



# **Home and Community- based Services (HCS) and Texas Home Living (TxHmL)**

## **Interpretive Guidance Booklet**

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**As Required by  
House Bill (H.B.) 3720, 87<sup>th</sup>  
Legislature, 2021**

**HHSC Long-term Care Regulation**

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**TEXAS**  
Health and Human  
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# 1. Executive Summary

Senate Bill 1385 (84<sup>th</sup> Legislature, Regular Session, 2015) and House Bill 2590 (85<sup>th</sup> Legislature, Regular Session, 2017) authorize the Health and Human Services Commission (HHSC) to collect administrative penalties from providers of Home and Community-based Services (HCS) and Texas Home Living (TxHmL) for failure to comply with certification principles and for other reasons, such as willful interference with the work of an HHSC representative or failing to pay an administrative penalty. House Bill 3720 (87<sup>th</sup> Legislature, Regular Session, 2021) directed HHSC to develop interpretive guidelines for HHSC staff and HCS/TxHmL program providers regarding the imposition of administrative penalties. This document contains the interpretive guidelines.

HHSC staff conduct regular surveys of HCS/TxHmL program providers. When HHSC staff identify a potential violation, they first confirm it through observation, interview, and record review. They classify violations based on the scope of the violation (how widespread it is) and on the severity of the violation (the degree of harm that has resulted, or could result, from the violation). For those violations deemed non-critical, the program provider has the opportunity to correct the violation to avoid an administrative penalty. The program provider submits a plan of correction that identifies all steps needed to correct the violation and ensure it does not recur and immediately begins implementing the plan, with a goal of coming into compliance by the next HHSC survey or by the date listed in the plan. If the violation has been corrected by the next survey opportunity, HHSC does not assess an administrative penalty. If the violation has not been corrected, the penalty begins accruing starting with the exit date of the survey at which it was identified that the correction wasn't made. A provider who disagrees with the citation may file a request for Informal Dispute Resolution, administered by an independent party, at which they can present evidence to dispute the citation. Providers who have been assessed an administrative penalty may also be able to request to ameliorate a non-critical violation, or use an amount of penalty that would otherwise have been paid to HHSC to make improvements to services or quality of care for individuals.

HHSC is committed to creating a consistent, transparent survey and enforcement process. In addition to the rules implementing this process, HHSC has issued guidance to program providers through Provider Letters [2020-55](#) (relating to administrative penalties) and [2021-07](#) (relating to informal dispute resolution). We have also developed a series of nine free webinars, [offered on an ongoing basis](#), that cover the administrative penalty process and all certification principles in depth. Finally, HHSC has developed this booklet to capture the guidance and examples in a format that is comprehensive and easy-to-use for both providers and surveyors. This booklet is a living document that is being made available to the industry with version control, so that HHSC can address questions that come in over time and ensure consistent understanding of these vital regulations.



## 2. Guide to Administrative Penalty Rules

### Administrative Penalties

#### Overview

Citation: 40 TAC [§9.181\(a\)](#); [§9.581\(a\)](#); [§49.535\(a\)](#)

Presentation Slide: Module 1, Slide 3

Guidance:

- Chapters 9 and 49 of the Texas Administrative Code allow HHSC to assess and collect an administrative penalty for violations from a HCS and TxHmL program provider. These rules also allow for an amelioration process in lieu of administrative penalty payments under some circumstances.
- The rules require HHSC to deduct the amount of an administrative penalty from payments due to the program provider if amelioration is not chosen.
- If HHSC approves a plan of amelioration and the cost of the proposed changes is less than the amount of the administrative penalty, HHSC must deduct the difference between the cost of the proposed changes and the administrative penalty.

#### Criteria for Imposition

Citation: 40 TAC [§9.181\(a\)](#); [§9.581\(a\)](#)

Presentation Slide: Module 1, Slides 5-6

Guidance:

- An administrative penalty may be imposed for violation of a certification principle, or for willfully interfering with the work of an HHSC representative or interfering with the enforcement of administrative penalties.
- Willfully interfering is defined as: Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede.
- This means that a provider's actions were an intentional interference in the survey or enforcement process.
- Willfully interfering may include:
  - making a false statement that the program provider knows or should know is false pertaining to a matter under investigation
  - falsifying documentation, including documenting the provision of a service before the service is provided or
  - failing to pay an administrative penalty within 10 calendar days after the date the penalty becomes final
- For willful interference during a survey, HHSC imposes the penalty of \$1000 no more than once per survey, and does not allow the program provider an opportunity to correct the action before it is imposed.

- HHSC may chose not to impose an administrative penalty for willful interference and instead impose a vendor hold or deny or terminate the certification of the program provider for these actions.

## **Determining the Amount of Administrative Penalties**

Citation: 40 TAC [§9.181\(c\)](#); [§9.581\(c\)](#); [House Bill 2590](#)

Presentation Slide: Module 1, Slides 7-8

Guidance:

- The range that may be imposed each day is based on the scope and severity of the violation and whether it is an initial or repeated violation. Penalties may be imposed per day per violation
- The following factors are considered when determining the amount of the penalty:
  - the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
  - the hazard to the health or safety of individuals resulting from the violation; and
  - the program provider's history of previous violations.
- Also considered is whether the program provider:
  - had prior knowledge, including whether they identified the violation through their internal quality assurance process;
  - whether they made any efforts to mitigate or correct the identified violation prior to the survey;
  - the penalty amount necessary to deter future violations; and
  - "any other matter that justice may require."
- "Any matter that justice may require" is statutory language that would encompass any circumstances not already covered that enforcement deems necessary when determining the administrative penalty.

## **Scope and Severity Matrix**

Citation: 40 TAC [§9.181\(c\)](#); [§9.581\(c\)](#)

Presentation Slide: Module 1, Slides 9-10

Guidance:

- All violations will fall into a box on the [table](#), with A being the lowest level of scope and severity and L being the highest level.
- Levels A–C: Means there was No Potential for Actual Harm – this is noncompliance causing no more than a minor negative impact on the individual.
- Levels D–F: Means there was Potential for Actual Harm – this is noncompliance that results in minimal physical, mental and/or psychological discomfort to the individual and/or has the potential to compromise the individual's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being.

- Levels G–I: Means there was Actual Harm – this is noncompliance that results in a negative outcome that has compromised the individual’s ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being.
- Levels J–L: Means an Immediate Threat – this is a situation in which immediate corrective action is necessary because a program provider’s noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual receiving care by the provider.
- The enforcement team reviews the following criteria to determine the scope and severity of the violation:
  - The seriousness of a violation;
  - The nature, circumstances, extent, and gravity of the violation; and
  - The hazard to the health or safety of individuals resulting from the violation.
- Once the above three criteria are considered, the enforcement team may add or subtract monetary amounts in accordance with the remaining criteria:
  - the program provider’s history of previous violations;
  - whether the program provider had prior knowledge of the violation, including whether the program provider identified the violation through their own internal quality assurance process and made efforts to correct the violation;
  - the penalty amount necessary to deter future violations; and
  - any other matter justice may require.

### **Limitation on Concurrent Enforcement Actions**

Citation: 40 TAC [§9.181\(i\)](#); [§9.581\(i\)](#)

Presentation Slide: Module 1, Slide 11

Guidance:

- If an administrative penalty is imposed, HHSC does not impose a vendor hold or otherwise withhold contract payments for the same violation at the same time. In other words, only one remedy will be imposed at any one time.
- A penalty will stop accruing before contract action is taken.

### **Consistent Application of Administrative Penalties**

Citation: Human Resources Code [§161.089\(c\)\(6\)](#)

Presentation Slide: Module 1, Slide 12

Guidance:

- HHSC’s Regulatory Enforcement is committed to making consistent penalty determinations. The factors that Regulatory Enforcement must consider for determining penalty amounts are codified in rule and help guide penalty decisions, so each provider gets the same consideration. Further, those factors allow Regulatory Enforcement to tailor the penalties to the unique

facts of each case. Consistency is improved as these factors are applied uniformly for all providers.

- The scope and severity matrix is another tool established in rule to ensure consistency of penalty determinations. Enforcement staff review each deficiency and make a final determination of the scope of the deficiency (whether it is isolated, pattern, or widespread) and the severity (whether there was no potential for harm, potential for harm, actual harm, or immediate threat). The penalty ranges are further broken down by whether the deficiency is an initial, repeated, or critical violation. Once scope and severity is determined, enforcement staff start the penalty amount for that deficiency at the midpoint of the penalty range for the particular scope and severity. That penalty amount may go up or down depending on whether mitigating or exacerbating factors exist. For example, the amount may go up if the program provider had prior knowledge of the deficiency, or may go down if the program provider made efforts to mitigate the issue. This matrix is consistently applied to each deficiency review.
- Finally, consistency of penalty determinations is built into the organizational structure. The staff making enforcement decisions are separate from the investigators and surveyors. This change allows Enforcement staff to review the facts of a case without penalty input from the survey staff. This structure helps ensure consistency because it limits the number of individuals making penalty determinations, because it allows Enforcement to remain independent from the compliance area, and because it allows Enforcement staff to remain objective in their determinations.

## Critical and Non-Critical Violations

Citation: 40 TAC [§9.181\(d\)-\(g\)](#); [§9.581\(d\)-\(g\)](#)

Presentation Slide: Module 1, Slides 13-14

Guidance:

- HHSC makes a distinction between critical and noncritical violations. This distinction will result in different regulatory responses.
- For critical violations, the program provider is **not** given the right to correct the violation before the administrative penalty is imposed. The penalty begins accruing on the date HHSC identifies the violation.
- For violations that are not critical, the program provider is allowed **one** opportunity to correct the violation before the administrative penalty is imposed. The penalty begins accruing on the date of exit conference of the post 45 day follow up survey. If corrective action has been completed by this time, no administrative penalty will be imposed.
- If corrective action is completed on the same day an administrative penalty begins accruing, a penalty will be imposed for one day.
  - *Example:* During a debriefing, the survey team informs the program provider of a critical violation pertaining to discrepancies on the medication administration records of multiple individuals within the contract. The program provider later the same day presents evidence that

the program nurse has reconciled the discrepancies, provided a thorough in-service to all delegated staff, and implemented a system to ensure ongoing compliance.

## **Program Provider Compliance and Corrective Action**

### **Compliance**

Citation: 40 TAC [§9.183\(a\)](#); [§9.587\(a\)](#)

Presentation Slide: Module 1, Slide 16

Guidance:

- If a survey determines that a program provider is in compliance with all of the certification principles during a survey, the program provider will receive a copy of the final survey report and no corrective action is required.
- If the survey is an initial or recertification survey, HHSC will certify the program provider for the new certification period, which is no more than 365 days

### **Immediate Threat**

Citation: 40 TAC [§9.183\(b\)](#); [§9.587\(b\)](#)

Presentation Slide: Module 1, Slide 17

Guidance:

- An immediate threat is defined as: A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of an individual. Examples of an immediate threat might include:
  - a hole in the floor of the residence that caused an individual to break their leg,
  - an individual who went without a critical medication who has not been assessed by a nurse, or
  - an individual died because staff did not accommodate their dietary needs (for example, staff did not puree their food and they choked).
- If surveyors identify an immediate threat during a survey, they will notify the program provider and require a plan of removal to be submitted immediately.
- The survey team may choose not to leave the area in which the immediate threat is identified until an approved plan of removal is received, corrective action occurs, or contract action is initiated and the threat to the health and safety of the individuals has been mitigated.

### **Plan of Removal**

Citation: 40 TAC [§9.183\(c\)-\(d\)](#); [§9.587\(c\)-\(d\)](#)

Presentation Slide: Module 1, Slide 18

Guidance:

- A plan of removal for an immediate threat must include a specific time by which the immediate threat will be removed.
- HHSC will approve or disapprove the plan and monitor to ensure the immediate threat is removed prior to exiting the survey.
- If the program provider does not provide a plan of removal, the plan is not approved, or if the provider fails to implement the approved plan HHSC will deny or terminate certification and coordinate with the local authority for the immediate provision of alternative services for the individuals in the contract.

## Corrective Action

Citation: 40 TAC [§9.183\(e\)-\(k\)](#); [§9.587\(e\)-\(k\)](#)

Presentation Slide: Module 1, Slides 19 and 23-25

Guidance:

- If the program provider is out of compliance with a certification principle during a survey, HHSC will send the program provider within 14 calendar days of the survey exit conference:
  - a final survey report;
  - Form 3719 which provides a penalty recommendation if the violation is not corrected; and
  - a letter notifying providers of their right to request an informal dispute resolution to dispute a violation.
- If the violations were identified during an initial, recertification, or intermittent survey, the program provider must submit a plan of correction for each violation identified in the final survey report within 14 calendar days after receiving the report. A plan of correction for each violation is required even if the program provider disagrees with the violation or requests an informal dispute resolution.
- If the violations were identified during an initial, recertification, or intermittent survey, the program provider must submit a plan of correction for each violation identified within 14 calendar days after receiving the final report. A plan of correction for each violation is required even if the program provider disagrees with the violation or requests an informal dispute resolution.
- The plan of correction must specify the date that the program provider will complete corrective action. This date must be no later than 30 days after the survey exit conference for a critical violation, and no later than 45 days for a non-critical violation.
- Once the plans of correction are received HHSC will approve or not approve plan. If the plan is not approved the program provider must submit a revised plan within five business days after the date HHSC provided notification that the plan was not approved.
- HHSC may take contract action if the program provider does not:
  - provide a plan of correction;



- revise a plan of correction that was not approved; or
- obtain approval for a revised plan.
- If the plan of correction is approved, HHSC will take the following actions to determine if correction action is complete:
  - request that the program provider submit evidence of correction;
  - conduct a follow-up survey for a critical violation within 45 calendar days of the survey exit (but not sooner than the date specified in the plan of correction); and
  - conduct a post 45-day follow-up survey for a violation that is not critical unless the program provider request that HHSC conduct a follow-up survey earlier.

