additional documentation;

(B) electronically approves the recommended LON; or

(C) sends written notification that the recommended LON has been denied.

(2) DADS reviews any additional documentation submitted in accordance with DADS' request and:

(A) electronically approves the recommended LON; or

(B) sends written notification that the recommended LON has been denied to the program provider, the service coordinator, and the individual or LAR.

§9.165. Reconsideration of LON Assignment.

Effective: June 1, 2010

(a) If the program provider disagrees with an

LON assignment, the program provider may request that DADS reconsider the assignment.

(b) The program provider may receive reconsideration only if the program provider submitted documentation supporting the recommended LON as required by §9.164(c) of this subchapter (relating to DADS' Review of LON).

(c) To request reconsideration of an LON assignment, the program provider must submit a written request for reconsideration to DADS within 10 calendar days after receipt of the notice that the recommended LON was denied. A program provider may send DADS documentation, in addition to that required by §9.164(c) of this subchapter, to support the request for reconsideration of an LON assignment.

(d) Within 21 calendar days after receipt of a request for reconsideration, DADS electronically approves the recommended LON or sends written notification that the recommended LON has been denied to the program provider, the service coordinator, and the individual or LAR.

§9.166. Renewal and Revision of an IPC.

Effective: March 20, 2016

(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:

(i) review and update the individual's PDP; and

(ii) if CFC PAS/HAB is included on the PDP, complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs.

(2) The service coordinator, within 10 calendar days after the PDP is updated, must send the program provider and FMSA, if applicable, a copy of:

(A) the updated PDP; and

(B) if CFC PAS/HAB is included on the PDP, a copy of the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form.

(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:

(A) review the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) 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 and non-CFC services.

(4) The program provider must develop, before the effective date of the proposed renewal IPC:

(A) an implementation plan for:

(i) HCS Program services, except for transportation as a supported home living activity, that is based on the individual's PDP and proposed renewal IPC; and

(ii) CFC services, except for CFC support management, that is based on the individual's PDP, proposed renewal IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(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

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HCS Program services and CFC services in accordance with:

(A) an implementation plan that is based on:

- (i) the individual's PDP;
- (ii) the renewal IPC; and
- (iii) if CFC PAS/HAB is included

on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) a transportation plan, if transportation as a supported home living activity is included on the PDP.

(b) Revisions to the IPC. Except as provided in subsection (f) of this section, 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 CFC 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) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB:

(i) the service planning team must complete DADS HCS/TxHmL CFC PAS/HAB Assessment form to determine the number of CFC PAS/HAB hours the individual needs; and

(ii) the service coordinator must send a copy of the completed form to the program provider for review;

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

(C) 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;

(D) the program provider must revise:

- (i) the implementation plan for:
 - (I) HCS Program services,

except for transportation as a supported home living activity, that is based on the individual's PDP and proposed revised IPC; and

(II) CFC services, except for CFC support management, that is based on the individual's PDP, proposed revised IPC, and if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(ii) the transportation plan, if transportation as a supported home living activity is modified on the PDP or IPC; and

(E) 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 and CFC services in accordance with:

(A) an implementation plan that is based on:

- (i) the individual's PDP;
- (ii) the revised IPC; and
- (iii) if CFC PAS/HAB is included

on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form; and

(B) the revised transportation plan, if revised in accordance with paragraph (3)(C)(ii) of this subsection.

(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 CFC 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 or CFC 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 CFC service or the increase in the amount of the existing HCS Program service or CFC 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:

(i) revise the implementation plan that is based on the individual's PDP and proposed revised IPC; and

(ii) develop or revise a transportation plan, if transportation as a supported home living activity is added to or modified on the PDP or 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 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 and CFC services in accordance with:

(A) an implementation plan that is based on the individual's PDP and the revised IPC; and

(B) the transportation plan developed or revised in accordance with paragraph (2)(C)(ii) of this subsection.

(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) Revision of IPC to include CFC support management. If an individual or LAR requests CFC support management during an IPC year, the service coordinator or the program provider must revise the IPC as described in the HCS Handbook available at www.dads.state.tx.us.

