

8.609 PROGRAM SERVICES AND SUPPORTS

8.609.5 RESIDENTIAL HABILITATION SERVICES AND SUPPORTS DESCRIPTION AND GENERAL PROVISIONS

Residential Habilitation Services and Supports provide a full day (24 hours) of services and supports to ensure the health, safety and welfare of the individual, and to provide training and habilitation services or a combination of training (i.e., instruction, skill acquisition) and supports in the areas of personal, physical, mental and social development and to promote interdependence, self-sufficiency and community inclusion. Services and supports are designed to meet the unique needs of each person determined by the assessed needs, personal goals, and other input provided by the Interdisciplinary Team, defined at 10 CCR 2505-10, Section 8.519.1, and to provide access to and participation in typical activities and functions of community life.

A. Program Approved Service Agency Policies, Procedures and Service Provisions

1. Each Program Approved Service Agency (PASA) providing residential services must establish and implement written policies and procedures concerning the use ~~and~~ handling and timely disbursement of personal needs funds and include a record of personal possessions, including clothing, of the participant.
2. PASA's must conduct an evaluation of consumer satisfaction with services and supports no less than every ~~three~~ two years. The PASA must ~~review and analyze this data and~~ address any complaints or problematic practices requiring corrective action.
3. The PASA must maintain a record for each participant which includes the information required by these rules and as prescribed by the Department.
4. Participants receiving Residential Habilitation Services and Supports must have 24-hour supervision. Supervision may be on-site (direct service provider or caregiver is present) or accessible (direct service provider or caregiver is not on site but available to respond when needed). Staffing arrangements must be adequate to meet the health, safety and welfare of participants and the needs of the individual as determined by the Service Plan. The PASA is responsible for ensuring that any direct care provider they employ or contract with has the capacity to serve the individuals in their care, as outlined in the Support Plan.
5. Physical facilities utilized as residential settings must meet all applicable fire, building, licensing and health regulations.
6. Services and supports must be provided pursuant to the person's Service Plan, in accordance with Department guidelines and service descriptions, and the HCBS Settings Final Rule at 79 Fed. Reg. 2948 (Jan. 16, 2014) (codified in relevant part at 42 C.F.R. § 441.301).
7. The PASA is responsible for providing services, supplies and equipment as prescribed by the Department.

8. Caregivers, providers and other support personnel must have ready access to records and all necessary, detailed protocols about the participant required to carry out their responsibilities.
9. PASA's must comply with the Colorado Adult Protection Services (CAPS) requirements, outlined in §26-3.1-111, C.R.S. and 12 CCR 2518-1, Volume 30.960. The PASA must maintain accurate records and make records available to the Department upon request.
 - a. During the application process, any individual applying for PASA certification must submit documentation that a CAPS check was completed, regardless if they are providing direct care to participants.
10. Direct service and backup providers shall be prohibited from providing IRSS to any participant if they have any of the following substantiated allegations:
 - a. A substantiated allegation of abuse, neglect, exploitation, or harmful act, as defined in Section 26-3.1-101, C.R.S., within the last 10 years by APS at a severity level of "Moderate" or "Severe" as defined in 12 CCR 2518-1 Section 30.100;
 - b. Three or more substantiated allegations of abuse, neglect, exploitation, or harmful act, as defined in Section 26-3.1-101, C.R.S., within the last five years by APS at the minor severity level as defined in 12 CCR 2518 Section 30.100; or
 - c. A criminal conviction of abuse, neglect, or exploitation against an at-risk adult with IDD as defined in Section 18-6.5-102, C.R.S.
 - d. Only substantiated allegations that have exhausted the appeal period and come to a final disposition, as defined as 12 CCR 2518-1 Section 30.920, shall be included in the above exclusions list.
119. Incident Reporting
 - a. The PASA must comply with all incident reporting requirements, as outlined in 10 CCR 2505-10, Section 8.608.6.
 - b. The PASA must notify guardians and/or representatives of Incident Reports (IR).
 - c. The PASA must have policies and procedures in place for handling cases of alleged or suspected abuse, mistreatment, neglect, or exploitation of any participant, pursuant to 10 CCR 2505-10, Section 8.608.8.
 - d. The PASA must notify the waiver participant and guardians and/or participants' representatives of investigations, including summary information pertaining to the outcome of the investigation, victim supports accessed, and recommendations to prevent recurrence.
124. The PASA is responsible for the monitoring of conditions at the property and must provide oversight and guidance to safeguard the health, safety, and welfare of the participant.
132. The PASA must provide for and document the regular on-site monitoring of Residential Habilitation Services and Supports. PASA's must conduct an on-site visit of each

Individual Residential Support Services (IRSS) or Group Residential Support Services (GRSS) setting before a participant moves in, and at a minimum once every quarter, with at least one visit annually that is unscheduled. On-site monitoring of IRSS and GRSS settings must include, but not be limited to:

- a. Inspection of all smoke alarms and carbon monoxide detectors;
- b. Ensuring all exits are free from blockages to egress;
- c. Review of each participant's emergency and disaster assessment; and
- d. Medication administration records and physician orders.