## Early Surveys

Citation: 40 TAC [§9.183\(I\)](#); [§9.587\(I\)](#)  
 Presentation Slide: Module 1, Slide 26

Guidance:

- Program providers may request an early survey if they have completed corrective action.
- If the program provider requests a survey earlier than the required time frames, and HHSC determines that they have completed corrective action before submitting a plan of correction, the provider then must detail the corrective action that was taken on the plan of correction.
- If a program provider requests a survey earlier than the required time frames and HHSC determines that they have not completed corrective action for a non-critical violation, the post 45-day survey will be conducted as scheduled

## Follow-up Surveys

Citation: 40 TAC [§9.183\(m\)-\(v\)](#); [§9.587\(m\)-\(v\)](#)  
 Presentation Slide: Module 1, Slides 27-31

Guidance:

- If it is determined from a follow-up survey that the program provider has completed corrective action for a critical violation, the penalty stops accruing on the date HHSC determines that corrective action was completed. HHSC will send the program provider a written notice with this information.
- If it is determined from a follow-up survey the corrective action has not been completed for a critical violation, the penalty continues to accrue and a follow-up survey is conducted, or HHSC takes contract action.
- The date that HHSC determines corrective action was completed does not necessarily mean the day HHSC reviewed the information. HHSC may determine that based on the evidence the corrective action was complete on a particular date prior to the follow up survey.

- *Example:* March 1st the provider completed corrective which was verified by HHSC during a follow up survey that occurred on March 25.
- If an additional follow-up survey is conducted and it is determined that the corrective action has been completed, the penalty stops accruing on the date HHSC determines that corrective action was completed. HHSC will send the program provider a written notice with this information.
- If the corrective action is not completed the penalty stops accruing and HHSC will take contract action. Contract action means imposing a vendor hold or deny or terminating the program provider's contract.
- If during the post 45-day survey HHSC determines that corrective action has been completed for the non-critical violation an administrative penalty will **not** be imposed.
- If corrective action has not been completed, HHSC imposes an administrative penalty which begins accruing on the date of the exit conference of the post 45-day follow-up survey, HHSC will conduct an additional follow-up survey at least 31 calendar days after the date of the exit conference. The survey may be conducted earlier than 31 calendar days if evidence of correction has been provided sooner.
- The administrative penalty stops accruing on the date that HHSC determines corrective action was completed. HHSC will send the program provider a written notice with this information.
- If corrective action has not been completed, the administrative penalty stops accruing and HHSC imposes a vendor hold or denies or terminates the program provider's certification.
- If HHSC imposes a vendor hold for a provisional contract HHSC will initiate termination of the program provider's contract.
- If HHSC imposes a vendor hold for a standard contract HHSC conducts a survey at least 31 calendar days after the effective date of the vendor hold to determine if the program provider completed the corrective action require to release the vendor and either releases the vendor hold if corrective action was completed or denies or terminates the contract if corrective action was not completed.
- HHSC does not cite a program provider for violation of a certification principle based solely on the action or inaction of a person who is not a service provider or a staff member. HHSC may cite a program provider for violation of a certification principle based on the program provider's response to the action or inaction of such a person.

## Informal Dispute Resolution (IDR)

Citation: Human Resources Code [§161.0892](#)

Presentation Slide: Module 1, Slides 20-22

Guidance:

- Effective March 1, 2021, IDR replaced the Informal Review process for program providers to dispute violations.

- At the survey exit, program providers will be given a statement of preliminary findings. After 14 calendar days, a final report will be sent. Once the final report is received, the program provider will have 10 days to request an IDR.
- Even if the request for an IDR is made, the program provider must still develop and submit a plan of correction.
- Within 5 calendar days of submitting the IDR request form, providers must send supporting documentation to Michigan Peer Review Organization (MPRO) by either:
  - Uploading to the MPRO Secure Application; or
  - Mailing the form to:  
MPRO - IDR Department  
22670 Haggerty Road, Suite 100  
Farmington Hills, Michigan 48335
- For more information about IDR, visit the [IDR website](#).
- Submit the IDR request and final report to [IDR@hhsc.state.tx.us](mailto:IDR@hhsc.state.tx.us).
- IDR administrative rules can be found at [1 TAC §393.3](#).

## Amelioration

### Eligibility for Amelioration

Citation: 40 TAC [§9.182\(a\)-\(b\)](#); [§9.586\(a\)-\(b\)](#)

Presentation Slide: Module 1, Slides 33-35

Guidance:

- Amelioration is an option available to program providers in certain circumstances that may be used in lieu of payment of an administrative penalty.
- Amelioration provides the opportunity for program providers to direct the funds to improve the program provider's services within their agency. Enforcement will include the amelioration opportunity in the notice letter to the provider that imposes the administrative penalty. Enforcement is also responsible for handling the amelioration.
- HHSC does not give a program provider the opportunity for amelioration:
  - more than 3 times in a 2-year period;
  - more than 1 time in a 2-year period for the same or similar violation; or
  - for a critical violation that is an immediate threat.
- HHSC does not give a program provider the opportunity for amelioration for willfully interfering with the work of a representative of HHSC or the enforcement of this subchapter, which may include:
  - making a false statement of material fact that the program provider knows or should know is false with respect to a matter under investigation by HHSC; and
  - falsifying documentation, including documenting the provision of a service before the service has been provided; or

- failing to pay an administrative penalty within 10 calendar days after the date the assessment of the penalty becomes final.

## Requesting Amelioration

Citation: 40 TAC [§9.182\(c\)-\(d\)](#); [§9.586\(c\)-\(d\)](#)

Presentation Slide: Module 1, Slide 36

Guidance:

- HHSC offers amelioration to a provider not later than the 10th day after the date the provider receives a final notification of the assessment of an administrative penalty. This is sent to the provider after an informal dispute resolution process but before an administrative hearing.
- In other words, to choose amelioration, the program provider must notify HHSC of this choice, in writing, within 10 business days after the date of HHSC's notice that the administrative penalty has stopped accruing.
- If the provider does not notify HHSC that they are choosing amelioration within the required 10-day period, the provider forfeits the opportunity.
- If amelioration is chosen, the program provider must submit a written plan to HHSC within 45 calendar days after the date of the notice. If a program provider does not submit a plan within 45 calendar days, the program provider will be required to pay the administrative penalty.

## Amelioration Plan

Citation: 40 TAC [§9.182\(e\)-\(i\)](#); [§9.586\(e\)-\(i\)](#)

Presentation Slide: Module 1, Slides 37-41

Guidance:

- A plan for amelioration must include:
  - proposed changes to the management or operation of the program provider that will improve services or the quality of care for the individuals they serve; and
  - the ways in which and the extent to which the proposed changes will improve services or quality of care for the individuals through measurable outcomes.
- A plan for amelioration must include:
  - clear goals to be achieved through the proposed changes;
  - a timeline for implementing the proposed changes;
  - specific actions necessary to implement the proposed changes;
  - the cost of the proposed changes; and
  - an agreement to waive the program provider's right to appeal the imposition of the administrative penalty if HHSC approves the plan for amelioration.
- The cost of the proposed changes must be incurred by the program provider after HHSC approves the plan for amelioration. If the plan is approved, and the cost of the proposed changes is less than the amount of the

administrative penalty, the program provider will be required to pay the difference between the cost of the changes and the administrative penalty.

- The program provider will be notified of the decision to approve or deny a plan for amelioration within 45 calendar days after the date HHSC receives the plan. During the 45-day period, HHSC may allow the program provider an opportunity to revise the plan.
- If the plan for amelioration is approved, the program provider must implement the plan; and HHSC:
  - requires the program provider to pay the amount of the difference between the cost of the proposed changes and the administrative penalty, if any; and
  - HHSC will determine in one or more surveys if the program provider has implemented the plan.
- If the plan for amelioration is denied, the program provider will be required to pay the amount of the administrative penalty. The program provider may appeal the administrative penalty.
- If a program provider does not implement an approved plan the program provider is required pay the amount of the administrative penalty. In this case the program provider may appeal the sole issue of whether the plan for amelioration was implemented.

## Survey Process Examples

Presentation Slide: Module 1, Slides 44-48

### Example 1: Non-critical Violation, Corrected

- A non-critical violation is identified during a survey
- Form 3701 is left with the program provider on exit
- Within 14 days, the provider receives the final survey report and the 3719 with a “recommended” penalty amount for the violation, including the potential penalty if the violation is not corrected.
- Within 14 days, the program provider sends the plan of correction and HHSC approves the plan
- The program provider then corrects the violation according to the plan of correction.
- If the violation has been corrected before the 45-day follow up survey, no administrative penalty is imposed.

### Example 2: Non-critical Violation, Not Corrected

- The plan of correction was submitted and approved, but during the follow-up survey, HHSC determines that the program provider did not correct the violation according to the plan of correction.
- An administrative penalty is assessed and continues to accrue until the violation is corrected, or HHSC imposes a vendor hold or proposes termination of the contract.

- Once the violation has been corrected, the penalty stops accruing and a plan for amelioration may be chosen.

### **Example 3: Non-critical Violation, Ameliorated**

- The program provider must notify HHSC in writing within 10 business days after receiving the notice that they are choosing amelioration.
- The provider will submit amelioration plans to HHSC within 45 calendar days after receiving notice.
- HHSC will approve or deny the plans within 45 days after receiving the plans from the provider.
- After amelioration is complete, HHSC will verify that the plan was implemented correctly during the next survey visit.

### **Example 4: Critical Violation, Corrected**

- HHSC identifies a critical violation during survey.
- The administrative penalty begins when the violation is identified. If it is corrected the same day it's discovered, the penalty will be imposed for one day.
- Form 3701 - Preliminary Findings is left with the program provider on exit
- Within 14 days, the provider receives the final survey report and the 3719 with a "recommended" penalty amount for the violation, including the potential penalty if the violation is not corrected.
- Within 14 days, the program provider sends a plan of correction to the HHSC. HHSC approves the plan of correction.
- HHSC determines that the program provider corrected the violation according to the plan of correction. The follow up survey will help determine if the plan of correction resolved the area of non-compliance. The plan of correction informs HHSC that the provider has a plan to come into compliance, but the survey will confirm if the plan of correction was implemented or successful.
- Once HHSC confirms the violation is corrected, the penalty stops accruing.

### **Example 5: Critical Violation, Ameliorated (Non-Immediate Threat)**

- The program provider notifies HHSC in writing within 10 business days after receiving notice that they are choosing amelioration.
- Amelioration plans are submitted to HHSC within 45 calendar days after receiving notice from HHSC.
- HHSC will approve or deny the plans within 45 days after receiving the plans from the provider.
- After amelioration is complete, HHSC will verify the plan was implemented correctly during the next survey visit.

## **Complaints Regarding Surveyors and Inconsistency**

Citation: [Provider Letter \(PL\) 2020-01](#)



## Presentation Slide: Module 1, Slide 42

### Guidance:

- To file a complaint against a surveyor, program providers may:
  - call the Complaint and Incident Intake hotline at 800-458-9858; or
  - complete a comment card at [this link](#).
- When filing a complaint, you may provide a name and contact information, but is not required to do so.
- HHSC accepts anonymous complaints; however, it might be challenging to obtain enough information for a thorough investigation without contacting the complainant. In addition, HHSC will be unable to provide investigation findings to anonymous complainants.
- To report survey inconsistency, program providers should fill out the survey inconsistency tool at [this link](#).
- This tool allows providers to report inconsistencies in how LTCR survey staff interpret and apply the regulations. HHSC uses this data to guide and enhance training, consistency, and improve policies and procedures.

### 3. HCS Program Operations

Presentation Slide: Module 2, Slide 2

As 40 TAC §9.172 is central to the mission of the HCS program, a program provider may receive a violation under this section when there are widespread problems that demonstrate the program provider is routinely not developing policies across its operations.

If a surveyor has identified multiple areas of noncompliance, they may review the program provider's policies and procedures to determine the impact on program provider operations, such as in the area of service delivery or abuse/neglect/exploitation (ANE).

This additional review may lead to surveyors identifying that the program provider lacks policies and procedures, or that those in place are contradictory to the mission and philosophy of home and community-based services programming.

Otherwise, if the concerns are not pervasive across the contract, then a violation may be cited in another certification principle related to a more specific TAC rule. It is important to note that a violation to these certification principles has a high potential for being widespread.

### Teaching and Training Philosophy

Citation: 40 TAC [§9.172\(1\)](#)

Presentation Slide: Module 2, Slide 3

Guidance:

- It is important that the program provider's teaching and training philosophies as a whole are developed in compliance with section 9.172(1).
- This would include ensuring that the mission and policies of the program provider are focused on the specific goals of each person served.
- Trainings and teachings should also be individualized based on each person's needs, rather than the same across all individuals.
- It is very important that the mission be person-centered, in that the individual receiving service is central to the development of the mission.
- Finally, philosophies must embrace the need for community integration in the delivery of services

### Humanity and Dignity

Citation: 40 TAC [§9.172\(2\)](#)

Presentation Slide: Module 2, Slide 4

Guidance:

- It is important that the individual be treated with dignity and respect by all persons involved in the delivery of services.
- This includes ensuring that any language is respectful and using appropriate terms when referencing the individual.
- The mission and philosophy must allow for individuals' privacy, both in their personal privacy and confidentiality in their personal information.
- All individuals must be valued as a person and be provided ethical treatment during all aspects of service delivery.
- On survey, if concerns are identified, it may lead to a more thorough review of the program provider's policies and procedures to determine if the concern is related to a more specific certification principle or if the concern is due to a larger process that is agency-wide.

