



**TEXAS**  
Health and Human  
Services



# **Implementation of Regulatory Settings Criteria for Home and Community-Based Services (HCBS)**

**August 2023**

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## Introduction

The Health and Human Services Commission (HHSC) conducted a systemic internal assessment of all home and community-based services (HCBS) and programs, which included a review of the waiver application, state rules, program rules, internal policies, provider policies, forms, documents, and publications. The majority of HHSC's Medicaid HCBS are already in compliance with the HCBS Settings Rule requirements. This is demonstrated in the service-specific remediation section of the Statewide Transition Plan (STP). If HHSC noted that no modifications were needed for a service, it means the settings where these services are provided fully comply with the HCBS Settings Rule because the services are individualized; are provided in the community, the individual's own home or family home, or non-disability specific setting; and allow full access to the broader community according to a person's needs and preferences. Providers of these services will not undergo a site-specific assessment process. However, HHSC will continue to monitor these services through existing provider monitoring processes. If the setting where a service is provided requires changes to comply fully with the HCBS Settings Rule, HHSC noted that modifications were in progress. These services are typically provided to groups of people. Providers of these services will undergo assessment and remediation processes and, if necessary, will undergo heightened scrutiny.

HHSC determined that existing state standards for the Medically Dependent Children's Program (MDCP) and Youth Empowerment Services (YES) settings meet requirements in the settings regulations and current oversight processes are adequate to ensure compliance. Therefore, settings currently approved under the state's standards for MDCP and YES meet HCBS Settings Rule requirements and the oversight system for these programs did not require modification.

# State oversight system modification

## Rules

HHSC amended Texas Administrative Code (TAC) rules for the Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), Home and Community-Based Services (HCS), and Texas Home Living (TxHmL) waiver programs to ensure compliance with the HCBS Settings Rule. The amended rules became effective by March 2023. Rule revisions were made with extensive input from stakeholders including providers, advocates, individuals receiving services, legally authorized representatives, and other interested parties. Stakeholders were invited to review draft rule language and provide comments at several points in the rule promulgation process. Opportunities to provide input included: (1) through public comment on rule drafts that were made available on HHSC's website; (2) through public testimony before the Medical Care Advisory Committee, which meets four times per year; (3) through public testimony before the HHSC Executive Council, which meets four times per year; and (4) during the formal rule public comment period on proposed rules published in the Texas Register, either in writing or during the public hearings held by HHSC.

Amended rules include:

- TAC Title 26, Part 1, Chapter 259 (effective January 30, 2023)
- TAC Title 26, Part 1, Chapter 260 (effective February 26, 2023)
- TAC Title 26, Part 1, Chapter 262 (effective March 1, 2023)
- TAC Title 26, Part 1, Chapter 263 (effective March 1, 2023)

## Licensure and Certification Standards

The HCS and TxHmL waiver programs and the new individualized skills and socialization service have separate regulatory rules that have been amended or created. The public input process for these rules followed the state-mandated process for TAC rules.

The amended and new rules include:

- TAC Title 26, Part 1, Chapter 565 (effective June 21, 2023)
- TAC Title 26, Part 1, Chapter 566 (effective June 19, 2023)

- TAC Title 26, Part 1, Chapter 559 (effective January 1, 2023)

## **Program Handbooks and Manuals**

HHSC is in the process of updating provider manuals and handbooks as well as the provider monitoring processes, to align with the amended TAC rules. HHSC will increase and enhance training on the HCBS Settings requirements outlined in handbooks, manuals, and rules, including the person-centered planning process and employment services, for service coordinators and case managers to ensure all regulatory and program criteria are followed.

## **Managed Care Contract Amendments**

Managed care contracts currently include requirements for managed care organizations (MCOs) to ensure their contracted providers comply with requirements at 42 CFR § 441.301(c)(4). HHSC amended these contracts, effective September 1, 2022, to provide additional specificity regarding the services subject to the HCBS Settings Rule. This included adding credentialing requirements for assisted living facilities (ALFs) and adult foster care settings (AFCs) participating in STAR+PLUS HCBS. The MCO contract amendment process includes review by the Centers for Medicare and Medicaid Services (CMS). Managed care contracts are posted to HHSC's [website](#).

HHSC has amended managed care program handbooks, which are considered an extension of the respective program's managed care contracts. The handbooks include descriptions of the MCO's responsibility to ensure compliance with certain HCBS criteria through the person-centered planning process, which is led by the MCO service coordinator. The handbook also highlights requirements that MCOs must ensure are met by their contracted providers. Handbook revisions became effective March 1, 2023.

## **Person-Centered Planning**

All of Texas Medicaid's HCBS programs include service coordination or case management. HHSC requires the service coordinator/case manager to assist the individual in creating a person-centered service plan. Person-centered planning requirements are outlined in contracts, handbooks, manuals, and rules. Depending on the program, the service coordinator/case manager is employed by an MCO, a private case management agency, a local intellectual and developmental disability authority (LIDDA), or the HCBS waiver program

provider. The service coordinator/case manager is responsible for ensuring the beneficiary understands their rights in an HCBS program, and they are also responsible for ensuring any limitations on those rights are recorded in the person-centered service plan in accordance with the HCBS Settings Rule. Through monitoring of service plans and service delivery, HHSC will ensure beneficiaries are receiving the most person-centered and integrated services possible.

## **Individual Rights**

HHSC will revise policies regarding individual rights and responsibilities as necessary to ensure individuals receiving services are informed of their rights and the processes for filing a complaint with HHSC or their MCO if restrictions are imposed on their rights without following proper procedures. Because the different programs provide information to individuals about their rights through different documents, including rights booklets and member handbooks, revisions to these documents will occur on separate timelines.

# Initial, Current, and Ongoing Compliance and Monitoring

Initial compliance describes the work done by HHSC to ensure settings were in compliance by the March 2023 deadline. Current and ongoing compliance describes the processes that will ensure continuous compliance after transition activities are complete.