~~13. The PASA must have a protocol in place for the emergency placement of the participant if a home is deemed not safe by the Division of Housing (DOH).~~

~~14. The PASA must have a written contract with each direct service provider providing IRSS under the PASA's authority, such as a Host Home provider or family caregivers not directly employed by the PASA.~~

~~a. A current list of the above-mentioned contracted IRSS providers and their accompanying contracts must be on file with the program approved service agency and a copy must be provided to the Department or its agent upon request.~~

~~b. Each contract must be in writing and contain the following information:~~

~~i. Name of contracted IRSS provider;~~

~~ii. Responsibilities of each party to the contract, including, but not limited to, responsibility for the safety and accessibility of the physical environment of the home;~~

~~iii. process for correcting non-compliance;~~

~~iv. process for termination of the contract;~~

~~v. process for modification or revision of the contract;~~

~~vi. process for relocation of the participant if they are in immediate jeopardy;~~

~~vii. process for coordinating the care of the participant;~~

~~viii. Payment rate and method; and~~

~~viii. Beginning and ending dates.~~

~~c. If a contract is terminated with a contracted IRSS provider due to health, safety or welfare concerns, the PASA must report to the following parties:~~

~~i. Within 430 days to the Department or its agent regarding the cited reason for termination of a contracted IRSS provider.~~

~~ii. Within 410 days to the guardian or authorized representative and case manager of the participant from the terminated contracted IRSS provider.~~

~~15. The PASA must require each contracted direct service provider providing IRSS to document each approved caregiver(s) and report to the agency the names of all persons that reside in the home. No backup provider may be hired without PASA approval. The agency must ensure criminal background checks are completed for any non-participant over the age of 18 who lives in the home.~~

~~i. mistreatment, abuse, neglect, or exploitation IRSS.~~

~~16. The Host Home must be the primary residence of the Host Home provider. A Host Home provider is not permitted to any not living in their Host Home.~~

~~17. Each PASA must provide quarterly housing and participant updates to the Department or its agent through a specified data collection platform. Failure to provide these quarterly updates result in payment suspension.~~

B. Rights of Participants

1. A participant must be presumed able to manage his/her own funds and possessions unless otherwise documented in the Service Plan.
2. Participants must have a key or key code to their home, a bedroom door with a lock, lockable bathroom doors, access to all common areas of the home, and a residential agreement that provides protections for evictions.
3. A participant, guardians, authorized representatives, as appropriate, and the case manager shall be notified at least fifteen (15) days prior to proposed changes in residential placements.
 - a. If an immediate move is required for the protection of the person, notification must occur as soon as possible before the move or no later than three days after the move.
 - b. A participant, guardians, and authorized representatives, as appropriate, must be involved in planning subsequent placements and any member of the Interdisciplinary Team may request a meeting to discuss the change in placement.
 - c. When a participant moves settings or PASA, all residential PASA's involved must be present for the move whenever possible, and will ensure all possessions, medications, money and pertinent records are transferred to the participant within 24 hours.
 - d. If the participant, guardians, or authorized representative, as appropriate, wants to contest the move they should follow the grievance procedure of the agency.
 - e. If there is a concern regarding the health, safety, or welfare of the person being jeopardized as a result of the move, any interested party may request an emergency order from the Department pursuant to Section 8.605.4.
4. Participants have a right to annual notification of PASA appeal/grievance policies and procedures.

8.609.7 INDIVIDUAL RESIDENTIAL SERVICES AND SUPPORTS (IRSS) SPECIFICATIONS

A. Individual Residential Services and Supports (IRSS) use a variety of living arrangements to meet the unique needs for support, guidance and habilitation of each participant.

1. IRSS settings include, but are not limited to:
 - a. a home owned, ~~or~~ leased or controlled by the Program Approved Service Agency (PASA);
~~a Host Home, or~~
 - b. a home of a family member;
 - c. their own home; or -
 - d. a Host Home.
 - i. The Host Home is the primary residence of the provider, which means that the Host Home provider occupies the residence seventy-five (75) percent of the time. The Host Home provider may not contract to provide services to more than three (3) individuals, inside or outside of the Host Home, at any given time.