## Protection of Rights

Citation: 40 TAC [§9.172\(3\)](#)

Presentation Slide: Module 2, Slide 5

Guidance:

- The mission and philosophies of the program provider must ensure that the individuals rights are protected. These rights include those available to all persons.
- Rights specific to the HCS program can be found in 40 TAC [§9.173\(b\)](#) and for TxHmL in 40 TAC [§9.580\(a\)](#).
- Typically, a rights violation will be cited in the specific rights of the individual sections, but if it is identified that all rights of each individual are not being protected due to a program provider's policy or procedure, then the concern could be a violation under this principle.

## Encouraging Choice

Citation: 40 TAC [§9.172\(4\)](#)

Presentation Slide: Module 2, Slide 6

Guidance:

- This rule relates to ensuring that the individual, their LAR (if applicable) and/or any family members per the individual's choice, are actively involved in the decision-making process regarding the individual. They should participate in any meetings related to the individual's services and their input should be heard.
- Participation is identified through signatures and dates on related forms and meeting notes.
- It is also important that any decisions are informed-decisions so that the individual and their LAR can make the best choice based on the individual's needs and wants.

- TAC §9.172(4) requires the program provider to encourage the individual to participate in decisions related to their lives.
- If the costs associated with those decisions exceeds the individual or LAR's financial circumstances, the program providers mission, development, and philosophy of program operations must support the encouragement of the individual, but does not require that a specific outcome be achieved.

## **Support Person-Directed Planning**

Citation: 40 TAC [§9.172\(5\)](#)

Presentation Slide: Module 2, Slide 7

Guidance:

- A determination of a lack of support can be identified through interview with the individual regarding the program provider's response when a service planning team (SPT) meeting occurs.
- The provider should assist the individual to attend meetings and give the service coordinator access to the individual during an SPT meeting.
- While the program provider is not a required member of the SPT, if the individual or LAR requests that a representative of the program provider be present at a service planning team meeting, the program provider must ensure someone is available to participate.

## 4. HCS Nursing Assessment

### Registered Nurse (RN) Responsibilities

Citation: 40 TAC [§9.174\(a\)\(31\)\(J\)](#)

Presentation Slide: Module 2, Slide 19; Module 3, Slide 3

Guidance:

- An RN is responsible for doing the following:
  - Performing a nursing assessment for each individual before an unlicensed service provider performs a nursing task, unless a physician has delegated the task as a medical act, in which case it must be documented by the physician.
  - Completing a nursing assessment when the RN determines it is necessary, including if the individual's health needs change;
  - Documenting information from the nursing assessment
  - If an individual is receiving a service through the CDS option, providing a copy of the nursing assessment to the individual's service coordinator
  - Developing the nursing service portion of the implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and
  - Making and documenting decisions related to the delegation of nursing tasks to unlicensed service providers.
- 40 TAC §9.174(a)(31)(J)(ii) is one of the most commonly cited violations.
  - This violation refers to the RN documenting information from a nursing assessment.
  - One example of this violation would be the program provider being unable to produce a current nursing assessment.
  - Other examples can include the nursing assessment being incomplete, such as missing required information, or the nursing assessment including inaccurate information, such as the medications listed on the assessment not matching the current doctor's orders.

### When a Nursing Assessment Is Not Required

Citation: 40 TAC [§9.174\(c\)](#)

Presentation Slide: Module 3, Slide 4

Guidance:

- A program provider may determine that an individual does not require a nursing assessment if:
  - nursing services are not on the individual's individual plan of care (IPC) **and** the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on HHS form [1572](#); **or**

- a physician has delegated the task to an unlicensed provider as a medical act.

## Frequency of a Nursing Assessment

Citation: 40 TAC [§9.174\(a\)\(31\)\(J\)](#); [HCS Billing Guidelines](#)

Presentation Slide: Module 3, Slide 5

Guidance:

- According to HHSC Form 8584 instructions, the Nursing Comprehensive Assessment must be:
  - completed by the selected RN at the time of enrollment to the program; and
  - reviewed face-to-face at least annually with the individual and whenever the health status of the individual changes.
  - if an individual transfers to a new program provider, a nurse must perform nursing tasks directly if a nursing assessment cannot be completed immediately. The program provider must ensure that a comprehensive nursing assessment is completed as soon as possible before any unlicensed personnel can perform any delegated nursing tasks.
- The average number of units billed for the nursing assessment is 3-6, and justification for more than 6 hours would be required on the individual's implementation plan.

## HHSC Form 8584, Nursing Comprehensive Assessment

Citation: 40 TAC [§9.174\(a\)\(31\)\(J\)](#); HHSC [Form 8584](#) and [Form 8584-CDS](#)

Presentation Slides: Module 2, Slide 19; Module 3, Slides 6-45

Guidance:

- Program providers may use Form 8584 as their nursing assessment form but are not required to. If a program provider creates a nursing assessment form, it must include the same information as Form 8584.
- Form 8584, or other nursing assessment form, is used by the RN to document a comprehensive physical and psychological assessment of an individual's health history, including current health status and current health needs.
- Form 8584, or other nursing assessment form, must be completed for each individual when
  - nursing services are provided through the waiver; and
  - before unlicensed personnel perform nursing tasks.

## Section I: Healthcare Team

- Review of Health Care Team:



- The RN will enter the name, title and health care organization for all health care professionals associated with the individual, including the last date seen by the physician and any comments relevant to the individual's treatment.
- Any regularly scheduled appointments should be entered in the Comments field.
- Natural Supports:
  - Natural supports are any unpaid persons, including family members, volunteers, neighbors and friends who assist and sustain the individual.
  - Any natural supports that are active in the individual's life must be entered, including their relationship to the individual and their contact information.

## Section I: Health History

- Health History, Axis I, Axis II, Axis III, Axis IV:
  - Enter the individual's psychiatric and medical diagnoses.
  - Diagnoses can be found in the individual's medical records as documented by a psychiatrist or a physician.
  - If diagnoses information is obtained from a source other than a physician, clearly identify the source.
- Health History, Psychiatric and Medical Diagnosis:
  - Axis I -Information about clinical disorders. Any mental health conditions, other than personality disorders or intellectual disability, would have been included here. Ex: Schizophrenia and Other Psychotic Disorders, Anxiety Disorders, Eating Disorders, Sleep Disorders, etc.
  - Axis II - Information about personality disorders; intellectual disability; Paranoid, Schizoid, Antisocial, Narcissistic, or Antisocial Personality Disorders.
  - Axis III - Information about any medical conditions that were present which might impact the patient's mental disorder or its management, e.g., Medical Conditions such as Seizure Disorder, Diabetes, Hypertension, Heart Disease, GERD
  - Axis IV - Used to describe psychosocial and environmental factors affecting the person, e.g., social, occupational, economic, housing, or other psychosocial and environment problems. This is the individual's social, environmental or other history.
  - For History of Major Medical/Surgical Occurrences, enter a complete list of major medical history and surgical occurrences in the individual's lifetime. Include the month and year the surgery took place, if possible.
  - When reviewing medical consults in the record, every diagnosis should be reflected in the nursing assessment under the appropriate Axis number.
- Current Medications:
  - There should be physician's orders for ALL medications.
  - If the physician's summary includes a list of all current medications, labs and recommendations, then it would be considered an updated physician's order.

- Doctor's orders are included in all settings, including host home/companion care (HH/CC). There is no specific form required for physician's orders.
- Page 2 of Form 8584 includes a Review of Current Medications. Include over-the-counter (OTC) medications, vitamins and herbs.
- Document all current medications, including OTCs, vitamins, herbal supplements, biologicals and alternative treatments. It is important to document the use of all substances, including topicals and other non-oral routes, in order to identify potential interactions with medications.
- Allergies – Enter all types of allergies including, food, environmental, etc.
- Medication – Enter all medications and update when medications change.
- Dose – Enter the amount taken at a single time.
- Freq. – Enter the frequency or number of times the medication is taken daily, weekly, etc.
- Route – Enter the path by which the medication is administered into the body.
- Purpose/Rationale – Enter the reason for the medication or expected outcome.
- Side Effects/Labs – Enter major medication side effects specific to the individual. List labs recommended and/or ordered from a physician, if needed for medication.
- If a MAR will not be used due to RN Delegation of Medication, then Exclusion Form 8495 should always be provided.

## **Section II: Current Status**

- Current medical and psychiatric history
  - Here the RN must briefly describe any recent changes within the past year, including changes in the individual's health, behavioral status, hospitalizations, falls, seizure activity or restraints.
  - This should include any follow-up from the provider any recommendations in the Hospital Discharge Summary. For example, if the hospital discharge note recommended follow up with Neurology, Cardiology, or any specialist, the provider should follow up on the hospital's recommendations.
  - A Post Hospital Assessment should be completed by the nurse to see if the individual needs more support or healthcare follow up. Following discharge, the RN would perform a face-to-face assessment and revise the nursing service plan as needed to address the changes in condition.
  - What is of primary concern/greatest expressed needs? Briefly describe the primary concern/greatest expressed needs of the individual, LAR or individual's responsible adult from their own perspective. It is important to address the assessment in a person-centered manner that focuses on relationship building with the individual. The individual should feel comfortable communicating health related issues with service providers and the nurse. Include medical, environmental, psychosocial and any needs specific to the person.

- Vital Signs
  - Here the RN enters the individual's blood pressure, pulse rate and rhythm, respirations rate and rhythm, temperature, pain level, blood sugar (if applicable), weight in pounds (lbs.) and height in feet and inches. If any vital sign was obtained from a source other than the current nursing assessment, the source should be documented, for example: self-reported, last machine reading or clinical record.
  - Documentation is based on the RN's clinical judgement and/or orders prescribed by a physician. For example, if an individual has a new cardiac medication, then the RN may monitor the blood pressure before and after administering the medication. Another individual may not need vital signs monitored if they have been prescribed a medication and have been stable. Vital sign documentation may vary based on the RN's clinical judgement or doctor's orders.
  - Routine vital signs, daily weights, and other routine care require a physician's order. On an urgent basis, if the RN has a concern, then the RN can take vital signs, do accuchecks, or complete other tasks at the RN's discretion.
  - There should be a physician's order to clarify when vital signs (V/S) should be taken as well as a Vital Sign Log, or documentation on the MAR, to show evidence of vital signs monitoring.
  - If the RN has delegated staff to monitor V/S then it is the responsibility of the RN to follow up on the delegated task and document the follow-up.
  - Comments should include any information about the individual that is outside normal limits and the action taken as a result.
- Labs
  - This section describes all ordered labs, dates and abnormal values within the past year and should include standing orders for labs, frequency of labs and lab results. Indicate if any labs are ordered specific to a prescribed medication.
  - There should be physician's orders for **all** labs.
  - Labs should be kept in the individual's record.
  - The RN should follow up and report any abnormal labs to the MD.
  - The RN should date and initial labs to show evidence of monitoring health data.
  - The RN is responsible the overall clinical management of the individual. The RN should follow-up on any missing lab information and report any concerns to the physician as needed. An RN is still responsible for nursing oversight for individuals who reside in a HH/CC setting.
  - If an individual refuses lab draws, the concern should be documented, and the individual's SPT should meet to address noncompliance issues. In some cases, behavioral supports may be needed.
- Fall Risk
  - Form 8584 includes a Fall Risk Assessment Section on page 4. The RN must either complete a fall risk assessment or check "no" if they have determined that no fall risk assessment is needed.

- The RN should always ensure the individual's safety by completing the Fall Risk Section so the team can understand the individual's level of mobility.
  - The individual should always have working adaptive equipment (e.g., wheelchair, walker, cane, etc.).
  - The level of supervision will vary according to the health and safety needs of the individual.
  - The home environment should be clean, free of clutter, and have clear walking areas.
  - If the RN determines a fall risk assessment is not required, the RN should document in the comments section as to why not.
  - If the RN determines the person is at risk of falls, the RN will check the box that corresponds (i.e. neurological, musculoskeletal, unknown), and the Fall Risk Assessment needs to be conducted and attached.
  - The comment section should include the list of adaptive aids used for mobility. If the person has adaptive aids, the RN should observe the condition of the adaptive aids and if they are being used correctly.
  - For example, observations may include whether wheelchair locks still lock, whether seat belts need repair, whether wheelchairs have leg rests for long-distance mobility, whether gait belts are available and clean and fit properly.
- Have staff been trained on the correct use of the adaptive aid?