## Initial Compliance

### Site-Specific Assessment & Validation

HHSC has completed or is in the process of conducting site-specific assessments of provider-owned or controlled settings in the HCS, TxHmL, DBMD, and STAR+PLUS HCBS programs.

### Settings that Did Not Require Site-Specific Assessment

#### Private Homes

Individual, privately-owned homes (privately-owned or rented homes and apartments in which the individual receiving Medicaid-funded home and community-based services lives independently or with family members, friends, or roommates) are presumed to be in compliance with the regulatory criteria of a home and community-based setting. In Texas, private homes are referred to as own home or family home settings.

#### Department of Family and Protective Services (DFPS) Foster Care

Medicaid HCBS individuals who are minors and in state conservatorship may reside in a DFPS foster care home, which is not a Medicaid HCBS-funded setting. DFPS foster care providers are not Medicaid HCBS providers and do not deliver Medicaid HCBS. Therefore, site-specific assessments are not needed for DFPS foster care home providers.



Delivery of Medicaid HCBS occurs in these settings in the same way it would for individuals who live in their own home or family home settings, and DFPS foster care homes are typical residences in the community. HHSC will conduct ongoing monitoring of Medicaid HCBS providers who deliver Medicaid HCBS to children and youth in foster care settings, in accordance with program-specific monitoring processes described in Section 10 of the STP.

## **Host Family Homes in MDCP**

MDCP respite is the only Medicaid home and community-based service that may be delivered in a host family home setting.<sup>1</sup> A host family home is a licensed/certified DFPS foster care provider and the host family home setting must be a typical residence in the community. Respite is a time-limited service.

Host family homes are used exclusively for the provision of respite services and CMS has clarified states are not required to assess settings exclusively used for respite services for compliance with the HCBS Settings Rule.<sup>2</sup> In addition, there are currently no individuals receiving respite in a host family home setting; therefore, there are no settings for which the state can conduct a site-specific assessment.

## **Day Habilitation in HCS, TxHmL, and DBMD**

HHSC has determined that day habilitation settings cannot comply with the requirements of a home and community-based setting in 42 CFR § 441.301(c)(4)(i-v). HHSC replaced day habilitation with a new, fully compliant service called individualized skills and socialization. Because day habilitation will not continue to be offered as a service, site assessments of day habilitation settings were not needed.

## **Support Family Services (SFS) and Continued Family Services (CFS) in CLASS**

There are no individuals residing in an SFS or CFS setting. Therefore, there are no SFS or CFS settings for which the state can conduct a site-specific

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<sup>1</sup> Host family home settings are not a setting option in any other Texas Medicaid HCBS program.

<sup>2</sup> [Frequently Asked Questions Regarding the Heightened Scrutiny Process and Other Home and Community-Based Settings Information \(June 26, 2015\)](#)

assessment. If and when either service is requested, HHSC will conduct assessment(s) to ensure compliance with HCBS Settings Rule.

## **Supportive Family-Based Alternatives in YES Waiver**

There are no individuals residing in a supportive family-based alternative setting. Therefore, there are no supportive family-based alternative settings for which the state can conduct a site-specific assessment. If and when the service is requested, HHSC will conduct assessment(s) to ensure compliance with HCBS Settings Rule.

## **Employment Assistance (EA) and Supported Employment (SE) in DBMD, MDCP, STAR+PLUS HCBS, and YES Waiver**

There are no individuals receiving EA or SE in the DBMD, MDCP, STAR+PLUS HCBS and YES Waiver programs. Therefore, there are no EA or SE settings for which the state can conduct a site-specific assessment for these programs. If and when the service is requested, HHSC will conduct setting assessment(s) to ensure compliance with the HCBS Settings Rule.

## **CLASS Program**

HHSC is conducting site-specific initial assessments of prevocational and SE settings where more than one individual is grouped together for the purpose of receiving services. There are no individuals currently receiving EA, so there are no settings to assess at this time. If and when EA is requested, HHSC will conduct setting assessment(s) to ensure compliance with the Settings Rule.

HHSC contracts with comprehensive program providers to deliver these HCBS waiver services. The comprehensive program provider may choose to provide the waiver service directly or they may choose to subcontract with a service provider. The comprehensive program provider is responsible for ensuring any subcontractors are in compliance with program requirements. HHSC is coordinating with comprehensive providers to identify settings where prevocational and SE are provided. Preliminary compliance counts included in this STP are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

## **Assessments**

HHSC is conducting on-site initial assessments of any prevocational or SE setting that has more than one individual grouped together for the purposes of receiving services. HHSC is using a combination of observations, interviews, and data collection to assess settings for compliance.

During an on-site assessment, the assessor will observe the setting, interview staff and individuals receiving services, and review related documentation the setting submits such as policy and procedure documents. HHSC has developed tools for collecting information based on the CMS Exploratory Questions.

## **Validation and Remediation**

HHSC staff will review all information collected during the on-site initial assessment, using the assessor's observations and documentation to validate information shared by the provider during the interview.

For each HCBS settings criteria, HHSC will consider all the information available when making a compliance determination for the setting. If HHSC identifies any areas of noncompliance, the staff reviewer will identify remediation needed to address the noncompliance. HHSC will develop an action plan that lists the specific remediation activities the provider must complete and give the provider a copy of the action plan at the time of the on-site assessment, or no later than 72 hours after the completion of the on-site assessment. The action plan will outline required remediation activities and will require the program provider to provide HHSC staff with verification of completion of all remediation activities within 21 calendar days.

The comprehensive provider is responsible for ensuring all required remediation activities are completed and must provide verification of completion to HHSC. HHSC will review the evidence of remediation submitted by the comprehensive provider to verify the remediation activities have been completed. If needed, HHSC staff will conduct a follow-up virtual visit with the provider to verify completion of remediation. Validation is occurring through desk reviews conducted by HHSC. HHSC expects desk review validations and remediation activities to be completed by March 17, 2024. HHSC will add this ongoing validation and remediation to the state's corrective action plan (CAP) request.