(g) Renewal and revision of IPC when all services are through the CDS option. For an individual who is receiving all 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.

Effective: November 15, 2015

(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 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 must convene a permanency planning meeting with the LAR and, if possible, the applicant, before enrollment.

(B) Before the permanency planning meeting, the LIDDA 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 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 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 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 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 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

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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, 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 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 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 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 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 Years of Age, found at www.dads.state.tx.us.

(G) A LIDDA must:

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

(ii) keep a copy of the Permanency Planning Review Approval Status View Screen from DADS data system 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 must inform the applicant and LAR that they may request a volunteer advocate to assist in permanency planning. The applicant or LAR may:

(i) select a person who is not employed by or under contract with the LIDDA or a program provider; or

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

(B) If an applicant or LAR requests that the LIDDA designate a volunteer advocate or the LIDDA cannot locate the applicant's LAR, the LIDDA 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 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 or a program provider.

(C) If a LIDDA is unable to locate a volunteer advocate locally, the LIDDA 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 in identifying a volunteer advocate, the LIDDA must document all efforts to designate a volunteer advocate in accordance with subparagraph (B) of this paragraph.

(b) Permanency planning reviews. A LIDDA 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 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 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 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 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 must, within the timeframes described in the performance contract between DADS and the LIDDA:

(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.

Effective: March 20, 2016

(a) If supported home living, respite, nursing, employment assistance, supported employment, cognitive rehabilitation therapy, or CFC PAS/HAB 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 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, cognitive rehabilitation therapy, or CFC PAS/HAB 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

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(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 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, cognitive rehabilitation therapy, or CFC PAS/HAB, 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

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) If an individual's PDP includes transportation as a supported home living activity to be delivered through the CDS option, the service planning team must develop a transportation plan.

(g) 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).

(h) If the service coordinator makes a

recommendation in accordance with subsection (g) 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.

(i) Within seven calendar days after notification in accordance with subsection (h)(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 (h)(1) of this section to DADS.

§9.169. Fair Hearing.

Effective: March 20, 2016

(a) An applicant whose request for eligibility for the HCS Program is denied or is not acted upon with reasonable promptness, or an individual whose HCS Program services or CFC services have been terminated, suspended, denied, or reduced by DADS receives notice of the right to request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) Only a service coordinator may recommend that DADS terminate an individual's HCS Program services or CFC services.

§9.170. Reimbursement.

Effective: March 20, 2016

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, supported employment,

and CFC PAS/HAB 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:

(i) for TAS based on a 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*; and

(ii) if requested, a TAS service fee in accordance with 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 Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request 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 TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(G) DADS pays for CFC ERS based on the actual cost of the service, not to exceed the reimbursement rate ceiling for CFC ERS.

(2) If an individual's HCS Program services or CFC 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

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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;
- (G) nursing; and
- (H) CFC PAS/HAB.

(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 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 is not provided in accordance with the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(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* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(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* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(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.);

(K) the service is provided by a service provider who does not meet the qualifications to provide the service as described in the *HCS Program Billing Guidelines* or the *CFC Billing Guidelines for HCS and TxHmL Program Providers*;

(L) 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;

(M) 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 Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS;

(O) for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, the service is not provided in accordance with a Home and Community-based Services (HCS) Program Pre-enrollment MHM Authorization Request form authorized by DADS;

(P) for a CFC service, the service is provided to an individual receiving host home/companion care, supervised living, or residential support; or

(Q) for transportation as a supported home living activity, the service is not provided in accordance with a transportation plan.

(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, the *HCS Program Billing Guidelines*, and the *CFC Billing Guidelines for HCS and TxHmL Program*

Providers. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the *HCS Program Billing Guidelines* and the *CFC Billing Guidelines for HCS and TxHmL Program Providers*. 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.

§9.171. DADS Review of a Program Provider and Residential Visit.

Effective: March 20, 2016

(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 or CFC 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; or

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

§9.172. Certification Principles: Mission, Development, and Philosophy of Program Operations.