### **Section III: Review of Systems**

- Neurological
  - If the person's medication regimen requires an Abnormal Involuntary Movement Scale (AIMS) Assessment, the corresponding box should be checked. If an AIMS assessment is determined necessary, the comment sections should include how often the AIMS assessment should be conducted (i.e., every 3 or 6 months).
  - Document any neurological concerns including seizures.
  - If the individual has a history of seizures, note the frequency and duration and check Y for yes or N for no for the type of seizure the individual experiences. Indicate the date the last seizure occurred and the source of information in the comment section.
  - There should be a Seizure Log if the individual is currently having seizures.
  - Check for lab orders for monitoring medication levels. The RN should report all abnormal labs to the physician and should follow-up to be sure that the physician addressed any abnormal labs.
  - Check for possible medication changes based on lab work as well as last Neurology visits.
  - Are physician's orders or Neurology recommendations being followed up with as needed?
  - Some of the side effects of anti-seizure medications may include, Nausea, Vomiting, Dizziness, Drowsiness, Constipation, Dry Mouth, Unsteadiness

- or Over-Sedation. Headaches that are severe or won't go away need to be reported to a doctor right away.
- Special Needs Training considerations include:
  - ◊ Availability of the medication at day habilitation, during outings and home visits
  - ◊ The proper use of seizure logs.
  - ◊ Have staff been trained/delegated as necessary on the proper use of PRN Diastat?
  - ◊ Are staff trained as to when the RN needs to be called, or when to call 911?
  - ◊ These are just a few of RN training considerations, but of course, special needs training would be individualized as to the person.
- Eye, Ear, Nose, and Throat
  - In the comments section, the RN should enter the date of the individual's last hearing test and eye exam and indicate if the individual wears adaptive aids for vision or hearing. If the individual wears corrective vision, list the condition of the individual's eye glasses. If hearing aids are used, document which type. Describe the condition of the individual's gums, teeth, oral hygiene, and ability to speak and swallow food. Document if the individual has a history of eye disease, eye surgery or cataracts, ear surgery or drainage.
  - The individual should have their adaptive equipment, including glasses, hearing aids, dentures, etc., available at all times.
  - Any Swallow Study results should be in the chart if this was ordered along with any resulting dietary changes or physician's recommendations.
  - There should be documentation of Special Needs Training for any dietary changes.
  - Things to take into consideration when conducting Special Needs Training:
    - ◊ Who is responsible for ensuring glasses are cleaned and how often?
    - ◊ Did Special Needs training include ensuring hearing aids batteries are working? Is there a dental treatment plan in the record?
    - ◊ How often are follow-up appointments scheduled with the dentist?
- Cardiovascular
  - The RN should document the individual's normal blood pressure range and indicate if the individual is on blood pressure medication in the Comments field.
  - In the comments section, include any history of cardiovascular disease, e.g., heart attack, congestive heart failure or related symptoms.
  - Any blood pressure lower than 90/60 or higher than 140/90 needs to be evaluated by a physician.
  - Side effects of cardiac medication may include: low blood pressure, dizziness, headache, drowsiness, lightheadedness, increased or irregular heart rate, fatigue, nausea, vomiting. Any side effects should be noted.
  - The RN should report abnormal labs such as sodium and potassium to physician, as these can cause heart irregularities.
  - The physician will need to address and adjust medication as needed.
  - Things to consider and include in Special Needs training:

- ◇ Are staff trained in cardiopulmonary resuscitation (CPR)? (Although it is not a requirement that staff be trained in CPR, it is best practice.)
  - ◇ Does the person assessed have activities of daily living limitations?
  - ◇ Does the person have compression stockings, and if so, are they available and worn as ordered by the physician?
  - ◇ The RN should train staff as to the blood pressure parameters and when the RN needs to be called when it is outside the parameters.
  - ◇ Have vital signs been delegated?
  - ◇ The RN must monitor health data and blood pressure logs.
  - ◇ If logs were not completed daily or as trained, re-training should occur.
- Respiratory
  - The RN should enter the size and type if the individual has a tracheostomy.
  - If the individual is on a ventilator, include the ventilator settings as recommended by the doctor or respiratory therapist.
  - Respiratory function is a life or death issue and the nurse should identify needs as they apply to service delivery and follow up with nursing needs/delegation activities, as needed. A stethoscope should be used to listen to all lung lobes.
  - The tracheotomy area should be clean and dry.
  - Oxygen tanks should be kept in a safe area away from heat or flames. Note any physician's orders for oxygen saturation checks.
  - Signs and symptoms of respiratory failure may include restlessness, anxiety, bluish discoloration around the mouth, loss of consciousness, rapid and shallow breathing, irregular heartbeat, or profuse sweating.
  - Respiratory medications may include breathing treatments like Albuterol (Bronchodilator) to treat asthma, COPD etc.
  - Side effects may include low potassium levels, abnormal heart rate, abnormal heart rhythm, migraine headaches, nausea, etc.
  - Special needs training considerations:
    - ◇ If the person has a tracheostomy and if the RN recommends RN delegation, has all staff conducting the delegated task been trained?
    - ◇ if the Primary Care Physician delegated the task, is there evidence in the record?
    - ◇ Does training include use of CPAP, if necessary?
    - ◇ Is there a repositioning log, for persons who can't reposition themselves independently?
    - ◇ If the person uses an inhaler, does the person have access to the inhaler at all times including when outside the home?
- Gastrointestinal
  - The RN should check the box to indicate if the person has a gastrostomy, jejunostomy or no tube.
  - Enter the bowel sounds in all quadrants, the date and time of the last bowel movement, and the frequency and type of bowel habits.

- Documentation should describe if the individual is on a bowel program. If the individual has a gastrostomy, G-Tube or J-Tube, the size and type, the formula used and the schedule should be documented.
- It is important if an individual has a tube for feeding that the individual's respiratory status is monitored for Aspiration Pneumonia.
- The Head of Bed (HOB) should be elevated during feedings.
- Feeding tubes should be patent with the site clean and dry and no redness.
- Medications may be given for constipation.
- Common Side effects of Miralax or other medications for constipation may include, but are not limited to, nausea, abdominal cramping, upset stomach gas, or dizziness. Notify the physician if you notice severe or bloody diarrhea, bleeding from your rectum, blood in your stools, or severe and worsening stomach pain, cramping, or bloating.
- Possible labs that may be ordered due to excessive diarrhea or GI side effects may include a complete blood count (CBC) to check for anemia or infection or electrolyte panels due to possible concerns with dehydration.
- Special Needs considerations:
  - ◊ training in the area of GERD precautions (i.e., are staff knowledgeable and encouraging decrease in the intake of "trigger foods" caffeine, carbonated beverages, mint and menthol, fatty/fried foods, citrus fruits, tomato products, spicy foods, alcohol, drink 8 glasses of water per day, stay upright for one hour after meals, elevate the head of bed).
  - ◊ If the person is at risk of constipation/impaction, which may be life threatening, does the person have a bowel movement log, is the RN monitoring logs, are the logs completed correctly, is initial and periodic training occurring as needed, are staff aware when to contact the nurse? Are there policies and procedures regarding the administration of PRN medications?
- Musculoskeletal
  - Documentation should include the type of adaptive equipment and instructions for use, including any recommendations by the physical therapist, if applicable.
  - The RN should assess for any limitations with mobility such as a wheelchair, walker, cane, or other assistive device.
  - The RN should check to see that all assistive devices are operational.
  - Special Needs Training considerations:
    - ◊ If a Hoyer Lift is being used for transfers, was training and delegation conducted, if recommended?
    - ◊ If impaired gait, have staff been trained on precautions (i.e., gait belt, cane, standby assistance, etc.)?
- Genitourinary
  - The RN should describe if the individual is sexually active. If the individual is using birth control medications, the nurse should refer to the medications list on Page 2.



- The RN should note if the individual is incontinent, and a skin assessment should be completed.
- Frequency in urination, cloudy/dark urine, blood in urine, flank pain, or an unusual discharge should be reported to the physician, as these could be signs of a urinary tract or bladder infection or renal concern.
- If a catheter is present, physician's orders should be present for catheter care and how often to change the catheter.
- Special Needs Considerations:
  - ◊ If incontinent, is the person on a toileting schedule?
  - ◊ If not, is there a schedule for staff to change adult briefs?
- Integumentary
  - The RN should conduct a head-to-toe skin assessment and describe any skin care issues, orders for wound care and wound care measurements, and any other important findings or information that may not be on the form. If needed, a diagram should be used to represent the location of the wound. If the skin assessment is deferred, the RN should explain why.
  - Be watchful for impaired skin Integrity. Any wound should always be followed up by the provider's RN.
  - There are several stages of wounds/pressure ulcers. The provider's RN should provide clinical oversight.
  - Wound care measurements, dressing changes, and wound care follow up are all critical issues that need to be documented to ensure the wound is healing.
  - RN training and frequent follow up regarding physician's orders, nutrition, and positioning should be completed.
  - The RN is ultimately responsible for the individual's care
  - If a skin assessment was conducted, it must be attached.
  - If the person requires a skin integrity checks during shift change or arrival at day habilitation, document the reason in the comments.
  - If the person has a history of skin breakdown or is at risk for breakdown, consider the following:
    - ◊ Can the person self-reposition in bed, or do they need assistance with repositioning?
    - ◊ If the person needs assistance, is a repositioning log used and filled out accurately?
  - The RN should monitor health data (logs) and conduct periodic training as needed.
- Endocrine
  - If the box for diabetes is checked YES, the RN should describe the management type and desired blood sugar range as well as the doctor orders for blood sugar checks and diet, if applicable. Any abnormal values should be explained, if applicable.
  - Average blood sugar is 70 -100 mg/dl.
  - Labs - HbA1c level is tested every few months – normal range (4- 5.6%) Level of 6.5% or higher indicates diabetes.
  - Physician's orders should be provided for insulin administration to include a sliding scale, and accu-checks.



- RN is responsible for determining delegation of diabetic medications or any other delegated tasks.
- Special needs Training should include signs and symptoms of Hyperglycemia/ Hypoglycemia and what to do in a diabetic emergency.
- If the RN delegated administration of insulin, the RN must be in compliance with the Board of Nursing rule at [22 TAC §225.12](#) as it relates to Delegation of Insulin or Other Injectable Medications Prescribed in the Treatment of Diabetes Mellitus.
- If the primary care physician delegated the use of insulin or the use of any injectables, is evidence in the record? If the person is delegated by the primary care physician, the RN is still responsible for monitoring the use of medication, initial training and periodic training as needed.
- Thyroid conditions or other disorders will also require follow up with lab draws to ensure therapeutic levels of medications.
- There should be physician's orders for the next follow-up visit, and/or lab draw.
- Have staff been trained on timing of thyroid medication administration and timing in relation to meals?

#### **Section IV: Additional Health Status Information**

- Immunizations
  - Routine vaccinations (e.g., Tdap, tetanus, etc.) should be up-to-date.
  - A copy of all immunizations should be kept in the individual's record.
  - If an immunization is obtained from a local pharmacy, the pharmacy should provide documentation of any immunizations administered to an individual. The pharmacy should also request the name of the individual's PCP to provide them with individual's immunization records.
  - The RN is to follow up with the physician as needed, especially for any annual immunization, such as the flu vaccine.
- Nutritional Assessment
  - If the individual is on a therapeutic diet, the RN should describe the type of diet and include the reason and date it was ordered.
  - The RN should explain any abnormal values and document how the weight was obtained and the type of clothing the individual wore.
  - Any changes in appetite, unintentional weight changes, decreased food intake, or dietary changes should be reported to the physician, as there may be an underlying medical condition.
  - Diet orders should be in the individual's chart.
  - Orders should include: food texture and liquid consistency, and, if needed, any restrictions/therapeutic diets such as diabetic, low salt, etc.
  - An individual's diet should always be included in the Nursing Assessment and in the staff Special Needs Training.
  - If an individual has a feeding tube, physician's orders should include type and amount of formula, and whether feedings are continuous or bolus. Staff training should be done on administering the feedings, positioning, aspiration precautions, and reporting abnormal breath or bowel sounds.

- Choking Precautions: Staff who care for individuals who are at risk for choking and aspiration should be trained by the nurse on diet texture, positioning, and Special Needs. The nurse should routinely follow-up with staff to ensure the health and safety of the individual.
- Special Needs Training Considerations:
  - ◊ Have staff been trained on food texture and liquid consistency?
  - ◊ Are precautions, such as increased supervision at mealtimes, being taken to decrease the risk of choking?
  - ◊ Where is the person seated at meal times related to others with regular diets? Are precautions taken to ensure the person cannot reach other individuals' food, putting them at risk of choking?

***The following information beginning on Page 9 of the form is designed to get a snapshot of the individual's lifestyle and how it relates to their health. It should be gathered by asking the individual open-ended questions in a person-centered manner.***

- Sleep Patterns
  - The nurse should describe the average number of hours of sleep per night, the quality of sleep, if the individual has difficulty falling asleep, the number of times the individual wakes up at night, and the number and duration of naps during the day. The individual's sleep patterns and any additional information not listed on the nursing assessment should be described in the comments, including whether lack of sleep disrupts the individual's lifestyle.
  - Excessive sleeping or a significant lack of sleep requires further investigation.
- Activity Level/Exercise
  - Describe the individual's activity level, whether they get routine exercise, and what type of exercise they prefer.
  - Document if the individual is on an exercise program recommended by a physician.
- Substance Use/Abuse
  - Describe any use of caffeine, tobacco, alcohol, recreational drugs, and history of non-compliance with prescribed medications.
  - Documentation should include the type of substance, amount, frequency, duration of use, any current and prior history of substance abuse, and any history of hospitalizations for substance abuse.
  - Any substance abuse or non-compliance with medications needs to be discussed by the team and addressed by Psychiatry or Psychology, and possibly evaluated for a Behavior Plan.
- Home Life
  - The RN should list the individual's past and current living situations.
  - The RN should note if the individual is happy with the current living situation and notify the team if there are any concerns.

- The RN should describe whether the individual feels safe in their current living environment and any environmental factors that may contribute to their health and well-being.
- The individual should be asked about what makes them happy or unhappy in their home, if they enjoy their current living location, and if they get along with staff and roommates.
- Document the individual's comments and any desires or unmet needs they have.
- Work/School/Day Activity
  - The RN should describe the activities the individual engages in on a regular and semi-regular basis and what the individual wants to be doing during the day in regards to work, school and recreational activities.
- Social Life
  - Here the RN describes the person's social interaction with peers and others in the community, including social activities that the person enjoys.
  - Does the person have friends who are not paid staff?
  - Do they have an opportunity to interact with friends outside of home and school?
  - Do they have an opportunity to meet new people?
  - The RN may consider a mental health assessment if the individual has chosen to isolate themselves.
- Religious Preferences
  - The RN should ask the individual if she/he has any religious preferences, and if they have the opportunity to practice their religion of choice.
- Coping Skills
  - Describe what the individual does when stressed and how they cope with positive and negative situations.
  - Include if the individual has a behavioral plan or if it is recommended that the individual receive a behavioral assessment to determine need for behavioral supports.
- Mental Status, Cognition, Thoughts
  - An assessment of mental status includes an evaluation of the individual's appearance including their posture, grooming, facial expressions, eye contact or lack thereof, and speech quality. Also describe the person's mood, for example, is the person cooperative, angry, depressed or excited?
  - Is there any sign of cognitive impairment?
  - Is the person oriented to person, place and time?
  - Include an evaluation of attention span, memory and emotions.
  - For evaluating thoughts, is the person experiencing any delusions or hallucinations?
  - Are thought processes logical and organized?
  - Does the individual have any phobias, antisocial urges obsessions or homicidal or suicidal ideations?
- Challenging Behaviors
  - The RN is to complete this to the best of their knowledge.