## **Texas Home Living Program**

HHSC is conducting initial site-specific assessments of EA, and SE, settings where more than one individual may be grouped together for the purpose of receiving services.

HHSC contracts with comprehensive program providers to deliver these HCBS waiver services. The comprehensive program provider may choose to provide the waiver service directly or they may choose to subcontract with a service provider. The comprehensive program provider is responsible for ensuring any subcontractors are in compliance with program requirements. HHSC is coordinating with comprehensive providers to identify settings where EA and SE services are provided. Preliminary compliance counts are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

### **Assessments**

HHSC is conducting initial on-site assessments of any EA and SE setting that has more than one individual grouped together for the purpose of receiving services. HHSC will use a combination of observations, interviews, and data collection to assess settings for compliance.

During an on-site assessment, the assessor will observe the setting, interview staff and individuals receiving services, and review related documentation the setting submits, such as policy and procedure documents. HHSC has developed tools for collecting information based on the CMS Exploratory Questions.

### **Validation and Remediation**

HHSC will review all information collected during the on-site assessment, using the assessor's observations and documentation to validate information shared by the provider during the interview.

For each HCBS settings criteria, HHSC will consider all the information available when making a compliance determination for the setting. If HHSC identifies any areas of noncompliance, the staff reviewer will identify remediation needed to address the noncompliance. HHSC will develop an action plan that lists the specific remediation activities the provider must complete and give the provider a copy of the action plan at the time of the on-site assessment, or no later than

72 hours after the completion of the on-site assessment. The action plan will outline required remediation activities and will require the program provider to provide HHSC staff with verification of completion of all remediation activities within 21 calendar days.

The comprehensive provider is responsible for ensuring all required remediation activities are completed and must provide verification of completion to HHSC. HHSC will review the evidence of remediation submitted by the comprehensive provider to verify the remediation activities have been completed. If needed, HHSC staff will conduct a follow-up virtual visit with the provider to verify completion of remediation. Validation will occur through desk reviews conducted by HHSC. HHSC expects desk review validations and remediation activities to be completed by March 17, 2024. HHSC will add this ongoing validation and remediation to the state's CAP request.

## **HCS Program**

HHSC is conducting site-specific assessments of three-person residences, four-person residences, and certain host home/companion care (HH/CC) settings. The only HH/CC setting the state considers provider owned or controlled is one 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.

HHSC is also conducting initial site-specific assessments of EA and SE settings where more than one individual may be grouped together for the purposes of receiving services.

HHSC contracts with comprehensive program providers to deliver these HCBS waiver services. The comprehensive program provider may choose to provide the waiver service directly or they may choose to subcontract with a service provider. The comprehensive program provider is responsible for ensuring any subcontractors are in compliance with program requirements. HHSC is coordinating with comprehensive program providers to identify settings where EA and SE services are provided. Preliminary compliance counts are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

## Residential Settings

### Assessment

HHSC's existing provider monitoring processes determine compliance with all HCBS settings criteria except:

- Lease agreement (42 CFR § 441.301(c)(4)(vi)(A))
- Bedroom door locks (42 CFR § 441.301(c)(4)(vi)(B)(1))
- Access to food at any time (42 CFR § 441.301(c)(4)(vi)(C))
- Modifications to additional conditions (42 CFR § 441.301(c)(4)(vi)(F))

LIDDA service coordinators for the HCS program are responsible for ensuring modifications are supported by a specific assessed need and documented in accordance with TAC and the requirements of 42 CFR § 441.301(c)(4)(vi)(F) prior to adding the modification to the person-centered plan.

HHSC is conducting site-specific assessments of three-person residences, four-person residences, and provider owned or controlled HH/CC settings to determine compliance with the HCBS requirements for lease agreements, bedroom door locks, and access to food at any time. If the on-site assessment identified any areas of noncompliance, including restrictions that were not based off an assessed need and documented in the person-centered plan, providers are required to complete remediation and send documentation to HHSC of completed remediation. Providers were informed of how to work with service coordinators to document and implement any restrictions or modifications in accordance with 42 CFR § 441.301(c)(4)(vi)(F).

HHSC Long-Term Care Regulation (LTCR) conducts annual on-site visits, including unannounced visits, to three-person residences, four-person residences, and HH/CC settings. There are two types of reviews: residential visits focused on the physical characteristics of the setting and certification surveys that assess the setting's compliance with provider certification principles.<sup>3</sup>

Through these reviews, LTCR assesses compliance with all HCBS settings criteria except the four bulleted criteria listed above.

Residential visit requirements and processes are described in [HCS Handbook Section 14400, Residential Visits](#). Residential visits assess providers for

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<sup>3</sup> [TAC Title 40, Part 1, Chapter 9, Subchapter D, Rules § 9.172-§ 9.180](#)

compliance with requirements related to physical accessibility, community access, and transportation.<sup>4</sup>

Certification survey requirements and processes are described in 40 TAC § [9.171](#) and [HCS Handbook Section 14200, Home and Community-based Services Surveys](#). Certification surveys assess for compliance with certification principles that include HCBS settings requirements related to: community access<sup>5</sup>; control of personal resources<sup>6</sup>; choice of services and supports and who provides them<sup>7</sup>; choice of setting<sup>8</sup>; rights of dignity, respect, and freedom from coercion and restraint<sup>9</sup>; optimizing individual initiative, autonomy, and independence<sup>10</sup>; and access to visitors<sup>11</sup>. HHSC developed an assessment form with 19 items related to the assessment criteria that capture assessor observations of the setting, provider interview responses, and photos and documentation. Observation criteria and provider interview questions are based on the CMS Exploratory Questions. If a modifiable restriction is observed during the visit, HHSC will review the person-centered plan to confirm the provider is implementing the restriction in accordance with the plan.