AB. Program Approved Service Agency Policies, Procedures and Service Provisions

1. The ~~Program Approved Service Agency (PASA)~~ has the responsibility for the living environment, regardless of the setting type.
2. IRSS may be provided to no more than three participants in a single setting. For each participant in a setting, the PASA must ensure the following criteria are met and documented:
 - a. The participants involved elect to live in the setting;
 - b. Each participant must have their own bedroom, unless they elect to share a bedroom with a roommate of their choice, which must be documented in the Service Plan;
 - c. Back-up providers are identified, available and agreed upon by the participant and PASA. When a back-up provider is not available, the PASA assumes responsibility for identifying a provider;
 - d. The PASA and case management agency of each participant in the setting must be involved in the coordination of placement of each participant;

- e. Participants are afforded regular opportunities for community inclusion of their choice;
 - f. Participants are afforded individual choice, including preference to live near family;
 - g. Distance from other homes (e.g., apartments, houses) of participants is examined so that persons with developmental disabilities are not grouped in a conspicuous manner;
 - h. For the placement of an individual into a three-person setting, the following factors must be examined to determine reasonableness of the placement:
 - i. Level of care and needs of each participant in the home;
 - ii. Availability to support and provide supervision to participants;
 - iii. Compliance with HCBS Settings Final Rule at 79 Fed. Reg. 2948 (Jan. 16, 2014) (codified in relevant part at 42 C.F.R. § 441.301); and
 - iv. Each participant's ability to evacuate.
 - i. When three participants reside in a single setting, the PASA must conduct monthly monitoring of the setting.
3. Participants must live safely in environments common to other citizens with reasonable and appropriate supports provided to protect their health and safety while simultaneously promoting community inclusion. Providers and caregivers must have the appropriate knowledge, skills, and training to meet the individual needs of the participant before providing care and services. The PASA must have policies and procedures in place outlining the required trainings for providers and caregivers. The policy and procedure shall include, but not be limited to, the following:
- a. Training specific to the participants' needs shall be completed by all providers and caregivers. Such training shall include, at a minimum, medical protocols and activities of daily living needs.
 - b. Providers and caregivers shall receive training in resident rights, abuse and neglect prevention, and reporting abuse, neglect, mistreatment and exploitation.
4. Upon enrollment in services, the PASA must assess each participant's ability to care for their safety needs and take appropriate action in case of an emergency. The assessment must be kept up to date and, at a minimum, address the following emergencies and disasters:
- a. Fire;
 - b. Severe weather and other natural disasters;
 - c. Serious accidents and illness;
 - d. Assaults; and,
 - e. Intruders.

5. There must be a written plan for each person addressing how the emergencies specified above will be handled. The plans must be based on an assessment, maintained current and shall, at minimum, address:
 - a. Specific responsibilities/actions to be taken by the participant, approved caregivers or other providers of supports and services in case of an emergency;
 - b. How the participant will evacuate in case of fire by specifying, at minimum, two exit routes from floors used for sleeping and the level of assistance needed; and
 - c. Telephone access (by the participant or with assistance) to the nearest poison control center, police, fire and medical services.
6. Safety plans and evacuation procedures must be reviewed and practiced at sufficient frequency and varying times of the day, but no less than once a quarter, to ensure all persons with responsibilities for carrying out the plan are knowledgeable about the plan and capable of performing it. All safety plans must be on site at the home and be reviewed by the PASA agency during each on-site monitoring visit.
7. The PASA must provide sufficient oversight and guidance and have established procedures to ensure that the health and medical needs of the participant are addressed. This includes:
 - a. Each participant must have a primary physician;
 - b. Each participant must receive a medical evaluation at least annually unless a greater or lesser frequency is specified by his/her primary physician. If the physician specifies an annual evaluation is not needed, a medical evaluation must be conducted no less frequently than every two years;
 - c. Each participant must be encouraged and assisted in getting a dental evaluation annually;
 - d. Other medical and dental assessments and services must be completed as the need for these is identified by the physician, dentist, other medical support personnel or the Interdisciplinary Team; and
 - e. Records must contain documentation of:
 - i. medical services provided;
 - ii. results of medical evaluations/ assessments and of follow-up services required, if any;
 - iii. acute illness and chronic medical problems; and,
 - iv. weight taken annually or more frequently, as needed.
8. The PASA must have a written contract with each direct service provider providing IRSS under the PASA's authority, regardless of the setting type. This includes but is not limited to Host Home providers and family caregivers not directly employed by the PASA.
 - a. A current list of the above-mentioned contracted IRSS providers and their accompanying contracts must be on file with the program approved service

agency and a copy must be provided to the Department or its agent upon request.

b. Each contract must be in writing and contain the following information:

