



Date: March 28, 2022 (Revised March 29, 2022)

To: Financial Management Services Agencies (FMSAs)

Subject: Information Letter 2022-21
Guidance for FMSAs on Consumer Directed Services (CDS) Employer Orientations

The purpose of this Information Letter (IL) is to provide guidance to FMSAs regarding orientations for CDS employers and designated representatives (DRs). FMSAs, CDS employers and designated DRs must comply with state and federal laws, rules, regulations, and letters about their Medicaid services.

Background: COVID-19 Flexibility

On March 20, 2020, the Texas Health and Human Services Commission (HHSC) published IL 20-08 allowing FMSAs to suspend in-person CDS employer orientations. Due to the ongoing risks of novel coronavirus (COVID-19), ILs were published monthly with updated extended timeframes for this allowance.

IL 2021-54, published on November 19, 2021 (replacing IL 2021-50), provides the most recent information about terminating the COVID-19 flexibility and establishing the permanent policy described in this IL.

Permanent Policy Effective February 1, 2022

Effective February 1, 2022, FMSAs can permanently conduct new CDS employer orientations virtually (i.e., audio-visual) or in-person, based on the CDS employer's preference.

The use of an audio-only option for CDS employer orientations allowed as a COVID-19 flexibility will not be permitted under this permanent policy. FMSAs were permitted to conduct audio-only orientations under the temporary COVID-19 flexibility until January 31, 2022. Beginning February 1, 2022, FMSAs must conduct all orientations virtually or in-person, based on the CDS employer's preference.

Rule Interpretation

Rules in 40 Texas Administrative Code §41.307(a) require FMSAs to conduct a “face-to-face” orientation for a new CDS employer. HHSC clarifies that “face-to-face” includes both in-person orientations and virtual orientations conducted using synchronous audio-visual platforms. The term “face-to-face” is not currently defined in 40 TAC Chapter 41 rules. Based on the successful delivery of CDS employer orientations during the COVID-19 pandemic, HHSC is expanding the scope of the term to include both in-person and virtual meetings.

This interpretation of “face-to-face” applies only to CDS rules in 40 TAC Chapter 41 and does not change the definition of “face-to-face” in other program rules or policies. FMSAs, CDS employers and DRs must follow applicable program rules which may define “face-to-face” differently.

40 TAC §41.307(a) requires that CDS employer orientations be conducted in the individual’s residence. This requirement has not changed. The CDS employer, who is either the individual receiving services or their legally authorized representative (LAR), must be in the individual’s residence when a virtual CDS employer orientation is conducted.

Orientations for New CDS Employers After February 1, 2022

For individuals who enroll in the CDS option on or after February 1, 2022, FMSAs must inform the individual or their LAR of the option to receive the CDS employer orientation in-person or virtually.

HHSC has revised Form 1736 to add a check box where the CDS employer will indicate the chosen method in which to receive the orientation (in-person or virtually).

Requirements for Initial Orientations Conducted Virtually or Telephonically During the COVID-19 Pandemic

FMSAs are not required to provide in-person orientation visits for all CDS employers whose initial orientation was conducted virtually or by telephone from March 20, 2020 through January 31, 2022. However, the FMSA must provide the CDS

employer with an in-person orientation if the CDS employer requests an in-person orientation.

If a CDS employer elects to receive an in-person orientation to replace a previously performed virtual or telephonic orientation, the FMSA and CDS employer must complete a new Form 1736, Documentation of Employer Orientation by Financial Management Services Agency, upon conclusion of the orientation.

Resources

- [IL 2021-54](#), COVID-19 Guidance for FMSAs and CDS Employers
- [Form 1736](#), Documentation of Employer Orientation by Financial Management Services Agency
- 40 TAC [§41.307](#), Initial Orientation of an Employer

Contact Information

If you have any questions about this letter, please contact the CDS Policy and Operations team by emailing CDS@hhsc.state.tx.us.

Sincerely,

[signature on file]

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Policy and Program
Medicaid and CHIP Services Department