- Fill in the frequency, severity and last time the behavior was exhibited based on review of the clinical records and interviews with others who have knowledge of the individual.
- If the individual has a formal behavioral plan, describe the plan and verify if it effectively addresses the individual's challenging behaviors.
- Include whether restraints are used as part of the behavioral support plan. If no plan is present, document if one is needed.
- If an individual is given a medication to control behavior, this would be considered a chemical restraint and a behavior plan is required.
- If the individual is having an active psychiatric emergency and are harming themselves or others, 911 should be called immediately.
- Communication
  - The names of any persons or agencies used for interpretive services should be documented, if applicable.
  - If the individual has a communication device, document whether they can use it effectively.
  - Describe if instructions are available for others to communicate with the individual and any behaviors the individual uses to communicate needs.
  - Also describe how the person communicates pain.
  - Understanding the individual's level of communication is important for person directed planning. If the individual is nonverbal then a family member or patient advocate may help communicate the individuals wants and needs. If the person is non-verbal, RN comments and Special needs training should include the interpretation of the person's body language.

## **Section V: Implementation Assessment**

- Healthcare and Decision-making Capacity
  - This section determines the individual's level of participation and accepted responsibility in their health care management.
- Support Systems
  - The RN should list members of the individual's support system and provide comments regarding their adequacy, reliability, availability and ability to communicate effectively.
  - If the primary decision maker status changes at any time, this section must be updated.
- Stability and Predictability and Need to Reassess
  - Document health topics relevant to the individual and whether there are ongoing nursing needs.
  - The frequency needed for RN assessment must be documented as well.
- Knowledge
  - This section evaluates the individual, Client Responsible Adult (CRA), and HH/CC provider's knowledge of the relevant health topics and whether they've demonstrated needed techniques.
  - The RN must assess the knowledge and skills of the individual, the CRA, and the HH/CC provider.

- The RN must understand exactly what the individual can and cannot independently do for themselves.
- The RN must see a return demonstration and verify that **all** unlicensed service providers are competent to provide care.
- The RN must ensure that unlicensed service providers are competent to provide care before any tasks are delegated.
- Participation in Assessment
  - This section is where the RN lists who participated in the assessment, and where the RN who completed the nursing assessment prints their name, signs and enters the date.
  - If the individual needs assistance with making health care decisions, a person who has been determined to be responsible for the individual will need to sign as the Client Responsible Adult or a Provider Advocate Committee may act as the CRA.
- RN Delegation
  - Page 16 of Form 8584 should be used by the RN to document delegation of tasks to unlicensed service providers. This will include the name of the individual providing care and the frequency of RN follow-up.
  - The RN must have Form 8585, RN Delegation Worksheet or comparable documentation attached if the RN is determining delegable nursing tasks for stable and predictable conditions.
- Safe Administration of Medications
  - This page cannot be left blank if an individual receives medication.
  - The RN must check the appropriate box regarding the individual's ability to self-administer their medication. If the individual CANNOT administer their own medications, the RN must document WHO is competent, and can safely administer the individual's medications.
- Nurse Supervision
  - Here is where the RN lists the persons who were consulted for the assessment and the level of monitoring required for unlicensed personnel who perform nursing tasks.
  - The RN should refer to the Board of Nursing rules for guidance and describe any follow-up needed to monitor competency and identify if additional monitoring is required.

## Section VI: Summary

- Briefly document the individual's strengths, based on the nursing assessment, as they relate to the individual's health status.
- Include any consultations recommended and summarize the clinical impression of the individual.

## Nursing Service Plan

Citation: 40 TAC [§9.174\(a\)\(31\)\(J\)\(iv\)](#)  
 Presentation Slide: Module 3, Slide 46

Guidance:

- The information in the nursing assessment is used to develop a Nursing Service Plan and Plan of Care that includes a nursing diagnosis, interventions, strategies, and desired outcomes to ensure optimal health. The hours needed to provide nursing care may be added to this section.
- The nursing service plan is the basis for creating the implementation plan for nursing, including specific interventions, measurable realistic goals and outcomes for each concern identified. Each service on the IPC must have an implementation plan. The nursing service plan does not take the place of the implementation plan for nursing.
- The RN must develop the plan for the nursing services that are needed by the individual. LVNs cannot develop nursing service plans. LVNs may participate and contribute information, but they cannot develop a plan.
- A nursing service plan must be developed for any individual receiving nursing services through the waiver.
- Nursing service plans must be current and updated when there is a change in condition or at least annually.

## **RN Review of Nursing Assessment**

Citation: 40 TAC [§9.174\(a\)\(31\)](#) and [§9.555\(c\)](#).

Presentation Slide: Module 3, Slide 47

Guidance:

- Although Form 8584 may not need to be rewritten with each year, all elements of Form 8584 must be reviewed with the individual on an annual basis and updated as needed. Any changes in the individual's health status must be updated and clearly documented when the changes occur.
- For each nursing assessment review, enter the date of review, select the appropriate purpose, describe the individual's health status and any changes identified. Include current vital signs, weights and any other clinical values obtained during the review. Document any actions taken by the RN and any changes needed in the nursing service plan.
- The RN signs and dates the assessment update.
- If a new RN is hired by the provider, the new RN is now accountable for the care of the individuals receiving services. The RN should make reasonable progress to verify and update the information in the nursing assessment to determine the appropriateness of the previously delegated tasks and continued competency of the unlicensed service providers performing the delegated tasks. The RN must consider the types of tasks being performed by the unlicensed service providers and the medical issues of the individual served when determining the priority/timeline to complete both a face to face review of the nursing assessment and the supervisory visits of the unlicensed service providers performing delegated tasks.

## **Nursing Assessment Resources**

- [Nursing Services FAQ](#)
- [Provider webinars](#)
- <https://www.bon.texas.gov/>
- [HCS/TxHmL Joint Training Page](#)
- <https://www.hhs.texas.gov/laws-regulations/handbooks>

## 5. Staff Member and Service Provider Requirements

### Continuous Availability

Citation: 40 TAC [§9.177\(a\)](#); [§9.579\(a\)](#)  
Presentation Slide: Module 4, Slides 3-5

#### Guidance:

- The individual's needs may be determined and documented in any of the following documents:
  - the PDP (Person Directed Plan);
  - IPC (Individual Plan of Care);
  - ICAP (Inventory for Client and Agency Planning);
  - Nursing Assessment;
  - Assessments from OT (Occupational Therapy), PT (Physical Therapy), or Speech/Dietary;
  - Behavior Support Plan;
  - service provider delivery logs; and
  - other special therapy assessments including medical and dental consults.
- The needs of the individual may also be determined through interviews of the individual, LAR, parents, family members, person(s) who knows the individual well, service provider staff, etc. Needs may also be determined through observations.
- If the IPC reflects a specialized service (e.g., OT, PT, Dietary, Dental, Behavioral Supports, Employment Support Services, etc.), then the service provider must ensure the availability of trained and qualified service providers to deliver the services as determined.
- *Example: Critical Violation*
  - The program provider failed to ensure the continuous availability of a trained and qualified Registered Nurse to deliver the required nursing services to all four individuals in the survey's comprehensive sample. The four individuals were determined to have critical health needs that required regular oversight from an RN. However, in this circumstance there was no evidence that Actual Harm had occurred to any of the four individuals.
  - If there was evidence of actual harm or life-sustaining oversight required that may elevate the concern to the level of an immediate threat.
- *Example: Non-Critical Violation*
  - The Service Planning Team met and added respite services on the IPC. The program provider did not contract with a respite service provider until three weeks later.
  - Both the individual and their LAR stated they made multiple requests for respite services during this time but none were provided. There was no evidence of a significant impact to the individual's health or safety.



## Employ/Contract with Person of Individual's Choice

Citation: 40 TAC [§9.177\(b\)](#); [§9.579\(c\)](#)

Presentation Slide: Module 4, Slides 6-8

Guidance:

- Individuals receiving HCS or TxHmL Program services and their LARs may choose their desired service providers.
- The program provider must contract with a person or entity of the individual's or LAR's choice unless they do not meet the criteria to contract with them as per TAC and the evidence is documented.
- *Example: Non-Critical Violation*
  - Upon admission, the LAR stated they would like the individual to see the same dentist and stated the individual does not have a routine follow-up appointment until four months later. One month later, the surveyor interviewed LAR who stated the provider has not contracted with dentist of choice. The individual has not expressed any pain or complaints and is not scheduled to see dentist for another three months. The surveyor noted the program provider has made no attempts to contract with the dentist. During the survey, the program provider established a contract with the dentist and an appointment has been scheduled for three months in accordance with the dental treatment plan.

## Compliance with Regulations

Citation: 40 TAC [§9.177\(c\)](#); [§9.579\(b\)](#)

Presentation Slide: Module 4, Slides 9-12

Guidance:

- Medicaid fraud is outlined in [IL 2007-50](#). It requires that all program providers who receive or make \$5 million or more must have:
  - a written policy with detailed information about the False Claims Act (the policy can be written or electronic, but must be accessible to all employees);
  - a detailed written policy about program provider's procedures for detecting and preventing fraud, waste, and abuse; and
  - information in their handbook regarding whistleblower protections, policies and procedures.
- Pet vaccines must be administered by a veterinarian to obtain valid records. Also an own home/family home setting would not be expected to demonstrate vaccination records, only 3-person, 4-person, and HH/CC residences.
- *Example: Critical Violation*
  - The LVN for the program provider's contract is not supervised by an RN. It is confirmed that there is no RN serving the contract.
  - Since this impacts the nursing services in the entire contract it would be considered a widespread violation. Given that the scope is widespread this

- violation would be critical. If there were individuals that had been or were continuing to be harmed as a result of the LVN's failure to be supervised by an RN, this may be considered an immediate threat.
- *Example: Non-Critical Violation*
    - During record review there were no current vaccination records for the individuals' cats and dogs. The program provider stated they were unaware that they needed to maintain those records as the individuals are all in host home settings. The scope of the violation would be widespread as the program provider acknowledged a systemic area of noncompliance. No adverse outcomes were identified.

## Staff Training

Citation: 40 TAC [§9.177\(d\)](#); [§9.579\(d\)](#)

Presentation Slide: Module 2, Slide 14; Module 4, Slides 13-19

Guidance:

- Upon hire of staff members and service providers, the program provider must train all staff members and service providers on the current needs and characteristics of the individual.
- Training must also be conducted periodically thereafter, such as when there is a change of condition, outcomes, behavior supports, or service provision; a new diagnosis or medication; changes to diet; medical consult recommendations; adaptive aids; etc.
- Staff administering, or supervising medications should know what the individual is taking the medications for, including medications that use generic and brand names interchangeably.
- Program providers must ensure that all staff members who participate in developing an implementation plan for CFC PAS/HAB complete the Introduction to Person-Centered Planning training approved by HHSC. All staff members who complete the implementation plan must take the training. This training is not designed to be a train-the-trainer.
  - To access and complete this free online training, please go to the [HHS Learning Portal](#), create a user login, and follow instructions to complete the training. Certificate should be maintained as evidence of compliance.
- *Example: Immediate Threat*
  - A day habilitation service provider did not demonstrate knowledge of the individual's diet texture and served the wrong diet texture (chopped instead of pureed) that resulted in the individual choking. The individual died as a result of the incident, and this was confirmed by the autopsy report. There was no evidence presented that staff member was trained on current diet texture for the individuals they were supporting.
  - This would constitute as an Immediate Threat as it meets the three key components:
    - ◇ there is an identified area of noncompliance with the principle;
    - ◇ the noncompliance resulted in the death of an individual; and

- ◊ there is a need for immediate action to prevent further harm or death from occurring.
- *Example: Non-critical Violation*
  - Based on record review, observation, and interview, the provider did not conduct periodic training that ensured that staff members were qualified to deliver services as required by the current needs and characteristics for 2 of 4 individuals.
  - The provider failed to train staff on Individual #1's and Individual #2's Behavior Support Plans and special needs. This failure put Individual #1 and Individual #2 at risk for physical and mental harm because the staff were not trained on the behavioral needs of the individuals in a home that the provider has designated as crisis respite.
- 40 TAC §9.177(d)(1) is one of the most commonly cited HCS violations. This paragraph refers to the requirement for initial and periodic training on the individual's current needs and characteristics, including the use of restraints. This violation refers to a staff member or service provider not demonstrating knowledge about the individual's needs. Examples can include a lack of knowledge of behavioral support plans, special diets or approved rights restrictions.
- *Example: Critical Violation of (d)(1)*
  - The direct care staff for all six individuals in the contract were determined to have a lack of training or were unable to demonstrate knowledge of the individuals' diagnoses, prescribed medications, the provider's infection control practices, and the use of an individual's gait belt.
  - If the individuals had been harmed or there was evidence indicating the individuals were lack to be significantly harmed by this lack of knowledge, this may have constituted an immediate threat.
- *Example: Non-Critical Violation of (d)(2)*
  - The program provider did not provide evidence that a staff member, who participated in the development of an implementation place for Individual #03 receiving CFC-PAS/HAB services, hired on 10/01/18, had completed person-centered service planning approved by HHSC.

