



## Long-Term Care Regulation Provider Letter

**Number:** PL 2023-06

**Title:** Provider Compliance with HCBS Settings Rules

**Provider Types:** Home and Community-based Services (HCS)

**Date Issued:** March 24, 2023

### 1.0 Subject and Purpose

This letter explains how LTCR surveyors will assess HCS providers for compliance with the new HCBS settings requirements.

### 2.0 Policy Details & Provider Responsibilities

On March 1, 2023, new Home and Community-Based Services (HCBS) settings requirements were adopted and published in Title 26 of the Texas Administrative Code (TAC), [Chapter 263](#): Home and Community-Based Services (HCS) and Community First Choice (CFC). Long-term Care Regulation (LTCR) is currently working to update the Certification Principles to align with the new requirements in Title 26 TAC Chapter 263.

Program providers are required to comply with all applicable regulations, including the settings requirements as part of the certification principles. Until new certification rules are adopted, LTCR will cite violations of 26 TAC Chapter 263 under rule [40 TAC §9.177\(c\)](#) which states that “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.”

For residences that are provider owned or controlled, LTCR will use [40 TAC 9.177\(c\)](#) to survey for compliance with the following HCBS settings rules:

- [26 TAC 263.502\(b\)\(7\)](#)

- [26 TAC 263.502\(b\)\(4\)](#)
- [26 TAC 263.503\(b\)](#)

This includes settings where host home/companion care (HH/CC) is delivered unless the HH/CC provider is an immediate family member.<sup>1</sup>

## 2.1 Right to Receive Visitors

Program providers must comply with [26 TAC 263.502\(b\)\(7\)](#):

*(b) In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (c) of this section:*

*(7) an individual may have visitors of the individual's choosing at any time.*

If there is a specific assessed need to modify visitation and the individual's service planning team updates the Person Directed Plan (PDP) to document this need, then the program provider may implement modifications to this rule. For the process to implement modifications, see [26 TAC §263.502\(c\)](#).

## 2.2 Locks on Bedroom Doors

Program providers must ensure that all individuals' bedrooms have a lock in compliance with [26 TAC §263.502\(b\)\(4\)](#):

*(b) In each residence in which a program provider provides residential support, supervised living, or host home/companion care, the program provider must ensure that, except as provided in subsection (c) of this section:*

*(4) a lock is installed on the individual's bedroom door at no cost to the individual and that:*

*(A) the lock is operable by the individual; and*

*(B) only the individual, a roommate of the individual, and staff designated by the program provider have keys to the individual's bedroom door.*

Current rule language in [40 TAC §9.173\(b\)\(44\)](#) and [40 TAC §9.174\(a\)\(23\)\(G\)](#) ensures the individual has a lock if they choose. However,

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<sup>1</sup> For more details on what qualifies as "immediate family member," see [IL 2023-09](#).

LTCR will now survey to ensure compliance with the HCBS settings rule that **requires** locks unless an individual's PDP describes a specific assessed need for a modification. For the process to implement modifications, see [26 TAC §263.502\(c\)](#).

### **2.3 Residential Agreements**

Providers must ensure every individual in a three-person, four-person, and HH/CC residence has a residential agreement that is signed by the individual or LAR and the program provider or HH/CC service provider in compliance with [26 TAC §265.503\(b\)](#):

- (b) An individual's program provider must ensure that:*
- (1) an individual living in a three-person residence or four-person residence or LAR has a written residential agreement with the program provider; and*
  - (2) an individual living in a residence in which host home/companion care is provided or LAR has a written residential agreement with the service provider of host home/companion care if the individual does not own the residence or lease the residence from another person.*

LTCR will survey to ensure every individual in a three-person, four-person, or HH/CC residence has a signed residential agreement.

### **3.0 Resources**

[26 Texas Administrative Code Chapter 263](#)

[40 Texas Administrative Code §9.177](#)

[Information Letter 2023-05](#): Guidance for LIDDAs and Program Providers- HCBS Settings Regulations

[Information Letter 2023-09](#): Provider Owned or Controlled Residential Host Home/Companion Care Settings

### **4.0 Contact Information**

If you have any questions about this letter, please contact the Policy and Rules Section by email at [LTCRPolicy@hhs.texas.gov](mailto:LTCRPolicy@hhs.texas.gov) or call (512) 438-3161.