Effective: June 1, 2010

The program provider must:

(1) implement a teaching and training philosophy that emphasizes improved, independent functioning for each individual;

(2) ensure that each individual's humanity and dignity is respected;

(3) ensure that the rights of the individual, as exercised by the individual or the LAR on behalf of the individual, are protected;

(4) encourage the individual, the individual's LAR, and family members, with the consent of the individual or the individual's LAR, to participate in making choices about where the individual will live, attend school, work, and take part in leisure activities; and

(5) support the individual in person-directed planning and participate, upon request of the individual or LAR, in a meeting of the service planning team.

§9.173. Certification Principles: Rights of Individuals.

Effective: March 20, 2016

(a) The program provider must assist the:

(1) individual, or the LAR on behalf of the individual, in exercising the same rights and responsibilities exercised by people without disabilities; and

(2) LAR or family members in

encouraging the individual to exercise the same rights and responsibilities exercised by people without disabilities.

(b) The program provider must protect and promote the following rights of the individual:

(1) to manage, be trained to manage, or have assistance in managing financial affairs upon documentation of the individual's written request for assistance;

(2) to access public accommodations;

(3) to be informed of requirements for participation;

(4) to be informed both orally and in writing of all the HCS Program services and CFC services available and rules pertaining to the individual's enrollment and participation in the program provider's program, including those related to the use of restraint, as well as any changes in these that occur;

(5) to be informed of the individual's IPC, implementation plan, and transportation plan, including any restrictions affecting the individual's rights;

(6) to participate in decisions and be informed of the reasons for decisions regarding plans for enrollment, service termination, transfer, relocation, or denial of HCS Program service or CFC services;

(7) to be informed about the individual's own health, mental condition, and related progress;

(8) to be informed of the name and qualifications of any person serving or treating the individual and to choose among various available service providers;

(9) to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals;

(10) to have privacy in visitation with family and other visitors;

(11) to make and receive telephone calls;

(12) to send and to receive sealed and uncensored mail;

(13) to attend religious activities of choice;

(14) to participate in developing a pre-discharge plan that addresses assistance for the individual after he or she leaves the program;

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(15) to be free from the use of unauthorized restraints;

(16) to live in a normative residential living environment;

(17) to access free public schooling according to the Texas Education Code;

(18) to live where the individual is within proximity of and can access treatment and services that are best suited to meet the individual's needs and abilities and enhance that individual's strengths;

(19) to have a personalized IPC, implementation plan, and transportation plan, based on individualized assessments that meet the individual's needs and abilities and enhance that individual's strengths;

(20) to help decide what the implementation plan and transportation plan will be;

(21) to be informed as to the progress or lack of progress being made in the execution of the implementation plan and transportation plan;

(22) to choose from the same services that are available to all community members;

(23) to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the implementation plan and transportation plan;

(24) to complain at any time to a staff member or service provider;

(25) to receive appropriate support and encouragement from a staff member or service provider if the individual dislikes or disagrees with the services being rendered or thinks that his or her rights are being violated;

(26) to live free from abuse, neglect, or exploitation in a healthful, comfortable, and safe environment;

(27) to participate in decisions regarding the individual's living environment, including location, furnishings, other individuals residing in the residence, and moves to other residential locations;

(28) to have service providers who are responsive to the individual and, at the same time, are responsible for the overall functioning of the HCS Program;

(29) to have active personal assistance in exercising civil and self-advocacy rights

attainment by provisions for:

(A) complaints;

(B) voter registration;

(C) citizenship information and education;

(D) advocacy services; and

(E) guardianship;

(30) to receive counseling concerning the use of money;

(31) to possess and to use money in personal and individualized ways or learn to do so;

(32) to access all financial records regarding the individual's funds;

(33) to have privacy during treatment and care of personal needs;

(34) to have privacy during visits by his or her spouse if living apart;

(35) to share a room when both the husband and wife are living in the same residence;

(36) to be free from serving as a source of labor when residing with persons other than family members;

(37) to communicate, associate, and meet privately with individuals of his or her choice, unless this violates the rights of another individual;

(38) to participate in social, recreational, and community group activities;

(39) to have his or her LAR involved in activities, including:

