



COMMISSIONER  
Adelaide Horn

June 5, 2009

To: Primary Home Care (PHC) Providers

Subject: Information Letter No. 09-70  
Revisions to *40 Texas Administrative Code (TAC), Part 1, §47, Contracting to Provide Primary Home Care (PHC)*

The Texas Department of Aging and Disability Services (DADS) revised PHC rules in *40 TAC §47, "Contracting to Provide Primary Home Care"*, effective June 1, 2009. In order to allow DADS staff and providers sufficient time to become familiar with the revised rules, DADS will implement the rules on July 1, 2009. The following summarizes the **major changes** resulting from this rules revision:

- The term "negotiated referral" has been changed to "expedited referral". An "expedited referral" is defined as "An oral request from a case manager to a provider when the case manager determines that an individual's needs require that pre-initiation activities be completed in less than 14 days. The completion date is negotiated between the case manager and provider." The provider contacts the case manager to initiate a start-of-care date and may begin services prior to submitting the Practitioner's Statement with the case manager's oral approval. **See §47.3, §47.43(b)(1), and §4745(a)(3)(B).**
- Providers may make temporary variances in the tasks and hours a consumer receives at the consumer's request as long as the variance does not continue for longer than 60 days and the hours delivered are not more than the authorized hours. If the change in the service delivery plan will require an increase in hours or go beyond 60 days, the provider must request and obtain a new authorization (via [Form 2101, Authorization for Community Care Services](#)) from DADS. For temporary changes to the service delivery plan the provider must document the specific variance, duration of the temporary variance, and the reason for the temporary variance in the individual's file. **See §47.45.**
- For referrals received July 1, 2009 and ongoing, PHC providers must begin using the revised DADS [Form 3052 \(June 2009\), Practitioner's Statement of Medical Need](#), and must send a completed Form 3052 to the DADS case manager or nurse **prior to** the authorization of services, except in the case of expedited referrals. **See §47.45(a)(3)(A).** **Note:** Although DADS revised the Form 3052 with a June 2009 effective date, PHC providers are not required to begin using the revised Form 3052 until July 1, 2009 with referrals received on or after July 1, 2009. Prior to that date, PHC providers may use either the previous version of the Form 3052 or agency forms that met DADS requirements prior to July 1, 2009.
- For referrals received effective July 1, 2009 and ongoing, a provider may not begin service delivery until Form 2101 is received from the DADS case manager for PHC or the DADS regional nurse for Community Attendant Services (CAS). **See §47.61.**

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Please see the attached document for further details regarding the specific Chapter 47 rule revisions.

If you have questions regarding this letter, please contact the PHC policy specialist at (512) 438-3015. All forms referenced in this letter are available on the DADS internet at: <http://www.dads.state.tx.us/forms/>.

Sincerely,

*[signature on file]*

Tommy Ford  
Interim Director  
Community Services

TF:ss

Attachment

## ATTACHMENT

In addition to changing all references of the Texas Department of Human Services (DHS) to the Texas Department of Aging and Disability Services (DADS) and changing all references of “client” to “individual”, DADS made the following revisions to Chapter 47:

### §47.3 Definitions

- Added definitions for: expedited referrals, facsimile notice, functional limitation, individual, notice, oral notice, secure e-mail notice, service delivery plan, and utilization review.
- Amended definitions for medical need, non-priority, practitioner’s statement, service schedule and written notice.

### §47.23 Attendant Qualifications

- Added section (3) which states that an attendant cannot be hired if the DADS case manager has listed them as a “Do not hire” on the service authorization.

### §47.25 Attendant Orientation

- Section (b) Method of orientation:
  - Adds to (b)(1)(B) language which states, based on the supervisor’s determination, an orientation may be conducted by phone or verbally at any location without the individual’s being present if the attendant meets certain criteria which includes being oriented to the individual and there are no service plan changes or has previously worked for the individual.
- Section (d) Documentation of attendant orientation:
  - Adds (d)(1)(D): the requirement to document on the attendant orientation “if the orientation was conducted in person with the individual or without the participation of the individual.”
  - Adds to (d)(1)(K)(vi) under specific situations about which the attendant must notify the provider: “suspicions or allegations of abuse, neglect, or exploitation of the individual.”

### §47.41 Allowable Tasks

- Separates the tasks of transfer and ambulation in (1)(J) and (1)(K).
- Removed language regarding providing direct transportation under the escort task (3)(B).

