



Date: April 4, 2023

To: Home and Community-based Services (HCS) Program providers
Local Intellectual and Developmental Disability Authority (LIDDA)

Subject: Information Letter 2023-15 (Replaces 2023-09) Provider owned or
controlled residential Host Home/Companion Care settings

The purpose of this letter is to inform local intellectual and developmental disability authorities (LIDDAs) and Home and Community-based Services (HCS) program providers that, based on guidance from the Centers for Medicare and Medicaid Services (CMS), some requirements in the new HCS Program rules in [Title 26, Texas Administrative Code \(26 TAC\), Chapter 263](#), effective March 1, 2023, will not apply to some host home companion care (HH/CC) settings.

Specifically, [26 TAC §263.502](#) and [§263.503\(b\)-\(m\)](#) will not apply to an HH/CC setting in which the HH/CC service provider is an immediate family member of all individuals receiving HH/CC in the setting. As derived from 42 CFR §1001.2, an “immediate family member” means an individual’s spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepsibling, grandparent, or spouse of a grandparent. **HHSC is updating this information letter to include father-, mother-, daughter-, son-, brother- or sister-in-law, grandchild, or spouse of a grandchild in the definition of an immediate family member.** If an HH/CC service provider provides services to multiple individuals, and if any of those individuals are not immediate family members of the service provider, then 26 TAC §263.502 and §263.503(b)-(m) **will** apply to the HH/CC setting.

In addition, the residence referred to in §263.503(a)(1)(A) is an HH/CC setting in which the HH/CC service provider is **not** an immediate family member of the individual.

HHSC is providing this direction based on recent guidance from CMS that an HH/CC setting in which the HH/CC service provider is a family member and owns or leases the setting is not “provider owned or controlled” as that term is used in Title 42, Code of Federal Regulations, §441.301(c)(4)(vi). As described in Texas’ Statewide Transition Plan that CMS initially approved on December 21, 2022, the only HH/CC settings the state considers provider owned or controlled are those in which the

HH/CC service provider is not a family member of the individual and the individual does not own or lease the home.

The direction given above will be effective **March 1, 2023**, however, HHSC will amend 26 TAC Chapter 263 to make needed changes in a future rule project.

An HCS program provider must comply with [26 TAC Subchapter F, §263.501](#) related to *Requirements for Home and Community-Based Settings* and [40 TAC Subchapter D, §9.173](#) related to *Rights of Individuals* for any setting in which residential support, supervised living, or HH/CC is provided, regardless of whether the HH/CC service provider is an immediate family member.

Requirements to Document Immediate Family Member Relationship

HCS program providers must obtain written documentation of all HH/CC settings in which the HH/CC service provider is an immediate family member of all individuals receiving HH/CC in the setting. Within 60 days of the date of this letter, HCS program providers must meet, in person or by telephone, with individuals or Legally Authorized Representatives (LAR) and the individuals' HH/CC service providers who have been determined to be immediate family members of the individuals. At the meeting, the HCS program provider must document in writing that the HH/CC service provider is an immediate family member of the individual and specify the relationship between the individual and the HH/CC service provider. The document must be signed by the program provider, the HH/CC service provider, and the individual or LAR. The HCS program provider must send the signed document to the individual's service coordinator to be added as an addendum to the Person-Directed Plan (PDP).

HHSC will update Form 8665-ID *Individual Data* by adding a new indicator to document whether the HH/CC provider is an immediate family member and to specify the relationship between the HH/CC service provider and the individual. When a service coordinator receives the document described above from a program provider, they must update Form 8665-ID.

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Questions related to this information letter can be sent to
HCSPolicy@hhs.texas.gov.

Sincerely,

[signature on file]

Michelle Erwin
Deputy Associate Commissioner, Office of Policy
Medicaid and CHIP Services