(A) being informed of all rights and responsibilities when the individual is enrolled in the program provider's program, as well as any changes in rights or responsibilities before they become effective;

(B) participating in the planning for HCS Program services and CFC services; and

(C) advocating for all rights of the individual;

(40) to be informed of the individual's option to transfer to other program providers as chosen by the individual or LAR as often as desired;

(41) to be informed orally and in writing of any charges assessed by the program provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status;

(42) to complain to DADS when the

program provider's resolution of a complaint is unsatisfactory to the individual or LAR, and to be informed of the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858);

(43) to be free from the use of seclusion; and

(44) to have a lock on the inside of the individual's bedroom door as described in §9.174(a)(23) of this subchapter (relating to Certification Principles: Service Delivery).

§9.174. Certification Principles: Service Delivery.

Effective: March 20, 2016

(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 and CFC services;

(4) ensure that each applicant or individual, or LAR, chooses where the individual or applicant will 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 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 in conducting permanency planning:

(i) cooperate with the LIDDA 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

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(III) identifying, in coordination with the individual's LIDDA, activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA 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:

(A) is renewed or revised in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(B) is authorized by DADS in

accordance with §9.160 of this subchapter (relating to DADS Review of a Proposed IPC);

(13) ensure that HCS Program services and CFC services identified in the individual's implementation plan and transportation 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

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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 a sufficient supply of hot water at sinks and in bathing facilities to meet the needs of individuals;

(D) the temperature of the hot water at sinks and bathing facilities does not exceed 120 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 and CFC services with non-HCS Program services and non-CFC 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;

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(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:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities;

(D) specialized accessibility and safety adaptations or additions; and

(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;

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(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:

(A) is available only to an individual who is not receiving:

(i) host home/companion care;

(ii) supervised living; or

(iii) residential support; and

(B) is available to an individual who is receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP,

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IPC, implementation plan, transportation 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) providing transportation;

(D) securing transportation;

(E) assistance with housekeeping;

(F) assistance with ambulation and mobility;

(G) reinforcement of professional therapy activities;

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

(I) supervision of individuals' safety and security;

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

(K) 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

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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; and

(II) securing and providing transportation; and

(B) is only provided:

(i) to individuals who are not receiving residential support, supervised living, or host home/companion care; and

(ii) when the unpaid caregiver is temporarily unavailable to provide supports;

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care,

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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 or CFC 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 or CFC 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 or CFC 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, 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, supported employment, or CFC PAS/HAB 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

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(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, supported employment, or CFC PAS/HAB 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) ensure that CFC PAS/HAB is available only to an individual who is not receiving host home/companion care, supervised living, or residential support;

(47) ensure that CFC PAS/HAB is provided in accordance with the individual's PDP, IPC, and implementation plan;

(48) ensure that CFC support management is provided to an individual or LAR if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management;

(49) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(50) maintain a system of delivering HCS Program services and CFC services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(51) 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;

(52) 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;

(53) maintain a single record related to HCS Program services and CFC services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;

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(C) the implementation plan;
(D) a behavior support plan, if one has been developed;

(E) a transportation plan, if one is required;

(F) documentation that describes the individual's progress or lack of progress on the implementation plan;

(G) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(H) the ID/RC Assessment;

(I) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(J) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

(K) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(L) documentation related to the suspension of an individual's HCS Program services or CFC services;

(M) for an individual under 22 years of age, a copy of the permanency plan; and

(N) documentation required by subsections (g)(2)(A) and (h)(2)(A) of this section;

(54) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (53) 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;

(55) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(56) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or CFC services or an individual or LAR has requested termination of all HCS Program

services or all CFC services;

(57) 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;

(58) for an HCS Program service or CFC 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;

(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;

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(59) for an applicant 21 years of age or older who is residing in a nursing facility and 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

(60) for 365 calendar 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) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

(b) A program provider may suspend HCS Program services or CFC services because an individual is temporarily admitted to a setting described in §9.155(e) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(1) If a program provider suspends HCS Program services or CFC 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 or CFC 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, day habilitation, or CFC PAS/HAB 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 (d) 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 Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS, as described in §9.158(k)(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; 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(k)(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

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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 member who is not 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

(C) keep a copy of the results in the residence.

