



INTERIM COMMISSIONER  
Jon Weizenbaum

October 9, 2009

To: Community Based Alternatives (CBA) Home and Community Support Services Agencies (HCSSAs) in Regions 4 and 11, HCSSA Consumer Directed Services Agencies (CDSAs) for CBA Consumers in Regions 4 and 11

Subject: Information Letter No. 09-140  
Expansion of Money Follows the Person (MFP) CBA Demonstration Service:  
Overnight Companion Services (OCS)

### **Background**

The Money Follows the Person (MFP) initiative helps people receiving Medicaid services in an institution to return to the community without being placed on a Community Services interest list. Through September 2011, the Texas Department of Aging and Disability Services (DADS) will enhance its successful MFP initiative through the [MFP Demonstration Project](#). The MFP Demonstration Project allows DADS to provide enhanced services to participants relocating into the community for 365 days, beginning with the date the participant enters the community. Participants continue in the Community Based Alternatives (CBA) program as long as they are eligible, but can only receive enhanced services for 365 days.

### **Expansion of Overnight Companion Services (OCS) and Expansion Event**

On July 1, 2008, DADS implemented a new pilot service, OCS, for CBA MFP demonstration participants residing in Cameron, Hidalgo and Willacy counties.

On November 1, 2009, DADS will expand OCS to the remaining fee-for-service counties<sup>1</sup> in Region 11 (Brooks, Duval, Jim Hogg, Kennedy, Live Oak, McMullen, Starr, Webb, and Zapata) and all of the counties in Region 4. As a result of the expansion of the demonstration, DADS will offer OCS annually for up to a total of twenty participants. The combined total number of OCS participants in Regions 4 and 11 cannot exceed twenty.

DADS will host an expansion event on Tuesday, October 13, 2009, to introduce OCS in Region 4, answer questions, and begin enrolling CBA home and community support services agencies that want to provide OCS. The event will take place from 10:00 a.m. until noon at the Health and Human Services Commission (HHSC) Regional Headquarters office, 302 E. Rieck Road, Tyler, TX 75703.

If you have questions about this particular event, please contact Donna Keenum, Regional Director for Long Term Services and Supports, at 903-737-0341.

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<sup>1</sup> OCS is not available in Region 11 managed care areas at this time.

DADS encourages all Region 4 and 11 CBA HCSSAs and CDSAs to attend this event. Those who would like to provide OCS but are not able to attend this event may enroll by sending an e-mail to Paul Straka, Manager, Community Services Contract Enrollment and Administration, at [paul.straka@dads.state.tx.us](mailto:paul.straka@dads.state.tx.us).

### **Description of Overnight Companion Services (OCS)**

Individuals may access OCS to assist in their relocation from institutional to community living. OCS provides 8-12 consecutive hours of access to direct support and assistance in the individual's home during normal sleeping hours (not restricted to nighttime hours). OCS components may include assistance with personal care as defined at [40 Texas Administrative Code \(TAC\) §97.2 \(71\)](#), including toileting, transfers, ambulation, general orientation, and medication reminders.

To receive OCS, the DADS case manager must determine that a CBA MFP Demonstration participant meets the following criteria:

- lives alone or with one other individual in a community setting;
- has a cognitive impairment or physical disability that requires OCS;
- has no one available as an informal support during normal sleeping hours;
- is willing to seek informal supports;
- understands and agrees that the service is temporary and limited to the 365 day MFP Demonstration period;
- has the ability to wake a companion during normal sleeping hours; and
- chooses to receive OCS.

**Note:** Allowing an OCS participant to live with one other individual is a change to the previous OCS criteria and this change is effective November 1, 2009. The other individual must not be physically or behaviorally able to provide the necessary informal supports to the OCS participant.

OCS may be provided by a HCSSA employee who must:

- meet the requirements to provide Personal Assistance Services as defined at [40 TAC§97.404](#);
- not be a resident in the home of the individual receiving services;
- have a separate, permanent residence; and
- not be the spouse or minor child of the individual receiving services.