The assessments are being conducted by HHSC staff and staff of the state's contractor, the Texas Medicaid & Healthcare Partnership (TMHP). HHSC staff regularly review three-person residences and four-person residences during ongoing monitoring and have incorporated this assessment into regularly scheduled on-site visits. HHSC has engaged TMHP to assist with on-site assessments as needed. TMHP staff will also participate in review and validation of completed assessments.

Upon completion of an on-site visit, the assessor submits the completed assessment form along with photos and other supporting documents which are reviewed by HHSC and TMHP staff. For quality assurance, completed assessment forms will be reviewed by staff person(s) other than the staff who conducted the on-site assessment.

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<sup>4</sup> LTCR staff use [Form 3609](#), Waiver Survey and Certification Residential Checklist, to conduct each residential visit.

<sup>5</sup> TAC § [9.173](#)(a)(1), (b)(1), (b)(22), (b)(31), (b)(32)

<sup>6</sup> TAC § [9.173](#)(b)(1), (b)(31), (b)(32)

<sup>7</sup> TAC § [9.173](#)(b)(22) and TAC § [9.177](#)(b)(1)

<sup>8</sup> TAC § [9.174](#)(a)(4)

<sup>9</sup> TAC § [9.173](#)(b)(15), (b)(26) and TAC § [9.172](#)(2), (3)

<sup>10</sup> TAC § [9.173](#)(a)(1), TAC [9.172](#)(4)

<sup>11</sup> TAC § [9.173](#)(b)(9) and (b)(10)

## Validation and Remediation

HHSC and TMHP staff are reviewing the results of the assessments to identify any area(s) of noncompliance or areas where additional information or clarification is needed. The staff reviewer will reach out to the HCS program provider to request additional information and/or inform the program provider of area(s) of noncompliance.

If the on-site assessment identified any areas of noncompliance, including restrictions that were not based off an assessed need and documented in the person-centered plan, providers are required to complete remediation and send documentation to HHSC of completed remediation. Providers were informed of how to work with service coordinators to document and implement any restrictions or modifications in accordance with 42 CFR § 441.301(c)(4)(vi)(F). Validation of this requirement is occurring through desk reviews conducted by HHSC or TMHP. For any modifications found during the initial assessment, HHSC or TMHP reviews documentation, including individual person-centered plans, to ensure the restriction has been removed or that it is based off an assessed need and documented in accordance with 42 CFR § 441.301(c)(4)(vi)(F). For all area(s) of noncompliance, the staff reviewer will request remediation to address the noncompliance and will provide an action plan for the program provider to complete. The action plan will outline required remediation activities and the timeframe in which the activities must be completed. The program provider is responsible for ensuring all required remediation activities are completed and must provide verification to HHSC and TMHP staff within 21 calendar days of remediation notification.

HHSC and TMHP staff may request a follow-up virtual visit with the program provider to verify completion of remediation, if needed. For example, if HHSC or TMHP staff are unable to verify through photos that locks have been added to an individual's bedroom door, staff will request a virtual tour of the specific setting to verify the installation of an appropriate lock.

After HHSC and TMHP staff confirm all required remediation has been completed for a setting, staff will send the program provider an email confirming the setting is compliant with the assessment criteria and the assessment of the setting is complete.



## **Non-Residential Settings**

### **Assessments**

HHSC is conducting initial site-specific assessments of any EA and SE setting that has more than one individual grouped together for the purpose of receiving services. HHSC will use a combination of observations, interviews, and data collection to assess settings for compliance.

During an on-site assessment, the assessor will observe the setting, interview staff and individuals receiving services, and review related documentation the setting submits, such as policy and procedure documents. HHSC has developed tools for collecting information based on the CMS Exploratory Questions.

### **Validation and Remediation**

HHSC will review all information collected during the on-site assessment, using the assessor's observations and documentation to validate information shared by the provider during the interview.

For each HCBS settings criteria, HHSC will consider all the information available when making a compliance determination for the setting. If HHSC identifies any areas of noncompliance, the staff reviewer will identify remediation needed to address the noncompliance. HHSC will develop an action plan that lists the specific remediation activities the provider must complete and give the provider a copy of the action plan at the time of the on-site assessment, or no later than 72 hours after the completion of the on-site assessment. The action plan will outline required remediation activities and will require the program provider to provide HHSC staff with verification of completion of all remediation activities within 21 calendar days.

The comprehensive provider is responsible for ensuring all required remediation activities are completed and must provide verification of completion to HHSC. HHSC will review the evidence of remediation submitted by the comprehensive provider to verify the remediation activities have been completed. If needed, HHSC staff will conduct a follow-up virtual visit with the provider to verify completion of remediation. Validation will occur through desk reviews conducted by HHSC. HHSC expects desk review validations and remediation activities to be completed by March 17, 2024. HHSC will add this ongoing validation and remediation to the state's CAP request.

## DBMD Program

HHSC conducted site-specific assessments of ALF and licensed home health assisted living (LHHAL) settings in the DBMD program.

### Assessment

HHSC conducted assessments of seven ALF settings and three LHHAL settings in the DBMD program. HHSC provider monitoring staff conducted on-site visits to these settings to assess for compliance with all of the HCBS settings criteria. These staff regularly monitor DBMD providers.

During an on-site assessment, the assessor observed the setting and interviewed the provider. HHSC has developed a 79-question interview tool and 30-item observation tool that assessors will complete while on site at the settings. Observation criteria and provider interview questions are based on [CMS Exploratory Questions](#). HHSC will also collect and review related documentation the setting submits, such as a residential agreement form or other policies and procedures documents.

### Validation and Remediation

HHSC reviewed all information collected during the on-site assessment, using the assessor's observations and documentation to validate information shared by the provider during the interview.