(j) CFC ERS must be provided in accordance with this subsection.

(1) A program provider must ensure that CFC ERS is provided only to an individual who:

(A) is not receiving host home/companion care, supervised living, or residential support;

(B) lives alone, who is alone for significant parts of the day, or has no regular

caregiver for extended periods of time; and

(C) would otherwise require extensive routine supervision.

(2) A program provider must ensure that CFC ERS is provided in accordance with the individual's PDP, IPC, and implementation plan.

(3) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(4) At the time CFC ERS equipment is installed, a program provider must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(5) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (3) and (4) of this subsection are documented in the individual's record.

(6) A program provider must ensure that,

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on or before the date CFC ERS equipment is installed:

(A) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(B) public emergency personnel:

(i) is designated as a second responder if the individual provides the name of only one responder; or

(ii) is designated as the sole responder if the individual does not provide the names of any responders; and

(C) the name and telephone number of each responder is documented in the individual's record.

(7) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

(8) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

(9) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the service coordinator to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

(10) If a system check is not conducted in accordance with paragraph (7) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) the good cause is documented in the individual's record.

(11) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(12) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact the individual to

determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(13) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

(A) the service coordinator receives written notice of the alarm call within one business day after the alarm call;

(B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraph (A) and (B) of this paragraph are maintained in the individual's record.

(14) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by paragraph (7) of this subsection:

(A) the individual is informed of the equipment failure; and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(15) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (14) of this subsection, the program provider must ensure that:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

(16) A program provider must ensure that, if the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(17) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (16) of this subsection:

(A) the failure to comply is because of good cause; and

(B) as soon as possible, a system check and battery replacement is made.

(18) A program provider must ensure that the following information is documented in an individual's record:

(A) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(B) the equipment or subscriber number;

(C) a description of the problem;

(D) the date the equipment or battery was repaired or replaced; and

(E) the good cause for failure to comply as described in paragraphs (15)(A) and (17)(A) of this subsection.

§§9.175-9.176. [*Repealed; reserved for expansion*]

§9.177. Certification Principles: Staff Member and Service Provider Requirements.

Effective: March 20, 2016

(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 or CFC service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) unless the program provider agrees to pay a higher amount, provides the service at or below:

(i) for any service except CFC ERS, the direct services portion of the applicable HCS Program rate; and

(ii) for CFC ERS, the reimbursement 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) 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) A 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) A program provider must:

(1) conduct initial and periodic training that ensures:

(A) 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,

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including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(B) staff members, service providers, and volunteers are knowledgeable about the information described in §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(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 and CFC services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing HCS Program services or CFC 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 or CFC 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 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:

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- (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) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;
 - (D) is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider);
 - (E) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;
 - (F) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or
 - (G) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.; and
- (2) completes the web-based DADS HCS and TxHmL Behavioral Support Services Provider Policy Training available at www.dads.state.tx.us:
- (A) before providing behavioral support services;
 - (B) within 90 calendar days after the date DADS issues notice to program providers that DADS revised the web-based training; and
 - (C) within three years after the most recent date of completion.
- (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 or CFC PAS/HAB 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) 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.
 - (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).

(u) A program provider must:

(1) ensure that a service provider of CFC PAS/HAB:

(A) is at least 18 years of age;

(B) has:

(i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(II) 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;

(C) is not:

(i) the spouse of the individual; or

(ii) a parent of the individual if the individual is a minor; and

(D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

(2) if requested by an individual or LAR:

(A) allow the individual or LAR to:

(i) train a CFC PAS/HAB service

provider in the specific assistance needed by the individual; and

(ii) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(B) ensure that a CFC PAS/HAB service provider attends training by HHSC or DADS so the service provider meets any additional qualifications desired by the individual or LAR.

§9.178. Certification Principles: Quality Assurance.

Effective: March 20, 2016

(a) In the provision of HCS Program services and CFC services to an individual, the program provider must promote the active and maximum cooperation with:

(1) providers of services other than HCS Program services or CFC services; and

(2) 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.