The OCS attendant is not required to remain awake, but must be able to be awakened and provide assistance when needed. The HCSSA may consider the use of technological devices (e.g. pagers, "child" monitoring systems) to enable the individual to wake the OCS attendant. If technological devices are used, the HCSSA must document competency in the use of devices by both the OCS attendant and the individual being served before the service is implemented. OCS may not be used to pay for technological devices, but the DADS case manager may determine that a device is allowable as a CBA adaptive aid when a request is made by the HCSSA to the case manager on [Form 3671-E, Adaptive Aids and Medical Supplies](#).

Unlike the required array of CBA services, the provision of OCS by a HCSSA is voluntary. Only those HCSSAs choosing to participate in the demonstration of OCS will be asked to provide the service.

### **OCS Available through the Consumer Directed Services (CDS) option**

Eligible MFP Demonstration participants or their legally authorized representative (CDS employer) may also hire their own OCS provider through the Consumer Directed Services (CDS) option. An individual hired by the CDS employer to provide OCS must meet the same requirements as those for HCSSA employees described earlier in this letter.

Similar to employees hired by a HCSSA, the OCS employee hired by the CDS employer is not required to remain awake, but must be able to be awakened and provide assistance when needed. The CDS employer may consider the use of technological devices (e.g., pagers, "child" monitoring systems, etc.) to enable the individual to notify and wake the companion. If technological devices are used, the CDS employer must document competency in the use of devices by the companion employee before the service is implemented.

Once an individual is determined eligible for OCS, the case manager will follow existing procedures and provide information on the CDS option and the HCSSA option for OCS by reviewing DADS [Forms 1581, Consumer Directed Services Option Overview](#); [1582, Consumer Directed Services Responsibilities](#); [1583, Employee Qualification Requirements](#), and [1584, Consumer Participation Choice](#).

### **Authorizing OCS**

To authorize OCS, the case manager:

- refers the individual to a CBA HCSSA providing OCS;
- authorizes OCS via [Form 2067, Case Information](#), which must include the ISP period and the units authorized; and documents OCS on [Form 8598, Individual Service Plan \(ISP\) – Non-Waiver Services](#) (formerly Form 3671-3) of the Individualized Service Plan (ISP).

To authorize OCS-CDS, the case manager:

- sends the CDSA selected by the individual [Form 1584, Consumer Participation Choice](#);
- authorizes OCS, including the Financial Management Services fee, via [Form 2067, Case Information](#);
- documents OCS on [Form 8598, Individual Service Plan \(ISP\) – Non-Waiver Services](#) of the ISP; and
- sends a copy of the ISP to the selected CDSA.

### **Tracking the 365-Day MFP Demonstration Period**

Both OCS providers and consumers must understand and agree that the service is temporary and limited to the 365-day MFP demonstration period. CBA MFP Demonstration consumers are entitled to participate in the demonstration for 365 days, beginning the date the consumer is enrolled in CBA. If the OCS participant is admitted into an institution (hospital, nursing facility), the

365-day MFP demonstration period stops and does not restart until the individual is discharged from the institution.

**Note:** If someone enrolls in the MFP Demonstration and is later determined to need OCS, the 365-day MFP demonstration period does not restart. OCS will end after the original 365-day MFP demonstration period.

Example: A CBA applicant chooses to participate in the MFP Demonstration and is enrolled in CBA effective January 1.

- If there are no institutional stays during the initial ISP period, the MFP Demonstration period ends on December 31.
- If the MFP Demonstration consumer is institutionalized for 10 days in February, the MFP Demonstration period is extended to January 10, following the ISP end date of December 31.
- If the MFP Demonstration consumer is authorized for a new MFP Demonstration service during the initial ISP period and there were no institutional stays, the 365-day demonstration period would still end on December 31.

A MFP Demonstration participant's eligibility for OCS may change during the 365 day demonstration period. An individual initially found ineligible for OCS may become eligible due to changes in condition or circumstance. In this situation the HCSSA or the CDSA submits Form 2067, Case Information, to the DADS case manager documenting that the individual now meets the criteria and requesting authorization for OCS. The DADS case manager reviews the criteria and changes in circumstance or condition to determine if the individual is eligible to receive OCS for the remainder of the 365 day demonstration period. If the individual is eligible, the case manager proceeds as described above.