- i. Name of contracted IRSS provider;
- ii. Responsibilities of each party to the contract, including, but not limited to, responsibility for the safety and accessibility of the physical environment of the home;
- iii. An agreement outlining the living arrangements, monitoring of the Host Home, Host Home provider duties, and any limitations on the Host Home providers duties;
- iv. Expectations that participants be provided opportunities for informed choice over a variety of daily choices similar to those exercised by non-participants including access to decision-making options described within C.R.S. 15.14.8.
- v. process for correcting non-compliance;
- vi. process for termination of the contract;
- vii. process for modification or revision of the contract;
- viii. process for relocation of the participant if they are in immediate jeopardy;
- ix. process for coordinating the care of the participant;
- x. Payment rate and method; and
- xi. Beginning and ending dates; and
- xii. A clause that states the contracted IRSS provider shall not sub-contract with any entity to perform in whole the work or services required under the IRSS benefit.

c. PASAs who utilizes the services of subcontractors are responsible for the following, which includes but it not limited to:

- i. Vetting, training, monitoring, and taking corrective action with employees and subcontractors.
- ii. Nothing in these regulations shall create any contractual relationship between any subcontractor of the PASA and the Department.

d. If a contract is terminated with a contracted IRSS provider due to health, safety or welfare concerns, the PASA must report to the following parties:

- i. Within 4 days to the Department or its agent regarding the cited reason for termination of a contracted IRSS provider.

ii. Within 4 days to the guardian or authorized representative and case manager of the participant from the terminated contracted IRSS provider.

9. The PASA must require each contracted direct service provider providing IRSS to document each approved caregiver(s) and report to the agency the names of all persons that reside in the home. Participants and/or guardians have a right to request and receive from the rendering PASA a list of all direct service and backup providers that are approved to provide them services. No backup provider may be hired without PASA approval. The agency must ensure criminal background checks are completed for any non-participant over the age of 18 who lives in the home.

~~substantiated allegations within the last 10 years by with the minor with IDD~~

~~d. Only substantiated allegations that have exhausted the appeal period, as defined as 12 CCR 2518-1 Section 30.920, shall be included in the above exclusions list.~~

10. Each PASA must provide quarterly housing and participant updates to the Department or its agent through a specified data collection platform. Failure to provide these quarterly updates may result in payment suspension.

11. The PASA must ensure nutritionally balanced meals are available to participants. Based on an assessment of the person's capabilities, preferences and nutritional needs, the PASA may provide guidance and support to monitor nutritional adequacy.

- a. Therapeutic diets must be prescribed by a licensed physician or dietician.
- b. Participants must have access to food at all times, choose when and what to eat, the opportunity to provide input into menu planning, comfortable seating for meals where they can choose their own seat, and shall have access to food preparation areas as documented in the Service Plan.

BC. Living Environment

1. Homes of participants must, at minimum, meet standards set forth in the Colorado Division of Housing (DOH) IRSS Inspection Protocol. The following setting types must pass the DOH IRSS Inspection Protocol every two years:

- a. All Host Homes; and
- b. All IRSS settings that are owned or leased by a PASA.

Settings must request an inspection prior to placement of a participant and must pass an inspection within 90 days of becoming an approved setting and providing services. Existing settings have until January 1, 2022 to pass an inspection.

2. The PASA must have a protocol in place for the emergency placement of the participant if a home is deemed not safe by the Division of Housing (DOH).

3. The home (exterior and interior) and grounds must:

- a. Be maintained in good repair;
- b. Protect the health, comfort and safety of the participant; and

- c. Be free of offensive odors, accumulation of dirt, rubbish and dust.
- 43. There must be two means of exit from floors with rooms used for sleeping. Exits must remain clear and unobstructed.
- 54. The PASA must ensure entry to the home and an emergency exit is accessible to participants, including participants utilizing a wheelchair or other mobility device.
- 65. The PASA must ensure that participants who utilize a wheelchair or other mobility device have access to all common areas of the home
- 76. Bedrooms must meet minimum space requirements (single 80 square feet, double 120 square feet). (Not applicable for studio apartments.)
- 87. Adequate and comfortable furnishings and supplies must be provided and maintained in good condition.
- 98. Participants have the right to furnish and decorate their sleeping and/or living units in the way that suits them, while maintaining a safe and sanitary environment.
- 109. A fire extinguisher must be available in each home. Presence of an operational fire extinguisher shall be confirmed by the PASA during each on-site monitoring visit.
 - a. PASA's must follow manufacturer specifications and expiration dates for all fire extinguishers.
- 119. Smoke alarms and carbon monoxide detectors must be installed in the proper locations in each home to meet Housing and Urban Development (HUD) requirements and/or local ordinances. Smoke and carbon monoxide detectors shall be tested during each on-site monitoring visit by the PASA.