HHSC considered all the information available when making a compliance determination for the setting for each HCBS setting criteria. Staff identified any area(s) of noncompliance or areas where additional information or clarification was needed. Staff reached out to the provider to request additional information and/or inform the provider of area(s) of noncompliance that required remediation.<sup>12</sup>

If HHSC identifies area(s) of noncompliance for a setting, the DBMD provider will be required to complete remediation to address the noncompliance. HHSC will develop an action plan that lists the specific remediation activities the provider

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<sup>12</sup> HHSC contracts directly with the DBMD provider. The ALF provider may be a subcontractor of the DBMD provider. HHSC confirmed there were six providers and some of the providers operate more than one distinct setting. Each individual ALF setting received an on-site assessment. HHSC MCS staff communicated directly with the DBMD provider to ensure any necessary remediation was completed.

must complete. The provider is responsible for ensuring all required remediation activities are completed and must provide verification of completion to HHSC within 21 calendar days of remediation notification.

HHSC reviewed evidence of remediation submitted by the provider to verify the remediation activities were completed. If needed, HHSC staff requested a follow-up virtual visit with the DBMD provider to verify completion of remediation. After HHSC confirmed all required remediation had been completed for an ALF or LHHAL setting, staff sent the DBMD provider an email confirming the setting is compliant with the assessment criteria and the assessment of the setting is complete.

## **STAR+PLUS HCBS Program**

HHSC is conducting site-specific assessments of ALFs and adult foster care (AFC) settings in the STAR+PLUS HCBS program.

### **ALF Settings**

#### **Assessment**

There are 212 ALF settings in the STAR+PLUS HCBS program. HHSC relied on the four MCOs<sup>13</sup> that administer the STAR+PLUS HCBS program to conduct site-specific assessments of the ALF settings.

HHSC developed tools for information collection including individual interviews; ALF administrative staff interviews; ALF direct care staff interviews; assessor observations of the setting; and documentation collection. Provider interview questions, individual interview questions, and observation criteria were based on [CMS Exploratory Questions](#). HHSC provided training and technical assistance to STAR+PLUS MCOs on the use of these tools and the process for reviewing the results of the assessment to determine compliance with the HCBS settings requirements.

Before beginning an interview with an individual member, the MCO informed the member of the purpose of the interview, the interview process, and the member's option not to participate. A member's legally authorized

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<sup>13</sup> The STAR+PLUS program was previously administered by five MCOs. However, Cigna HealthSpring ended their participation in STAR+PLUS as of December 31, 2021. They began conducting site-specific assessments before that date and transferred assessment assignments to Molina upon their termination from the program.

representative (LAR) could participate in the interview on behalf of a member or could attend the interview with the member to provide support. A member who chose to participate in the interview could decline to answer any specific questions during the interview. Interview responses were recorded by the MCO. Responses were only recorded as “no response” or “refusal” if the member declined to answer the interview question.

HHSC provided a webinar for ALF providers on October 6, 2021, to inform them of the upcoming assessment process and to provide information about the HCBS Setting Rule. HHSC also relied on MCOs to share information with their contracted ALFs regarding the HCBS Settings Rule and assessment process.

Assessments were conducted between November 2021 and March 2022. MCOs made on-site visits or conducted virtual visits to the ALF settings.<sup>14</sup> While on site or in a virtual visit, the MCO interviewed ALF direct care staff and administrative staff, interviewed individuals, and made observations of the setting. The MCO also collected and reviewed related documentation submitted by the setting, such as a residential agreement form or other policies and procedures documents.

## Validation and Remediation

After conducting the on-site or virtual visit and collecting documentation, MCO staff reviewed all information collected during the assessment and determined an ALF setting’s compliance with each HCBS settings requirement. MCO staff identified necessary remediation and worked with each ALF provider to develop an action plan for completion of remediation activities.

The MCO summarized their compliance findings and planned remediation activities in an evidence packet. HHSC staff are reviewing and validating compliance determinations made by MCOs. The review process includes reviewing member interview transcripts, administrative and direct care staff interview transcripts, the setting’s written policies and procedures, photos of the setting, and descriptions of MCO staff observations of the setting. As needed, HHSC staff may contact the MCO or provider to obtain additional information needed to validate the MCO’s compliance determination.

ALF providers are in the process of completing remediation activities listed in their remediation plan and MCOs are required to verify and report to HHSC that

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<sup>14</sup> Due to a rise in cases of COVID-19 in late 2021, MCOs conducted many of the assessments virtually.

remediation has been completed. HHSC will continue to work with the ALFs and MCOs to ensure they complete all remediation. HHSC expects remediation activities to be completed by March 17, 2024. HHSC will add this ongoing remediation to the state's CAP request.

During the assessment and evidence packet completion process, STAR+PLUS MCOs and HHSC determined most ALFs require remediation in the following areas<sup>15</sup>:

- Employment;
- Residential agreements;
- Door locks;
- Curfews; and
- Access to visitors.

## **AFC Settings**

### **Assessment**

There are 41 AFC settings in the STAR+PLUS HCBS program. HHSC conducted assessments of these settings through provider self-assessments and virtual visits.

HHSC reached out directly to AFC providers via email to inform them of the assessment process and delivered a [webinar presentation](#) on October 4, 2022 about the HCBS Settings Rule and upcoming assessment processes.

For STAR+PLUS HCBS AFCs, site-specific assessments were conducted through an online provider self-assessment, a virtual visit, and review of the setting's written policies and procedures. AFC providers were required to complete a 49-question online self-assessment by November 18, 2022. The assessment addresses all HCBS settings criteria. Assessment questions were based on the [CMS Exploratory Questions](#).

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<sup>15</sup> A full description of key findings from the assessment process and remediation activities is posted at: <https://www.hhs.texas.gov/sites/default/files/documents/heightened-scrutiny-settings-list-key-findings-may-2022.pdf>

## Validation and Remediation

HHSC staff reviewed provider self-assessments and validated results for each AFC provider by conducting a mandatory virtual visit with the provider. Virtual visits began November 28, 2022, and concluded in January 2023.