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(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 and CFC services as requested by DADS, other authorized agencies, or CMS 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

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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 or CFC services 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 or provision of CFC services, 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

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(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

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(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 or through CFC.

(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.

§9.179. Certification Principles: Restraint.

Effective: June 1, 2010

(a) A program provider must not use restraint:

(1) in a manner that:

(A) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

(B) impairs the individual's breathing by putting pressure on the individual's torso;

(C) interferes with the individual's ability to communicate;

(D) places the individual in a prone or supine position;

(E) extends muscle groups away from each other;

(F) uses hyperextension of joints; or

(G) uses pressure points or pain;

(2) for disciplinary purposes, that is, as retaliation or retribution;

(3) for the convenience of a staff member or service provider or other individuals; or

(4) as a substitute for effective treatment or habilitation.

(b) A program provider may use restraint:

(1) in a behavioral emergency;

(2) as part of a behavior support plan that addresses inappropriate behavior exhibited voluntarily by an individual;

(3) during a medical or dental procedure if necessary to protect the individual or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(4) to protect the individual from

involuntary self-injury; and

(5) to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning.

(c) In order to decrease the frequency of the use of restraint and to minimize the risk of harm to an individual, a program provider must:

(1) with the involvement of a physician, identify:

(A) the individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint;

(B) the individual's ability to communicate; and

(C) other factors that must be taken into account if the use of restraint is considered, including the individual's:

(i) cognitive functioning level;

(ii) height;

(iii) weight;

(iv) emotional condition (including whether the individual has a history of having been physically or sexually abused); and

(v) age;

(2) document the conditions and factors identified in accordance with paragraph (1) of this subsection, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the individual's record; and

(3) review and update with a physician, RN, or LVN, at least annually or when a condition or factor documented in accordance with paragraph (2) of this subsection changes significantly, information in the individual's record related to the identified condition, factor, or limitation.

(d) If a program provider restrains an individual as provided in subsection (b) of this section, the program provider must:

(1) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subsection (c)(2) and (3) of this section;

(2) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others;

(3) safeguard the individual's dignity, privacy, and well-being; and

(4) not secure the individual to a stationary object while the individual is in a standing position.

(e) In a circumstance described in subsection (b)(1) or (2) of this section, a program provider may use only a restraint hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subsection (a)(1) of this section.

(f) A program provider must release an individual from restraint:

(1) as soon as the individual no longer poses a risk of imminent physical harm to the individual or others;

(2) if the individual in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency; or

(3) as soon as an individual in a restraint hold described in subsection (e) of this section who moves toward the floor reaches the floor.

(g) After restraining an individual in a behavioral emergency, a program provider must:

(1) as soon as possible but no later than one hour after the use of restraint, notify an RN or LVN of the restraint;

(2) ensure that medical services are obtained for the individual as necessary;

(3) as soon as possible but no later than 24 hours after the use of restraint, notify one of the following persons, if there is such a person, that the individual has been restrained:

(A) the individual's LAR; or

(B) a person actively involved with the individual, unless the release of this information would violate other law; and

(4) notify the individual's service coordinator by the end of the first business day after the use of restraint.

(h) If, under the Health Insurance Portability and Accountability Act, the program provider is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subsection (g)(3)(B) of this section must be to a person to whom the program provider is allowed to release information under 45 CFR §164.510.

§9.180. Certification Principles: Prohibitions.

Effective: September 1, 2014

A program provider must not use seclusion.

§9.181-9.184. [Reserved for expansion]

§9.185. Program Provider Compliance and Corrective Action.

Effective: March 20, 2016

(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 §9.171(b) of this subchapter (relating to DADS Review of a Program Provider and Residential Visit), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.171(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 §9.171(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing HCS Program services or CFC 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 HCS Program services or CFC services to an individual 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 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 §9.177(o) or (p) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of

supported home living or CFC PAS/HAB who was not paid the wages required by §9.177(o) of this subchapter, the difference between the amount required and the amount paid to the service provider.

§9.186. Program Provider's Right to Administrative Hearing.

Effective: November 15, 2015

(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;

(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).