### **Billing for OCS**

The OCS service code will be added to the CBA contract of each HCSSA choosing to provide OCS and each CDSA choosing to provide Financial Management Services for OCS-CDS participants. Participating HCSSAs and CDSAs should access a MESAV (Medicaid Eligibility Service Authorization Verification) to ensure the OCS service code is available prior to attempting to bill for this new service. If the service code has not been added to the contract, the HCSSA or CDSA may send an e-mail to Paul Straka, Manager, Community Services Contract Enrollment/Administration, at [paul.straka@dads.state.tx.us](mailto:paul.straka@dads.state.tx.us). The e-mail must include the CBA contract number and indicate that the DADS case manager has authorized OCS. DADS will prioritize the addition of the OCS code to the HCSSA's or CDSA's contract to allow for billing.

A unit of service is defined as 8 – 12 consecutive hours within a 24 hour period. The reimbursement rate is \$44.17 per unit of service for agency-managed OCS and \$43.17 per unit of service for consumer-directed OCS.

To bill for provider-managed OCS, HCSSAs must use **service group 3, service code 65, and bill code G0817** as indicated in the Long Term Care Bill Code Crosswalk that is available on the DADS website at <http://www.dads.state.tx.us/providers/hipaa/billcodes/index.html#ltc>.

To bill for consumer-directed OCS, CDSAs must use **service group 3, service code 65V, and bill code G0818.**

CBA participants using OCS remain eligible for all other CBA services as documented on their ISP. The dollar value of OCS is not included in the overall ISP. The DADS case manager and interdisciplinary team (IDT) review the continued need for OCS six months after service initiation or when informed that an individual receiving OCS may no longer be eligible due to change in circumstances or supports.

**Exemption from the Fair Labor Standards Act (FLSA) for OCS**

Employers who provide home health care services for individuals who are unable to care for themselves may or may not be required to pay minimum wage and/or overtime premium pay, depending upon the type of services provided and the nature of the working relationship. Employees providing "companionship services" as defined by the U.S. Department of Labor need not be paid the minimum wage or overtime. CBA HCSSAs may use the attached *Acknowledgement of FLSA Exemption \_ OCS* form to explain the FLSA exemption to HCSSA employees who provide OCS.

If you have questions regarding this letter, please contact the CBA policy specialist at (512) 438-3190.

Sincerely,

*[signature on file]*

Tommy Ford  
Director, Community Services

TF:ss

Attachment

**Acknowledgement of Understanding of Exemption from the Fair Labor Standards Act (FLSA) for Overnight Companion Service (OCS)**

Overnight Companion Service provides 8-12 consecutive hours (standard shift) during a 24 hour period of available, direct support and assistance in the individual's home during normal sleeping hours, not restricted to normal nighttime hours.

Assistance with personal care including toileting, transfers, ambulation, general orientation and medication reminders may be provided. The companion is not required to remain awake, but must be able to be awakened and provide assistance when needed.

Employers who provide home health care services for individuals who (because of age or infirmity) are unable to care for themselves may or may not be required to pay minimum wage and/or overtime premium pay depending upon the type of services provided and the nature of the working relationship. Employees providing "companionship services" as defined by as defined by the U.S. Department of Labor need not be paid the minimum wage or overtime.

I understand that as an employee of \_\_\_\_\_, I will be providing "companionship services for the aged and infirm" as defined in U.S. Department of Labor regulations.

As a companionship services employee, I understand that I will not be subject to the minimum wage or overtime pay requirements in the Fair Labor Standards Act (FLSA).

I understand and agree that my entire compensation for a standard shift will be \$\_\_\_\_\_ per shift.

I will sign the two copies of this Acknowledgement of Understanding of Exemption from the Fair Labor Standards Act (FLSA) for Overnight Companion Service (OCS), retain one copy for myself, and return one copy to the Company's representative listed below on the date specified. I understand that this form will be retained in my personnel file.

\_\_\_\_\_  
Signature of Companion Services Provider

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Companion Services Provider

\_\_\_\_\_  
Company Representative

\_\_\_\_\_  
Date