During a virtual visit, staff reviewed the self-assessment with the provider and asked open-ended interview questions. The provider also gave HHSC a virtual tour of the setting that included viewing the kitchen area for any physical obstructions that could limit access to food and viewing bedroom doors to verify they are lockable by the individual.

All AFC settings have completed a self-assessment and received a virtual site visit. If a provider owns or operates multiple AFC settings, the self-assessment survey and virtual visit were conducted for each individual setting.

During the virtual visit, HHSC staff identified and communicated to the AFC provider any area(s) of noncompliance. Staff developed an action plan for each provider who must complete remediation to address areas of noncompliance. The action plan identifies the areas of noncompliance and lists remediation activities the AFC provider must complete.

The AFC provider must complete remediation activities listed on the action plan and provide evidence of completion to HHSC staff within two weeks of notification that remediation is required.

HHSC staff will review evidence of remediation submitted by the AFC provider to verify the remediation activities have been completed. If needed, HHSC staff will request a follow-up virtual visit with the AFC provider to verify completion of remediation.

After HHSC staff confirm all required remediation has been completed for an AFC setting, staff will send the provider an email confirming the setting is compliant with the assessment criteria and the assessment of the setting is complete.

## **Site-Specific Assessment for Other Provider Owned and Controlled Group Settings**

### **HCS, TxHmL, and DBMD - Individualized Skills and Socialization Settings**

An individualized skills and socialization provider must be either a TxHmL or HCS program provider, a DBMD program provider, or a subcontractor of a TxHmL, HCS or DBMD provider. An individualized skills and socialization provider must also be licensed by HHSC. The new TAC rules for individualized skills and socialization require that all providers receive an on-site licensure survey, conducted by HHSC's LTCR division prior to receiving a license. HHSC issues a license if it finds that the applicant or license holder, and the provider meet all applicable requirements of the TAC rules. LTCR may issue a temporary license for up to 180 days prior to completion of the on-site survey and issuance of a full license.

HHSC's Contract Administration and Provider Monitoring (CAPM) staff is conducting on-site assessments of all individualized skills and socialization providers to assess for compliance with the HCBS Settings Rule for all settings that have not yet received a full license. HHSC's CAPM unit will work with providers to complete any remediation activities necessary to achieve full compliance. Individualized Skills and Socialization HHSC will request additional time to complete assessments and remediation for compliance with access to the broader community, and if needed provider disenrollment and participant relocation to a compliant setting.

## **Monitoring for Ongoing Compliance with the HCBS Settings Rule**

### **CLASS**

HHSC Medicaid & CHIP Services Provider Monitoring staff conduct on-site contract monitoring of providers, including provider owned and controlled CLASS settings, at least biennially to determine whether a contractor is following the terms of the contract. This includes any prevocational, EA, and SE settings in which two or more individuals are grouped together for the purposes of receiving services. Site-specific monitoring of these settings includes assessment of compliance with all the HCBS Settings criteria.

On-site monitoring ensures compliance with applicable federal and state laws, rules, and regulations, including all HCBS Settings Rule requirements; provider manuals and handbooks; billing guidelines; and communications promulgated by HHSC, such as information letters and provider letters. HHSC is responsible for developing and maintaining a monitoring schedule that ensures monitoring activities are conducted in accordance with the required monitoring frequency. HHSC may also conduct provider reviews based on a report of a complaint; death; abuse, neglect, or exploitation (ANE); or for other provider monitoring purposes.

The provider of SFS and CFS must be licensed as a home and community support service agency under Title 40 of the TAC, Part 1, Chapter 97 or an independent foster family verified by DFPS and contracted with a direct service agency or verified by a child-placing agency licensed by HHSC in accordance with Title 26 of the Texas Administration Code, Part 1, Chapter 749, Minimum Standards for Child-Placing Agencies, and Chapter 745, Licensing. No individuals currently receive CLASS SFS or CFS. If and when either service is requested, HHSC will conduct oversight to ensure compliance with HCBS Settings rule on a case-by-case basis.

## **HCS and TxHmL**

Through the amendments to rules, handbooks, and manuals to incorporate HCBS Settings Rule requirements described in Section 8 of the State's STP, HHSC will have the authority to remediate any non-compliance discovered during oversight activities and take enforcement action if needed.

HHSC conducts, at least annually, unannounced surveys of each residence in which residential support or supervised living is provided to verify that the residence provides an environment that is healthy and safe for the individuals who live there and complies with HHSC rules. HHSC may, at any time, conduct an unannounced survey of a residence in which host home/companion care is provided to determine if the residence provides an environment that is healthy and safe for the individuals who live there and complies with HHSC rules.

In addition, HHSC surveys HCS program providers for compliance with HCS certification principles annually. HHSC also reviews an HCS program provider's compliance with program billing requirements and policies and procedures at least once every four years as approved by the HCS Medicaid Application. Additional reviews will be conducted when significant issues or complaints are identified. Following certification reviews, all program providers receive a written



certification review report that details any specific areas of non-compliance found during the review and includes instruction regarding the program provider's responsibility with regard to the areas of deficiency. If HHSC determines based on a survey that the program provider is not in compliance with all of the HCBS Settings rule requirements, HHSC may provide technical assistance, require a plan of correction or require evidence of correction, conduct a follow-up survey, impose an administrative penalty, or deny or terminate certification.

Please refer to the [HCS waiver application](#) and [TxHmL waiver application](#) for complete details of program monitoring processes.