## Infectious and Communicable Disease Prevention

Citation: 40 TAC [§9.177\(e\)](#); [§9.579\(e\)](#)

Presentation Slide: Module 4, Slides 20-21

Guidance:

- These policies and procedures should be in place to protect individuals from contracting communicable diseases such as the flu, COVID-19, scabies, head lice, etc., and should be updated to align with CDC guidance. These processes should address the use of personal protective equipment (PPE).
- To ensure compliance, providers should ask themselves:
  - When an individual has a communicable diseases what precautions are taken?
  - Are staff following these policies?

- Are individuals up-to-date on vaccinations, including the flu vaccine, as per doctor's orders, unless contraindicated?
- *Example: Critical Violation*
  - A program provider transported an individual to day habilitation after being diagnosed with the flu, not safeguarding the other individuals at the day habilitation site from the flu, a communicable disease. Four individuals became ill with the flu following their interactions with the individual at the day habilitation site.

## Provider Operations and Conflicts of Interest

Citation: 40 TAC [§9.177\(f\)](#); [§9.579\(f\)](#)

Presentation Slide: Module 4, Slides 22-24

Guidance:

- What systems and processes does the program provider have to ensure there is no conflict of interest?
- If a provider needs further clarification regarding possible conflicts of interest, they may follow-up with Rights in State Office.
- *Example: Non-Critical Violation*
  - It was observed during a home visit that an individual's clothing was locked in an area of the residence separate from the individual's bedroom that only the service providers can access. There were no other individuals who were determined to have access to their belongings restricted.
- *Example: Critical Violation*
  - For all individuals without LARs, the program provider provided family members monthly trust fund balances without authorizations from the individuals. Two of the individuals were financially exploited by their family members who were not authorized to be given information regarding the individual's finances.

## Qualifications: Service Provider Overseeing Services

Citation: 40 TAC [§9.177\(g\)](#); [§9.579\(g\)](#)

Presentation Slide: Module 4, Slides 25-27

Guidance:

- For the person responsible for overseeing the provision of HCS and TxHmL Program services and CFC services, during record review, the HHSC surveyor will need to see written statements from the person's employer to verify three years of work experience in planning and providing HCS Program services or CFC services.
- If the person does not have three years of work experience, then the program provider must ensure they have verified in writing that the service

provider has least three years of experience planning and providing services similar to HCS Program services or CFC services and participated as a member of a microboard.

- *Example: Non-Critical Violation*
  - The program provider is unable to present written statements verifying the person who oversees HCS services and CFC services has at least three years of experience. There is no evidence of an adverse outcome to the individuals and the written statements were provided when the area of noncompliance was identified.

## Qualifications: Certain Service Providers

Citation: 40 TAC [§9.177\(h\)](#); [§9.579\(h\)](#)

Presentation Slide: Module 4, Slides 28-29

Guidance:

- These qualifications apply to service providers of day habilitation, supported home living, HH/CC, supervised living, and residential support.
- Surveyors will conduct record reviews for evidence of compliance. It is the responsibility of the program provider to present evidence that the high school diploma or certificate is recognized by a state as the equivalent of a high school diploma. A high school diploma from a different country may or may not be recognized by a state as the equivalent of a high school diploma. The program provider would need to provide documentation that the diploma is equivalent to a high school diploma or certificate equivalent to a diploma obtained in the United States.
- The high school diploma or certificate does not have to be an original. A college or associate's degree may be accepted as documentation of education since the higher degree would supersede the high school diploma.
- In lieu of a high school diploma or equivalent, the program provider may provide documentation of a proficiency evaluation of experience and competence to perform the job tasks. This documentation must include a written, competency-based assessment of the person's ability to document service delivery and observations of the individuals to be served and at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for individuals. A multiple-choice questionnaire does not meet this requirement of a written, competency-based assessment. To meet the requirement, the assessment would need to show evidence of the ability to document service delivery and observations.
- *Example: Non-Critical Violation*
  - The program provider failed to ensure that the service providers for Supervised Living and Day Habilitation had evidence of a high school diploma or a written competency test and reference letters. There was no evidence of an adverse outcome experienced by the individuals receiving these services.

## Qualifications: Professional Therapists

Citation: 40 TAC [§9.177\(i\)](#); [§9.579\(q\)](#)

Presentation Slide: Module 4, Slides 30-32

Guidance:

- During record review, the surveyor will look for evidence that the service provider of professional therapies is currently qualified by reviewing the license or certification.
- The program provider is responsible for ensuring that any licensed service provider has a current license any time they are providing services to an individual. Frequency of checks will be dependent on the length of each person's license. If a service provider's license is revoked at any time or their license is no longer current, then they would not be eligible to provide services.
- *Example: Critical Violation*
  - The program provider contracts with a dietician whose certification has not been renewed. The dietician provided services to multiple individuals with critical dietary needs. Three individuals experienced adverse outcomes as a result.
- *Example: Non-Critical Violation*
  - During survey there was no evidence of a current certification of a speech therapist. There was no evidence that an individual experienced an adverse outcome as a result of this lapse in certification documentation.

## Qualifications: Behavioral Support Services

Citation: 40 TAC [§9.177\(j\)](#); [§9.579\(o\)](#)

Presentation Slide: Module 4, Slides 33-35

Guidance:

- Surveyors will request evidence the service provider of behavior supports are being provided by someone who is licensed or certified.
- In order to be in compliance, the program provider must ensure the [HHSC training](#) is taken at the proper time/frequency. During record review, surveyors will verify the web-based training was conducted prior to providing behavioral supports by viewing evidence of the certificate of completion.
- All providers of behavioral support services, including licensed psychologists, must take the web-based training every three years.
- *Example: Non-Critical Violation*
  - The program provider failed to provide evidence that the service provider who was providing behavioral supports met one of the criteria listed in the rule. This failure resulted in individuals receiving services from providers who may not be licensed or certified by the state of Texas in the specific area for which services are delivered or being provided.
- *Example: Non-Critical Violation*

- The service provider of behavioral support services does not meet criteria (licensed or certified by HHSC) to provide behavioral support services. They provided behavioral support services to all individuals receiving the service in the contract.

## Qualifications: Transportation Provider

Citation: 40 TAC [§9.177\(k\)](#); [§9.579\(k\)](#)

Presentation Slide: Module 4, Slides 36-38

Guidance:

- During interviews, surveyors will ask if the service provider transports staff members and if so, whether it is in their personal vehicle or company vehicle.
- During record review of personnel files, surveyors will verify a valid driver's license and the copy of the vehicle's insurance policy.
- If during record review, the surveyor reviews a document that states the staff member is not to transport staff as they do not have a valid driver's license, yet service delivery logs reflect the staff has been providing transportation, this may lead to a violation.
- This rule requires a valid driver's license. Per [Texas Department of Public Safety](#), new Texas residents can legally drive with a valid, unexpired non-Texas driver's license for up to 90 days after moving to Texas.
- Regarding the need for insurance, if the insurance is a personal policy, it should include the staff member's name. If it is company or business policy, then specific staff member's names do not need to be included.
- *Example: Critical Violation*
  - During record review it was revealed that a staff member transported individuals without a valid driver's license. A traffic accident occurred on the way to the day habilitation program, and three individuals sustained non-life-threatening injuries.
- *Examples: Non-Critical Violation*
  - The program provider failed to ensure staff who provided transportation had a valid driver's license and current vehicle insurance for one staff member out of 15 who provided transportation for individuals in the contract.
  - The program provider failed to ensure the host home provider had a valid driver's license and current vehicle insurance.

## Qualifications: Dentist

Citation: 40 TAC [§9.177\(l\)](#); [§9.579\(l\)](#)

Presentation Slide: Module 4, Slides 39-40

Guidance:

- The program provider must have documented evidence of the license by the Texas State Board of Dental Examiners for the dentist or the dental



hygienist. A copy of the license may be obtained by the dentist or on the internet.

- If an individual and/or LAR chooses to receive dental services in Mexico, this should be documented in the PDP. Billing and Payment will not reimburse for dental services provided in Mexico or outside of the State of Texas if the dentist is not licensed in Texas. If there are dental services on the IPC, the Implementation Plan needs to reflect how the funds will be utilized.
- Question: Can a program provider contract with a dentist who has a citation on their license?
  - Answer: The dentist is required to have a valid license. Any violations associated with their license would be the responsibility of the Board of Dental Examiners to address accordingly. If the license is revoked or invalid it would not be in compliance with this requirement.
- *Example: Non-Critical Violation*
  - Review of the program provider's personnel records revealed that one of the dentists who provided dental services during the review period did not have a current license on file. During interview with the program provider, they stated that they were unsure whether the dentist's license was current and were not able to verify. The survey team reviewed the dentist's license information and discovered that it had been renewed. There was no evidence the individuals had been harmed.

## Qualifications: Nurse

Citation: 40 TAC [§9.177\(m\)](#); [§9.579\(m\)](#)

Presentation Slide: Module 4, Slides 41-42

Guidance:

- Surveyors will ask to see documented evidence the RN or LVN is licensed by the Texas Board of Nursing prior to the RN or LVN providing nursing services.
- *Example: Critical Violation*
  - The program provider's RN has been providing nursing services with an expired Texas Board of Nursing license. There was no licensed RN overseeing medications, delegating nursing tasks, or overseeing the LVNs in the contract. The RN provides oversight for the entire contract, so this is widespread as all individuals are at risk for actual harm. This would rise to immediate threat if individuals in the contract experienced or were likely to experience serious adverse outcomes and the RN was continuing to provide services.

## Background Checks

Citation: 40 TAC [§9.177\(n\)](#); [§9.579\(r\)](#); [§49.304](#)

Presentation Slide: Module 2, Slides 15 and 25; Module 4, Slides 43-44

Guidance:



- This is one of the most commonly cited violations for both HCS and TxHmL. This can be cited when a provider failed to complete, or when there is missing evidence of, [DPS criminal history check](#), [employee misconduct registry](#) (EMR), [List of Excluded Individuals/Entities \(LEIE\)](#) or [Nurse Aide Registry \(NAR\)](#) checks. Chapter 49 provides TAC rules related to all agencies contracted to provide community services.
- The List of Excluded Individuals and Entities (LEIE) must be checked prior to employment and at least monthly.
- Providers typically have a checklist that includes the employee's name, date of check, and the person responsible for conducting the check's signature or initials.
- [Debarred Vendor Checks](#) are only required at initial time of employment. Employees hired prior to 09/01/2014 will not have a record of a debarred vendor check.
- A criminal history check is only required at initial time of employment. It is also required for any volunteers for the agency. The criminal history check for unlicensed applicants must be checked through the Texas Department of Public Safety.
- TAC §49.304(b) only requires a check before hire. However, program providers are required to ensure they do not employ someone who has been convicted of a crime and typically routine checks, such as annually, will help to ensure compliance with this requirement. Program providers must develop and implement a policy that requires an employee, volunteer, or subcontractor to report if any of the background information changes.
- TAC §49.304 requires that a program provider complete a background check for any unlicensed applicant for employment, potential subcontractor or volunteer applicant, including a provider of HH/CC care. If a member of the household is not providing HCS program services, then a background check of that individual is not required.
- TAC does not prohibit the employment of a service provider who has been charged but has not been convicted for a criminal offense.
- Surveyors are not reviewing the details of the background check; they simply review the documentation that verifies the check was completed.

Check	When Completed
Criminal History	Prior to hire
Debarred Vendor	Prior to hire
LEIE	Prior to hire and monthly
NAR	Prior to hire and annually
EMR	Prior to hire and annually
Professional Licenses	Before service provision and regularly thereafter

## Minimum Wage for Attendants

Citation: 40 TAC [§9.177\(o\)-\(p\)](#); [§9.579\(s\)-\(t\)](#); [§49.312](#); 1 TAC [§355.7051](#)

Presentation Slide: Module 4, Slides 45-47

Guidance:

- 40 TAC §49.312 refers to 1 TAC §355.7051, which describes the minimum hourly wage for CFC PAS/HAB, supported home living and in-home respite service providers.
- The program provider must ensure the contractor:
  - complies with requirements regarding the base wage, which is currently \$8.11 per hour;
  - notifies a person who becomes employed or contracts with the contractor as a CFC PAS/HAB, supported home living or in-home respite service provider that the contractor must pay at least the wage required; and
  - makes this notification within three days after the person accepts employment or enters into a contract with the contractor.
- If the program provider does not pay a CFC PAS/HAB, supported home living or in-home respite service provider the current base wage, it would be a violation. Providers need to ensure they are up-to-date on the current salary requirements in the TAC.
- A plan of correction may include paying the CFC PAS/HAB, supported home living or in-home respite service provider the difference of the amount paid and the amount owed.
- Surveyors verify compliance with this principle by reviewing and ensuring the following information:
  - Pay stubs match the information report
  - Signed offer of employment
  - Notification to employee of wage requirements
  - Statement in offer of employment
  - Copy of letter or e-mail notifying employee
- *Example: Non-Critical Violation*
  - The program provider is paying one personal attendant who was hired 10/1/2020 \$7.85 per hour, which is below the required base wage of \$8.11 per hour.
  - During survey, the program provider presented evidence they paid the personal attendant back pay and that they increased the hourly base wage to \$8.11. The program provider presented a policy to ensure compliance going forward and trained HR.

## Qualifications: Cognitive Rehabilitation Therapy

Citation: 40 TAC [§9.177\(q\)](#)

Presentation Slide: Module 4, Slides 48-49

Guidance:

- During record review, the surveyor will ask to see evidence the license of service providers of cognitive rehabilitation therapy is current and valid.
- *Example: Non-Critical Violation*
  - During survey, the program provider could not present evidence that the service provider of cognitive rehabilitation therapy was a psychologist licensed in accordance with Texas Occupations Code, Chapter 501.