### §47.45 Pre-Initiation Activities

- Changed “negotiated referral” to “expedited referral”
- Section (a) Pre-initiation changes:
  - (a)(3)(A) and (B): Providers will now have to submit the Practitioner’s Statement to DADS for review and will not start services until DADS authorizes PHC/CAS.
  - Section (a)(3)(B): For expedited referrals, providers must notify DADS upon receipt of the completed Practitioner’s Statement, and then send the Practitioner’s Statement to DADS within 7 working days after the initiation of services. Failure to meet this time frame will result in the withholding of payment until the date DADS receives the Practitioner’s Statement.
- Section (b) Service delivery plan changes:
  - The provider must notify DADS if there are variances in the service delivery plan when the initial service delivery plan developed by the provider is temporarily changed for more than 60 days or will result in more hours of service provided than have been approved (increased hours)

- The provider may temporarily change the service delivery plan if the individual needs assistance with allowable tasks not identified on the service delivery plan due to either a change in circumstances or available supports which will not require an increase in hours or extend beyond 60 days.
- If the change in the service delivery plan will require an increase in hours or go beyond 60 days, the provider must request and obtain a new authorization (*Form 2101*) from DADS.
- For temporary changes to the service delivery plan the provider must document the specific variance, duration of the temporary variance, and the reason for the temporary variance in the individual's file.
- Section (d) Delay in pre-initiation activities: Added the language “which must be beyond the provider's control” which is not limited to natural or other disasters.

#### **§47.47 Medical Need Determination**

- Section (a) Applicability: Added language that this section also applies to transfers of individuals in the PHC program.
- Section (b) Determining Medical Need: Added that the provider must obtain and submit a complete practitioner's statement to DADS for review by the applicable due date.” The Practitioner's Statement is now a DADS form.

#### **§47.49 Interdisciplinary Team (IDT)**

- Section (b) Convening an IDT meeting:
  - Amended the timeframes for a provider to convene an Interdisciplinary Team (IDT) meeting dependent on certain criteria as follows:
    - 3 working days of the date a provider suspends services for §47.71(a)(7) or (b), which relate to imminent danger to health and safety issues, discrimination or refusal of services for 30 consecutive days; and,
    - 7 working days of the date a provider suspends services due to identification of an issue that prevents the provider from carrying out a PHC program requirement not related to the issues mentioned above.
  - The provider must make and document a good faith effort to include all members of the IDT (including the individual, provider representative and DADS representative.)

#### **§47.57 Service Delivery Options**

- This new section outlines the three service delivery options an individual can choose: agency option, consumer directed services (CDS) option, and service responsibility option.

#### **§47.59 Support Consultation**

- This is a new section that outlines the optional service of support consultation when an individual chooses the CDS option.

#### **§47.65 Supervisory Visit**

- Section (b) Frequency: Added the language “in-person” when referencing supervisory visits.
- Section (d) Combining a supervisory visit and a new attendant orientation: Changed the language to permit both a supervisory visit and an attendant orientation to be conducted at the same time without the limiting language related to a new attendant orientation.

## **§47.67 Service Delivery Plan Changes**

- Section (c) Immediate increase in hours of service: Added the language “or designee” and “DADS staff” when referencing the DADS staff member who can be notified regarding an immediate increase in hours, and who approves the immediate increase in hours for the purpose of documentation by the provider.
- Section (e) Delay in implementation of service delivery plan changes: Added language for the requirement to “set a new implementation date” when there is a delay in the implementation of a service plan change.

## **§47.71 Suspensions**

- Section (a) Required Suspensions:
  - (a)(1): Adds “temporarily” leaves the provider’s “contracted service delivery area” while deleting the language referencing the state and county.
  - (a)(4)(F) Adds “correctional facility” to the institutions for which services must be suspended upon admission.
- Section (c) Notification of service suspension:
  - Requires provider to notify the case manager by the first working day after services are suspended by the provider.
  - Requires a written explanation of the circumstances surrounding a service suspension for imminent danger to health and safety or optional suspension [(a)(7) or (b)].
- Section (e) Resuming services after suspension: states this section does not apply to (a)(7) or (b).

## **§47.72 Compliance with Program Requirements**

- This new section reinstates termination of services related to the “3-strike rule” for individuals who have services suspended on more than three occasions related to §47.71 (a)(7), but permits the individual to appeal the termination by requesting a fair hearing.

## **§47.73 Annual Reauthorization for Community Attendant Services (CAS)**

- Section (a) Reauthorization request: Added “upon receipt” of the annual DADS authorization, the provider must request the annual authorization for all CAS.
- Section (c) Authorization determination: this section states that “DADS makes the authorization determination and notifies the provider before the annual reauthorization is due.”

## **§47.75 Complaints**

- This section lists all the rule references with which the provider must comply regarding complaint procedures.

## **§47.87 Record Keeping**

- Section (a) General record keeping requirement: Adds references to Chapter 47 and the provider’s company policies regarding the maintenance of records.

## **§47.91 Utilization Review**

- This new section outlines DADS’ utilization review process.

To view the new PHC rules, click on the following link:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=40&pt=1&ch=47](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=1&ch=47).