## **DBMD**

HHSC Medicaid & CHIP Services Provider Monitoring staff conduct on-site contract monitoring, at least biennially, to determine whether a contractor is following the terms of the contract, including compliance with applicable federal and state laws, rules, and regulations; provider manuals and handbooks; billing guidelines; service documentation requirements; and communications promulgated by HHSC such as information letters and provider letters. HHSC is responsible for developing and maintaining a monitoring schedule that ensures monitoring activities are conducted in accordance with the required monitoring frequency. HHSC may also conduct reviews based on a report of a complaint; death; ANE; and for monitoring visits to any providers. Biennial monitoring reviews of provider owned and controlled DBMD settings will include site-specific monitoring for compliance with all the HCBS Settings Rule requirements. HHSC levies appropriate actions and sanctions for failure to follow program requirements based on the results of the monitoring activity and will conduct intermittent monitoring for providers that do not meet an acceptable compliance level during formal monitoring reviews.

DBMD assisted living services are provided by licensed ALFs or home and community support services agencies. HHSC ensures that both types of providers meet all program requirements, including HCBS Settings Rule requirements, on a continuous basis. HHSC monitors the ongoing performance of licensed providers through surveys and inspections, including follow-up surveys and inspections to ensure the provider has effectively implemented any corrective action plans required due to cited state violations.

## YES

HHSC staff are responsible for conducting on-site reviews of each comprehensive waiver provider (CWP) at least annually to evaluate evidence of the program provider's compliance with YES program requirements. A CWP may either provide all waiver services or provide some waiver services and subcontract for the provision of other waiver services. The CWP is responsible for ensuring that subcontracted waiver providers follow all federal and state statutes, rules, and regulations, including all the HCBS Settings Rule requirements.

HHSC may also conduct a review of a CWP based on a report of a complaint; death; ANE; and for monitoring visits to any location in that contract. Please refer to the [YES waiver application](#) for complete details of program monitoring processes.

## MDCP

Medicaid MCOs are responsible for ongoing monitoring of their contracted providers. However, HHSC delineates roles and responsibilities and maintains monitoring and oversight functions. HHSC monitors the MCOs when new regulations, services, or programs come under the contractual obligation of the MCO and conducts ongoing monitoring of the MCOs' compliance with the contract.

MCOs ensure contracted MDCP providers comply with program rules, regulations, and guidelines specified in its approved 1915(c) waiver application, managed care contract and any other regulatory guidance. MCOs verify provider qualifications prior to awarding a provider agreement and annually thereafter. The MCO respond to complaints received against a contractor for failure to maintain provider qualifications and levies appropriate actions and sanctions for failure to follow the provider agreement requirements. MCOs must make a minimum of four face-to-face contacts annually with each member, in addition to monthly calls to monitor the member's health and welfare and ensure authorized services are delivered.

As described in the most recent MDCP waiver amendment (effective August 31, 2020), HHSC now reviews performance measures annually through desk reviews of member's service plan and corresponding interview with the member. HHSC also conducts on-site operational reviews of MCOs at least biennially to ensure MCOs follow their documented policies and procedures and that those policies

and procedures continue to align with HHSC's contractual requirements, including complying with all the HCBS Settings Rule requirements.

MCOs that fail to meet contract standards are subject to liquidated damages and other remedies such as corrective action plan, accelerated monitoring, requiring additional financial or programmatic reporting, and terminating or declining to renew or extend the contract.

Please refer to the [MDCP waiver application](#) for complete details of program monitoring processes.

## **STAR+PLUS HCBS**

MCOs are responsible for ongoing monitoring of their contracted providers. HHSC monitors the MCOs when new regulations, services, or programs come under the contractual obligation of the MCO and conducts ongoing monitoring of the MCOs' compliance with the contract. Ongoing monitoring of the MCOs includes leveraging existing processes, including frequent communication via conference calls, emails, and meetings; quarterly reporting; on-site reviews (as needed); and assessment of corrective action plans or liquidated damages.

Utilization management review is conducted through on-site reviews of the MCO records related to STAR+PLUS HCBS assessments, service coordination planning, and timeliness. HHSC also documents living arrangements, reviews service provision, and refers non-compliance issues to the appropriate oversight entity.

Beginning in September 2017, HHSC implemented an operational review process that monitors MCO contract compliance through on-site visits and desk reviews. The utilization review (UR) portion of the operational review provides oversight to ensure MCOs use prior authorization and UR processes appropriately to reduce authorizations of unnecessary services and inappropriate use of services. In addition, monitoring activities ensure MCO compliance with federal and state laws and rules, applicable HHSC contracts, and the MCO's internal policies. HHSC UR staff also conduct readiness and targeted reviews, as well as clinical reviews of individual cases in response to complaints or special requests. Beginning in September 2018, HHSC expanded the scope of these reviews and began including additional agency departments in the review process.

STAR+PLUS MCOs are required to ensure ongoing compliance with the HCBS Settings rule, including ensuring ALFs and AFC providers meet all requirements for provider-owned or controlled settings. MCOs will be required to confirm an

ALF or AFC provider's compliance through an attestation process, including validating attestation responses through a desk review process. HHSC is developing the attestation forms providers will complete and submit to the MCO. The process for monitoring ALFs and AFCs will be site-specific. An ALF or AFC provider will be required to submit an attestation of compliance with all HCBS settings criteria for each setting to the MCO at least every three years, as part of provider recertification. The attestation for new providers who begin participation in the STAR+PLUS HCBS program after March 17, 2023, will require providers to share information about how they meet the HCBS settings requirements, including referencing their residential agreement and other operating policies.

HHSC currently monitors for certain HCBS settings requirements through a utilization review process by conducting member interviews.<sup>19</sup> For any future member surveys, HHSC will utilize similar processes to those used in the STAR+PLUS HCBS ALF site-specific assessment process to ensure members' responses are the prevailing response and members are offered privacy and freedom from coercion in the interview process. Interviews are used to report on the following criteria:

- Number of members who report their service coordinator asked about their preferences, per member interview.
- Number of members who report being offered a choice of waiver services, per member interview.
- Number of members who report being offered a choice of providers, per member interview.