## Qualifications: Supported Employment or Employment Assistance

Citation: 40 TAC [§9.177\(r\)-\(s\)](#); [§9.579\(i\)-\(j\)](#)  
Presentation Slide: Module 4, Slides 50-54

Guidance:

- Surveyors will conduct record review to ensure compliance with (r) (e.g., age, not a spouse, etc.) and education/experience.
- Surveyors will ask to see evidence of written statements to ensure compliance with (s).
- *Example: Non-Critical Violation of (r)*
  - It was determined that the person providing supported employment services did not have the required six months of paid or unpaid experience. There was no evidence of an adverse outcome to the individual, and there were no other areas of noncompliance identified in the rest of the survey sample.
- *Example: Non-Critical Violation of (s)*
  - Based on interview and record review, the program provider failed to ensure the service provider of supported employment had the required experience. There was no evidence of a written statement from a person who paid for the supported employment service or who supervised the provision of the service for paid experience, or a written statement from a person who has personal knowledge of the experience for unpaid experience.
- *Example: Non-Critical Violation of (s)*
  - The program provider failed to present evidence of the required experience for the CFC provider who delivers supported employment to an individual.

## Qualifications: Transition Assistance Services (TAS)

Citation: 40 TAC [§9.177\(t\)](#)  
Presentation Slide: Module 4, Slides 55-56

Guidance:

- A service provider of TAS cannot be a relative of an applicant. Therefore, a parent would not be eligible to provide TAS, regardless of the individual's age.

- One qualification distinction from other service provider qualifications is that a provider of TAS must have a high school diploma. It cannot be supplemented with reference letters and a competency test like other service provider types.
- *Example: Non-Critical Violation*
  - The TAS provider did not have a high school diploma and is not qualified to provide the service. Please note that although the violation is not critical, the employee would not be able to continue providing this service in order for the program provider to come into compliance.
- *Example: Non-Critical Violation*
  - The service provider for TAS lives with the individual.

## Qualifications: CFC PAS/HAB

Citation: 40 TAC [§9.177\(u\)](#); [§9.579\(u\)](#)

Presentation Slide: Module 4, Slides 57-59

### Guidance:

- A service provider of CFC PAS/HAB can be the parent of an individual who is an adult, if the individual does not reside in the same home. Please note that this does not address COVID-19 flexibilities, which does allow a person living in the same residence to provide CFC PAS/HAB only while these flexibilities are in place.
- Surveyors will review evidence of qualifications and criteria of CFC PAS/HAB service provider.
- *Example: Non-Critical Violation*
  - The program provider failed to present evidence of education or its equivalent or a competency test with three personal reference letters for the CFC provider who delivers Community First Choice Personal Attendant Service/Habilitation, Transportation, and Supported Employment to an individual.

## 6. Restraints

Restraint should only ever be used as a last resort to keep an individual and/or others around them safe when they are in an immediate risk of danger. It must never be used for the convenience of service providers or in lieu of effective, less intrusive interventions.

Program providers are required to have processes in place within to manage harmful behavior prior to the use of any restraint on an individual whenever possible. Prior to delivering services, program providers are also required to ensure, that all of their service providers are trained on how to comply with all regulations pertaining to restraints.

During the use of restraint, the health and safety of the individual being restrained must always be protected; ensure proper follow-up by medical professionals; and ensure that any required documentation related to the incident is thorough, accurate, and present in the individual's record for review by authorized parties.

The use of seclusion is prohibited and is considered physical abuse by definition.

Failure to comply with these rules and regulations may not only lead to the imposition of administrative penalties, but, if severe enough, may warrant Provider Investigations involvement, criminal prosecution, contract action, and/or other sanctions against the program provider and relevant associated parties.

### Key Definitions

#### Restraint

Citation: 40 TAC [§9.153\(99\)](#); [§9.553\(84\)](#)

Presentation slide: Module 5, Slide 4

Guidance:

- The TAC definition separates restraint into three categories: physical, mechanical, and chemical.

#### Physical Restraint

Citation: 40 TAC [§9.153\(82\)](#); [§9.553\(70\)](#)

Presentation slide: Module 5, Slide 5

Guidance:

- *Physical restraint* is defined as any manual method used to control an individual's behavior that restricts movement or access by an individual to any part of their body.
- This does not include un-resisted physical guidance or prompting.
- Examples of physical restraints include:

- bed rails that keep an individual from voluntarily getting out of bed;
- holding an individual down in response to behavioral symptoms, or when they refuse care; and
- holding an individual's arm to prevent movement.

## **Mechanical Restraint**

Citation: 40 TAC [§9.153\(68\)](#); [§9.553\(58\)](#)

Presentation slide: Module 5, Slide 6

Guidance:

- A *mechanical restraint* is any device used on a person to control behavior that restricts freedom of movement.
- Examples of a mechanical restraint include:
  - A garment that intentionally restricts an individual's freedom of movement and which is intended for the individual to not be able to remove.
  - Engaging brakes on a wheelchair, walker, or other ambulatory aid to intentionally restrict an individual's freedom of movement.
  - A seatbelt or harness that an individual does not want to use that prevents them being able to release themselves when desired.
  - Mittens (often used to prevent self-injurious behavior)
  - A lap belt or table that secures an individual to a chair or wheelchair which the individual is unable to remove.

## **Chemical Restraint**

Citation: 40 TAC [§9.153\(19\)](#); [§9.553\(17\)](#)

Presentation slide: Module 5, Slide 7

Guidance:

- A *chemical restraint* is any medication used to control an individual's behavior or restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition. To simplify, it is a medication that is not intended to treat a medical symptom but rather to prevent the individual from engaging in an un-desired action or behavior. The use of medication is an intrusive intervention or technique if the medication is prescribed:
  - for the sole purpose of controlling behavioral events (for example, a medication to reduce episodes of physical or verbal aggression, explosive or combative behavior or self-injurious behavior);
  - as needed, to manage an outburst; or
  - to treat a medical condition, with an elevated dose to control undesired behavior.

If an HCS or TxHmL program provider uses medication to control an individual's behavioral events, as described above, the use of that medication is an

intrusive intervention or technique and the program provider must comply with §9.178(q).

## Limitations on Restraint Use

Citation: 40 TAC [§9.179\(a\)](#)

Presentation slide: Module 5, Slides 9-19

Guidance:

- (a)(1) lists prohibited restraint techniques.
- *Example: Non-Critical Violation of (a)(1)*
  - An individual with an extensive history of violence towards self and others makes threats, attempts to grab a knife and other harmful objects from the service provider, and verbally expresses the intent to harm to themselves and others. The service provider, to protect the individual from harm, tries to restrain the individual according to their training. During the struggle over the knife, the individual reaches the floor, and for a brief time, the individual is on their back. It is determined through interview and record review that the staff attempted to utilize the practices within their authorized training to prevent harm to the individual.
  - There is no evidence this was a pattern or widespread throughout the contract, and the individual was not harmed.
  - It's important to note that section 9.179 (f)(3) states that an individual must be released from a restraint once the individual reaches the floor.
- *Example: Immediate Threat/Critical Violation of (a)(1)*
  - A service provider held Individual #01's arms across the chest and applied pressure for an unknown amount of time. The incident report states the behavioral incident lasted 30 minutes. The individual had a history of physically aggressive and self-injurious behaviors. The individual passed away as a result of the provider's actions. There is a second individual in the contract who also requires behavioral interventions that continues to be supported by the same service provider. The circumstances are a pattern throughout the contract and the incident resulted in actual harm to an individual. That makes the violation critical, and an administrative penalty may be imposed.
- Per (a)(2), a program provider must never use restraint in any form to punish an individual, "teach them a lesson," or act out against them in response to a negative circumstance.
- *Example: Non-Critical Violation of (a)(2)*
  - A surveyor interviewed an individual about a restraint used on another individual. The individual stated that the restraint was used because the other individual was displaying behavior the staff member did not like. As a result, the service provider used a restraint. The program provider took corrective action and there was no evidence that this reoccurred. This is an isolated incident that did not result in harm. The program provider took corrective action regarding the staff member.

- *Example: Immediate Threat/Critical Violation of (a)(2)*
  - An individual displayed aggressive behavior toward a service provider and continuously made offensive remarks during their shift. The service provider became fed up with the individual's behavior and when the behavior occurred, secured them in a seat with a tray that the provider knew the individual was unable to remove. There is evidence that the individual experienced psychological distress due to the provider's actions.
  - No corrective action has been taken and the service provider continues to provide services to the individual.
  - This is an immediate threat. This has potential to be a widespread, and there is a need for immediate action as the service provider is still providing services to the individual involved and other individuals in the contract.
- Per (a)(3), a program provider cannot use a restraint for the convenience of a staff member, service provider or other individuals.
- *Example: Non-Critical Violation of (a)(3)*
  - During a visit, the surveyor discovered an isolated incident in which an individual was unnecessarily kept in a seatbelt in their wheelchair by their service provider. There is documentation that the individual has a walking routine, and the seat belt should remain unsecured to encourage mobility, unless the individual is being transported. The service provider kept the seatbelt on for convenience while doing tasks around the home to prevent the individual from getting out of the wheelchair. When the program provider was made aware of the incident, they immediately took disciplinary action and ensured the staff was in-serviced. The example is non-critical because it was an isolated incident with no actual harm and the provider corrected the situation.
- *Example: Immediate Threat/Critical Violation of (a)(3)*
  - The surveyor discovered multiple instances in which an individual was unnecessarily kept in a seatbelt in their wheelchair by two of their service providers. The individual had a walking routine when at home, and the seatbelt should have remained unsecured unless the individual was being transported. The service providers stated that they kept the individual secured in the wheelchair when the residence was understaffed and they needed to finish making meals or supporting other individuals in the residence. On two occasions, it was reported that the individual sustained injuries while attempting to get out of the wheelchair. No corrective action was been taken by the program provider, and the service providers remain employed.
  - The example is critical because the incident occurred more than once, the individual sustained injuries, and no action was been taken by the provider to prevent further harm from occurring. An administrative penalty may be imposed.
- Per (a)(4), a program provider must not use restraint as a substitute for effective treatment or habilitation. For example, a medication cannot be used in lieu of behavioral supports, or a mechanical restraint cannot be applied to aid in mobility in lieu of physical therapy.



- *Example: Critical Violation of (a)(4)*
  - An individual started having behaviors of hitting and grabbing others during transportation for outings in the community. There is evidence that this occurs when the group travels to a specific location and after the individual has returned from visiting with family. The program provider expressed the concern to the individual's psychiatrist, and service providers began to administer a sedative before transporting the individual.
  - There is no evidence that the program provider attempted to address the cause of the aggression, such as adjusting the individual's routine, implementing a Behavior Support Plan, or seeking counseling services to address the sudden change in their behavior.

## When Restraints May Be Used: Behavioral Emergency

Citation: 40 TAC [§9.179\(b\)\(1\)](#); [§9.153\(8\)](#)

Presentation slide: Module 5, Slides 21-23

### Guidance:

- This certification principle would not result in a violation, as this principle permits a provider to use restraint in this manner.
- Behavioral emergencies are a very serious situation for both the individual and those around them. A behavioral emergency is defined as any situation in which an individual displays severely aggressive, destructive, violent, or self-injurious behavior that:
  - poses a potential risk of imminent probable death or substantial bodily harm to the individual or others;
  - does not respond to attempted preventative de-escalation techniques or redirection;
  - is not addressed in a written behavior plan; and
  - does not occur during a medical or dental procedure.
- An example of a behavioral emergency would be an individual who is becoming increasingly upset and erratic. Though they have never displayed elopement behavior in the past, the individual becomes so agitated that they start running into oncoming traffic. The staff member may restrain the individual to prevent serious bodily harm. Note that if the individual continued to display elopement behavior, it would be important for the program provider to notify the individual's Support Planning Team and discuss whether behavioral services are warranted. Restraint should not be used in lieu of effective habilitation or treatment. Therefore, if the instances of behavioral emergencies can be reduced or mitigated with proper intervention, they must be pursued to decrease the use of restraint.

## When Restraints May Be Used: Behavior Support Plan

Citation: 40 TAC [§9.179\(b\)\(2\)](#)

Presentation slide: Module 5, Slides 24-27

### Guidance:

- This certification principle would not result in a violation, as this principle permits a provider to use restraint in this manner.
- If the behavior support plan includes the use of restraint, the program provider must comply with [§9.178\(q\)](#), related to behavior management techniques involving intrusive interventions.
- If a physician prescribes a restraint to prevent involuntary self-injury and there is medical documentation is present to support its use, then this would be an acceptable use of restraint. If the restraint is being used for a behavioral purpose, then a BSP is required.
- Example: An individual tries to “stab” others in the residence with a fork. The individual has injured themselves and others in the past. The individual’s BSP included the use of a restraint to addresses this dangerous behavior. The BSP described how and when to conduct an object removal restraint for the safety of others around them. All service providers have been trained on how to properly complete this task to minimize injury and safeguard the individual and others.
- For rights restrictions, such as adding restraints to a behavior support plan, the individual must have a behavioral assessment.
- The SPT must convene to discuss the concern regarding the individual’s safety and the safety of others around them. The team should review any additional services that can be attempted to remedy the concern or review what services have been used previously that were determined ineffective. The team should consider the effects of the techniques on the individual.
- A program provider is expected to continue providing behavioral supports to the individual for ongoing data collection on the restriction’s effectiveness.
- Before implementing a BSP, a program provider must obtain written consent from the individual or LAR to implement the plan and involve the individual and LAR in plan development.
- A program provider also needs to obtain written notification regarding the right to discontinue the BSP at any time.
- The LIDDA Service Coordinator must be notified of the BSP completion and plan for implementation.
- The BSP should include behavioral data collection and monitoring, allow for flexibility for a decrease or increase in the use of techniques based on data, allow for the revision of the behavior plan if concerning behaviors are not being displayed, and also allow for revision of the plan in its entirety if the techniques are deemed ineffective.

