



Date: January 26, 2023

To: Home and Community-based Services (HCS) Program Providers
Local Intellectual and Developmental Disability Authorities (LIDDAs)

Subject: Information Letter No. 2023-05 Guidance for LIDDAs and Program
Providers-HCBS Settings Regulations

The purpose of this letter is to provide guidance to local intellectual and developmental disability authorities (LIDDAs) and Home and Community-based Services (HCS) Program providers regarding implementation of the federal Home and Community Based Services (HCBS) settings regulations.

Background:

In 2014, CMS issued federal regulations for settings where Medicaid home and community-based services (HCBS) are provided. All settings where Medicaid HCBS are delivered must meet federal requirements by March 17, 2023.

HHSC is finalizing updates to the HCS Program rules at 26 TAC §263.502. The rules are expected to be adopted in early 2023 and will include the detailed requirements outlined below.

The federal regulations require that all individuals residing in a provider owned or controlled setting must ensure certain requirements are met. These requirements include:

- Individual privacy in the bedroom;
- Choice not to share a bedroom;
- Choice of roommate if sharing a bedroom;
- A lock is installed on the bedroom door;
- Individual can furnish and decorate their bedroom;
- Individual has control over their schedule and activities that are not part of an implementation plan;
- Individual has access to food at any time;
- Individual has the ability to have visitors of their choosing at any time;

If a program provider becomes aware that a modification to one of these requirements must be implemented due to a specific assessed need of an individual, the program provider must notify the service coordinator as soon as possible. The program provider must provide the service coordinator with the following information:

- A description of the specific and individualized assessed need that justifies the modification;
- A description of the positive interventions and supports that were tried but did not work;
- A description of the less intrusive methods of meeting the need that were tried but did not work;
- A description of the condition that is directly proportionate to the specific assessed need;
- A description of how data will be routinely collected and reviewed to measure the ongoing effectiveness of the modification;
- The established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
- The individual's or legally authorized representative's (LAR's) signature evidencing informed consent to the modification; and
- The program provider's assurance that the modification will cause no harm to the individual.

If the service coordinator receives a notification from the program provider of a required modification(s), the service coordinator must convene a service planning team (SPT) meeting to update the person-directed plan (PDP) with the information above. If the SPT agrees to the modification(s) and updates the PDP, then the program provider may implement the modification(s).

Note that a family member/LAR's request or preference to not comply with one of the requirements is not considered an individualized assessed need that justifies a modification to the federal requirement.

LIDDAs should be aware that HCS Program providers may request for the PDP to be updated within short timeframes due to HHSC deadlines for complying with the federal requirements by March 17, 2023. Proactive planning and communication

between LIDDAs and HCS Program providers will ensure equal understanding and good collaboration and allows both entities to begin working together as the volume of PDP updates can vary. HCS Program providers are encouraged to reach out to their contract manager regarding any delays in compliance that they may experience.

For questions about this communication, LIDDAs may email liddaservicecoordination@hhs.texas.gov and HCS Program providers may email HCSPolicy@hhs.texas.gov.

Sincerely,
[signature on file]

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