## **Other Provider Owned or Controlled Group Settings**

### **Individualized Skills and Socialization in HCS, TxHmL, and DBMD**

### **Individualized Skills and Socialization in HCS, TxHmL, and DBMD**

TAC rules require settings where individualized skills and socialization is delivered to meet the federal HCBS settings requirements. HHSC LTRC division will conduct on-site inspections of licensed individualized skills and socialization

every two years for compliance with 42 CFR § 441.301(c)(4)(vi). The LTCR division will conduct a review of a sample of licensed individualized skills and socialization providers annually for compliance with 42 §§ CFR 441.301(c)(4)(i) through (v). In addition, HHSC LTCR will perform follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits, as necessary. As part of licensure oversight, HHSC LTCR ensures individualized skills and socialization services are provided in accordance with a beneficiary's service plan, including monitoring to ensure any modification is supported by a specific assessed need and justified in the person-centered service plan. In addition to monitoring related to license requirements, HHSC will monitor fiscal compliance with program requirements.

## **Non-Provider Owned or Controlled Settings**

Non-provider owned or controlled settings include an individual's private residence and settings in the broader community.

HHSC has amended program rules to add requirements for all non-provider owned and controlled services and settings, including employment services, in the HCS, TxHmL, CLASS, and DBMD programs to comply with all HCBS Settings Rule requirements. The new program and licensure/certification rules will allow HHSC to enforce remediation of any non-compliance discovered during routine provider and program monitoring in these programs. Existing policies and annual monitoring processes in the YES and MDCP waiver programs also allow HHSC to assess for all HCBS Settings Rule requirements and enforce remediation of any non-compliance discovered during regular monitoring activities.

Managed care contracts require MCOs to ensure their contracted non-residential providers meet the applicable HCBS Settings rule requirements.

In addition, the person-centered planning process is the primary mechanism through which the state ensures ongoing compliance of these settings. This process occurs at least annually during assessments for waiver and other service needs and may occur more frequently if there is a significant change in condition. If it is discovered through the annual service planning or monitoring activities that an individual's unique needs for specific HCBS setting qualities are not met, or a setting is non-compliant, the service plan will be updated to address the individual's needs, including providing the individual options for alternative settings that can fully comply. The individual will not lose federally funded HCBS while waiting to transition to a compliant setting.

# Beneficiary's recourse to notify the state of provider non-compliance

## HHSC Office of the Ombudsman

The HHSC Office of the Ombudsman is responsible for the receipt of complaints by individuals, legally authorized representatives, family members, and the general public about services, programs, and staff. This includes concerns and complaints related to provider non-compliance with HCBS settings requirements. A beneficiary may file a complaint with the Office of the Ombudsman by calling the toll-free-number, submitting the complaint online, or by faxing or mailing the complaint. When Ombudsman staff determines HHSC has no jurisdiction to investigate, complaints are referred to other agencies, boards, or entities, as required. If the Ombudsman is unable to resolve a complaint, it is referred to the appropriate area within HHSC. The HHSC Office of the Ombudsman assists the public when the MCO complaint process cannot, or does not, satisfactorily resolve an issue.

The Ombudsman's services include:

- Conducting independent reviews of complaints concerning agency policies or practices;
- Ensuring policies and practices are consistent with the goals of HHSC;
- Ensuring waiver participants are treated fairly, respectfully and with dignity; and
- Making referrals to other agencies as appropriate.

The process to assist with complaints and issues is as follows:

- The Office of the Ombudsman provides an impartial review of actions taken by the program or department.
- The Office of the Ombudsman works with HHSC program staff, providers, MCOs, health providers, LIDDAs, and local mental and behavioral health authorities to achieve resolution.

In addition to the Ombudsman, for the CLASS and DBMD programs, the HHSC Complaint and Incident Intake unit responds to concerns and questions

regarding the facilities/agencies regulated by HHSC. HHSC Complaint and Incident Intake staff triage and refer complaints regarding an HHSC licensed agency or facility, including ALFs contracted to provide waiver services, to the appropriate HHSC department. When HHSC Complaint and Incident Intake staff determines HHSC has no jurisdiction to investigate, complaints are referred to other agencies, boards, or entities as required.

If the Office of the Ombudsman or the Complaint and Incident Intake unit determines the complaint is related to provider non-compliance with HCBS Settings requirements, the appropriate area within HHSC will investigate further to determine the cause of the non-compliance and to develop a plan for remediation, which could include technical assistance to the provider, a plan of correction or requiring evidence of correction, conducting a follow-up survey, imposing an administrative penalty, imposing a vendor hold, or denying or terminating certification.

Complaints involving allegations of abuse, neglect, or exploitation are referred immediately to DFPS and investigated by the appropriate area within DFPS or HHSC.

## **Managed Care Organization Complaint Process**

The MCO is contractually required to develop, implement, and maintain a member complaint and appeal system that complies with the requirements in applicable federal and state laws and regulations. The complaint and appeal system must include a complaint process, an appeal process, and access to HHSC's fair hearing system. The MCO must have written policies and procedures for receiving, tracking, responding to, reviewing, reporting, and resolving complaints by members or their authorized representatives. The member or member's authorized representative may file a complaint orally, in person, or in writing. The MCO must also inform members how to file a complaint directly with HHSC, once the member has exhausted the MCO's complaint process. The procedures must be the same for all members and must be reviewed and approved in writing by HHSC or its designee.

The MCO's complaint procedures must be provided to members in writing and through oral interpretive services. The MCO must include a written description of the complaint process in their member handbook. The MCO must maintain and publish in the member handbook, at least one local and one toll-free telephone

number with teletypewriter/telecommunications device for the deaf (TTY/TDD) and interpreter capabilities for making complaints. The MCO's process must require that every complaint received in person, by telephone, or in writing must be acknowledged and recorded in a written record and logged.

The MCO is prohibited from discriminating or taking punitive action against a member or his or her representative for making a complaint. The MCO must provide a designated member advocate to assist the member in understanding and using the MCO's complaint system until the issue is resolved.