§9.187. Other Program Provider Responsibilities.

Effective: September 1, 2014

A program provider must comply with United States Code, Title 42, §1396a(w), regarding requirements about advance directives.

§9.188. DADS Approval of Residences.

Effective: March 20, 2016

(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(31)(D) 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.

Effective: November 15, 2015

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 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 years of age.

§9.190. LIDDA Requirements for Providing Service Coordination in the HCS Program.

Effective: March 20, 2016

(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 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 must employ service coordinators who:

(1) meet the minimum qualifications and LIDDA staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about:

(A) the HCS Program and CFC, including the requirements of this subchapter and

the HCS Program services and CFC services described in §9.154 of this subchapter (relating to Description of the HCS Program and CFC); and

(B) Chapter 41 of this title.

(c) A LIDDA must have a process for receiving and resolving complaints from a program provider related to the LIDDA's provision of service coordination or the LIDDA'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 must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The LIDDA 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 processes for filing complaints as follows:

(A) the telephone number of the

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LIDDA 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 of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed DADS HCS/TxHmL CFC PAS/HAB Assessment form;

(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) to meet the needs of an individual as those needs are identified, develop for the individual a full range of services and resources using:

(A) providers for services other than HCS Program services and CFC services; and

(B) advocates or other actively involved persons;

(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) 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 LIDDA's Responsibilities);

(B) states, for each HCS Program service, other than supervised living and residential support, and for each CFC service, 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, CFC services, and non-HCS Program and non-CFC 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 and CFC services with non-HCS Program and non-CFC 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 or a CFC service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

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(20) if informed by the program provider that an individual's HCS Program services or CFC 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, day habilitation, or CFC PAS/HAB, 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(e) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services);

(23) if the service coordinator determines that HCS Program services or CFC services

provided to an individual should be terminated, including for a reason described in §9.158(k)(15)(A) or (B) 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 recommendation to terminate the individual's HCS Program services or CFC services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written recommendation and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services or all CFC 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 CFC services; and

(iii) possible service resources upon termination, including CFC services through a managed care organization; 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 and CFC services from one program provider to another or transfer from one FMSA to another, 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 and CFC 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 the individual or LAR with a list of and contact information for HCS Program providers and FMSAs in the geographic location 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 notifies the service coordinator that the LIDDA 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

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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 22 years of age 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;

(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 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;

(41) have a face-to-face contact with an individual to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service unless:

(A) the individual's HCS Program services have been suspended; or

(B) the service coordinator had a face-

to-face contact with the individual that month to comply with §2.556(d) of this title (relating to MRA's Responsibilities); and

(42) at least annually:

(A) using a DADS form, provide an oral and written explanation to the individual or LAR of:

(i) the eligibility requirements for HCS Program services as described in §9.155(a) of this subchapter; and

(ii) if the individual's PDP includes CFC services:

(I) the eligibility requirements for CFC services as described in §9.155(c) of this subchapter; and

(II) the eligibility requirements for CFC services as described in §9.155(d) of this subchapter to individuals who receive MAO Medicaid; and

(B) using a DADS form, provide an oral and written explanation to the individual or LAR of all HCS Program services and CFC services.

§9.191. LIDDA Compliance Review.

Effective: November 15, 2015

(a) DADS conducts a compliance review of each LIDDA, at least annually, to determine if the LIDDA is in compliance with:

(1) Chapter 2, Subchapter L, of this title (relating to Service Coordination For Individuals with an Intellectual Disability);

(2) §9.190 of this subchapter (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program); and

(3) other requirements for the LIDDA as described in this subchapter.

(b) If any item of noncompliance remains uncorrected by the LIDDA at the time of the review exit conference, the LIDDA must submit to DADS a plan of correction in accordance with the performance contract. DADS may take action as specified in the performance contract if the LIDDA fails to submit or implement an approved plan of correction.

§9.192. Service Limits.

Effective: March 20, 2016

(a) The following limits apply to an

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individual's HCS Program services:

(1) for adaptive aids, \$10,000 during an IPC year;

(2) for dental treatment, \$2,000 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;

(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 \$2,000 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.