## **When Restraints May Be Used: Medical and Dental Procedures**

Citation: 40 TAC [§9.179\(b\)\(3\)](#)

Presentation slide: Module 5, Slides 28-29

Guidance:

- This certification principle would not result in a violation, as this principle permits a provider to use restraint in this manner.
- During a medical or dental procedure, if necessary, a restraint may be implemented to protect the individual or others. A restraint may also be used during follow-up after a medical or dental procedure or following an injury to promote the healing of wounds.
- An example would be an individual has shoulder surgery and is required to wear a sling with an immobilizer to secure the arm during recovery.

## **When Restraints May Be Used: Protection from Involuntary Self-Injury**

Citation: 40 TAC [§9.179\(b\)\(4\)](#)

Presentation slide: Module 5, Slides 30-31

Guidance:

- This certification principle would not result in a violation, as this principle permits a provider to use restraint in this manner.
- An involuntary self-injury is any action that an individual does that causes injury without the intention of causing injury.
- If a physician prescribes a restraint to prevent involuntary self-injury and there is medical documentation is present to support its use, then this would be an acceptable use of restraint. If the restraint is being used for a behavioral purpose, then a BSP is required.
- An example would be if a helmet is used to protect an individual who has frequent seizure activity that causes them to hit their head against walls and other surfaces.

## **When Restraints May Be Used: Postural Support**

Citation: 40 TAC [§9.179\(b\)\(5\)](#)

Presentation slide: Module 5, Slides 32-34

Guidance:

- This certification principle would not result in a violation, as this principle permits a provider to use restraint in this manner.

- These are devices to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning. The restraint is a device used to achieve proper body position, balance, or alignment. These types of restraints are often prescribed by a primary care physician, physical therapist, or occupational therapist.
- An example of this kind of restraint could be a gait belt that is necessary for walking safety or a harness to keep an individual upright in their wheelchair and to keep them from slumping or falling out.
- Example: an individual utilizes a gait belt prescribe by their physician to ensure their safety while walking. All service providers have been trained on the effective use of this device. A gait belt is necessary to encourage mobility. This is permitted.

## **Restraint Risk Assessment**

Citation: 40 TAC [§9.179\(c\)](#)

Presentation slide: Module 5, Slides 35-44

Guidance:

- This assessment must be completed for individuals who have a BSP that includes the use of restraint, an individual who is at risk of restraint, and/or an individual who has a history of being restrained.
- It is best practice to complete the restraint risk assessment for all individuals served by the program provider as a restraint may occur when there is a sudden and unavoidable risk of harm that cannot be mitigated. An event or circumstance that may ultimately require the use of a restraint can be unpredictable and therefore it cannot always be determined ahead of time whether an individual may ultimately experience a situation that requires a restraint to be used by a service provider to protect themselves or the people around them.
- The intent of the restraint risk assessment to decrease the frequency of the use of restraint and minimize the risk of harm to an individual.
- The program provider is required to involve a physician in the assessment for professional opinion to identify factors that may constitute a risk to the individual during the use of a restraint. The physician may be able to define limitations on a restraint, especially if the individual has a diagnosis such as osteoporosis, a bone loss disorder.
- An individual may exhibit dangerous behaviors while also having osteoporosis. The physician would be able to explain to the team and provider staff the limitations of force and exertion that a restraint may pose on that person to keep them safe and reduce the likelihood of restraint injuries.
- Best practice is to complete a restraint risk assessment for all individuals, but current rule does not have this as a requirement. It must be completed for individuals who have a BSP that includes the use of restraint, individuals at risk of restraint, and individuals with a history of being restrained. There is

no specific form required. Any assessment used needs to include the elements outlined in the rule.

- The restraint risk assessment must include the individual's cognitive functioning level, height, weight, emotional condition (including history of sexual or physical abuse), and age.
- The physician is NOT required to sign the assessment if they do not wish to do so. In this instance, the program provider would be expected to provide documentation indicating how and when the physician was involved. The purpose of the assessment is to identify how the individual may be harmed if a restraint was used.
- TAC requires the involvement of a physician to identify risk factors, but an RN or LVN can conduct the annual review and update it as needed.
- A psychologist would not meet the definition of a physician, and therefore would not satisfy the requirement that a physician be involved.
- *Example: Non-Critical Violation of (c)(1)*
  - Based on interviews, observation and record reviews, the provider failed to maintain documentation showing that a restraint risk assessment was completed with the involvement of a physician for four individuals requiring a restraint risk assessment. There is no evidence the individuals were harmed by use of the restraint.
- *Example: Critical Violation of (c)(1)*
  - Two individuals who have a BSP that includes the use of restraint do not have a restraint risk assessment in their record. Individual #01 is diagnosed with osteoporosis and was seriously injured as a result of the restraint. Their physician noted during a follow-up visit that restraint should never be used on the individual due to their diagnoses. Individual #02 has a history of being physically and sexually abused by others. Review of the record reveals that the individual has not been responding well since the implementation of the BSP with restraint and incident reports indicate that the individual exhibits signs of emotional distress and withdrawing from others. This example is critical because there is a widespread scope and there is potential and actual harm.
- Once any conditions, factors, or limitations on specific restraint techniques or mechanical restraint devices are identified, they should be documented in the individual's record. This information is used to determine the various limitations or restraints that can be applied or placed on the behavioral plan.
- *Example: Non-Critical Violation of (c)(2)*
  - Record review revealed that the restraint risk assessment for an individual who had a BSP that included the use of restraint did not include the weight, height, or age of the individual. During interview, the RN stated they were aware of the missing elements on the risk assessment and had intended to go back and complete the form but had forgotten to do so. Further investigation showed the individual had not been restrained during the review period.
- *Example: Critical Violation of (c)(2)*
  - There are multiple instances of restraint being used in response to behavioral emergencies for multiple individuals in the contract. There is

- no evidence for any of the individuals in the survey sample that their restraint risk assessments indicate limitations on specific restraint techniques. For the critical example, this violation was pervasive throughout the contract or there was actual harm that occurred for multiple individuals, so the severity would rise to critical and an administrative penalty may be imposed.
- The individual's medical team must keep their medical documentation updated. This helps to ensure the behavior plan is kept current and staff are aware of the individual's current restraint limitations and health concerns. Staff must have knowledge of these changes to decrease the risk of harm to the individual during the use of restraint.
  - *Example: Non-Critical Violation of (c)(3)*
    - There was no evidence that the restraint risk assessment was reviewed and updated at least annually by a physician or nurse for one individual in the survey sample. This could result in the provider not ensuring that all conditions, factors or limitations for the individual are taken into account when assessing for possible risks if a restraint is used.

## Applying Restraints: Considerations

Citation: 40 TAC [§9.179\(d\)\(1\)](#)

Presentation slide: Module 5, Slides 45-46

Guidance:

- If a program provider restrains an individual, the program provider must consider the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices.
- Remember that §9.179(b) refers to when a restraint can be used. The rules mandate that providers consider all aspects of the individual when using a restraint. For example, if the provider staff needs to conduct a restraint in a behavioral emergency and that staff is aware the individual has a medical limitation, that knowledge can be used by the staff to determine what kind of restraint might be appropriate.
- *Example: Critical Violation*
  - The program provider failed to ensure that 3 individuals were free from the use of helmets and arm braces which were used as mechanical restraints. Their service providers had been using these restraints without an assessment of their appropriateness, without any established guidelines, and without any documentation that supported the individuals' response to the restraints. It is unclear how limiting the individuals' freedom of movement affected the individuals or subsequently, how it would be reviewed by their physicians.
  - For this example, the scope is widespread because several individuals have been affected across the contract. There is a violation with the certification principles. There is potential or possibly actual harm caused to these individuals. If an individual had been harmed by the use of the restraints and had a life-threatening contraindication, the severity would

rise to immediate threat and a plan of removal would be required. If the individual had been harmed but it was not life threatening, it would be actual harm. Both scenarios would result in a critical violation, and an administrative penalty may be imposed.

## **Applying Restraints: Force and Pressure**

Citation: 40 TAC [§9.179\(d\)\(2\)](#)

Presentation slide: Module 5, Slide 47

Guidance:

- This certification principle would not result in a violation, as this principle permits a provider to use restraint in this manner. Failure to adhere to this could result in a violation under a different certification principle.
- §9.179(b) refers to when a restraint can be used. This regulation ensures that providers are using the minimal amount of force or pressure during a restraint on an individual.

## **Applying Restraints: Dignity, Privacy, Well-Being**

Citation: 40 TAC [§9.179\(d\)\(3\)](#)

Presentation slide: Module 5, Slide 48

Guidance:

- If a restraint is used in accordance with §9.179(b), the privacy, dignity, and well-being of the individual must be safeguarded. An example of safeguarding privacy during a restraint could be using a privacy screen.

## **Applying Restraints: Stationary Objects**

Citation: 40 TAC [§9.179\(d\)\(4\)](#)

Presentation slide: Module 5, Slide 49

Guidance:

- If a restraint is used during a behavioral emergency, the individual must not be secured to a stationary object while in a standing position.

## **Applying Restraints: Holds**

Citation: 40 TAC [§9.179\(e\)](#)

Presentation slide: Module 5, Slides 50-51

Guidance:

- A program provider may use a restraint hold in which the individual's limbs are held close to the body to limit or prevent movement only if the restraint is occurring due to a behavioral emergency or the restraint is part of a BSP



that addresses inappropriate behavior. Remember, §9.179(a)(1) describes the manners in which a restraint cannot be used.

- *Example: Immediate Threat/Critical Violation*
  - A service provider held Individual #01's arms across the chest and applied pressure for an unknown amount of time. The incident report stated the behavioral incident lasted 30 minutes. The individual died as a result, and the cause of death was confirmed by the autopsy report to be asphyxiation due to the incident. The individual had a history of physically aggressive and self-injurious behaviors. There is a second individual who requires behavioral interventions and continues to be supported by the same service provider. In this example, the service provider held the individual in an improper restraint hold, and the individual died as a result. The same service provider is continuing to provide services.

## Releasing the Restraint

Citation: 40 TAC [§9.179\(f\)](#)

Presentation slide: Module 5, Slides 52-53

Guidance:

- An individual must be released from a restraint as soon as the individual does not pose a risk of physical harm to themselves or others around them. They must be released if the individual experiences a medical emergency. As soon as an individual in a restraint hold who is moving to the floor reaches the floor, they must be released.
- When an individual is restrained, staff should be aware of the individual's well-being to ensure a release is made correctly and at the right time. The program provider must ensure the restraint is used correctly and that the individual is released in a timely manner to uphold their dignity.
- *Example: Immediate Threat/Critical Violation*
  - A service provider physically restrained an individual even after they stopped resisting and there was no longer an imminent risk of harm. The restraint continued after individual reached the floor. The individual was reported to be making sounds indicating they were struggling to breathe. The individual died as a result of the incident. The service provider continues to provide services to other individuals in the contract.
  - In this example, the service provider restrained the individual and continued to do so even after they stopped resisting and the individual was on the floor, and continued to do so when there was no longer risk for harm. The individual was struggling to breathe and died. The same service provider continued providing services to other individuals in the contract.

## Actions After Use of a Restraint in a Behavioral Emergency

Citation: 40 TAC [§9.179\(g\)](#)

Presentation slide: Module 5, Slides 54-56

Guidance:

- If a restraint is necessary during a behavioral emergency there are several steps to ensure proper documentation and follow up are conducted according to §9.179(g). The program provider must:
  - notify the nurse as soon as possible, but not more than one hour after the restraint was used;
  - ensure that proper medical care is obtained as needed;
  - notify the individual's LAR or actively involved person of the restraint as soon as possible but no more than 24 hours after the occurrence; and
  - notify the service coordinator within the first business day after a restraint occurs.
- *Example: Non-Critical Violation*
  - The individual was restrained during a behavioral emergency, and there was no documentation that the necessary notifications were made within the required timelines. Medical documentation was also unavailable. The individual was injured during the restraint, but the injury was not life-threatening.
- *Example: Critical Violation*
  - During observation, Individual #3 was observed in bed dressed in a long-sleeve shirt with both sleeves tied in a knot at the ends. The surveyor observed that the individual's right arm and hand were swollen and discolored, with red and black wounds on the individual's hand. The bandage was observed to be dirty with visible drainage on it. Record review revealed no documentation that an LVN or RN had been notified of the individual being placed in a restraint, no documentation that the individual was being released from the restraint and assessed by an RN or LVN, and no documentation that this type of restraint was authorized. Further, the surveyor found no evidence the service coordinator or LAR was notified of the restraint. The individual was transported to the hospital and his right hand and arm were surgically amputated from the elbow down.

## Release of Information

Citation: 40 TAC [§9.179\(h\)](#)

Presentation slide: Module 5, Slides 57-59

Guidance:

- Program providers must adhere to HIPPA rules when disclosing personal health information (PHI), which includes PHI related to restraints.

- *Example: Non-Critical Violation*
  - The surveyor did not find a documented release of PHI signed by the individual allowing the program provider to discuss this information with the person they notified about the restraint. Since the information provided to the unauthorized party did not result in actual harm to the individual and there was no indication harm was likely to occur, the violation is non-critical.
- *Example: Critical Violation*
  - The surveyor did not find a documented release of PHI signed by the individual for the program provider to discuss this information with the person they notified about the restraint. The program provider released the information to a person who was not authorized, and the information resulted in psychological distress to the individual. Therefore, this would be a critical violation.

## Nursing Requirements

Citation: 40 TAC [§9.174\(a\)\(31\)\(C\)](#); [§9.174\(a\)\(31\)\(H\)](#); [§9.174\(a\)\(31\)\(J\)\(i\)\(II\)](#)

Presentation slide: Module 5, Slide 60

Guidance:

- A nurse is responsible for key factors to uphold the individual's health and safety in regard to restraints.
- Per §9.174(a)(31)(C), nurses must monitor health risks, health data, and health information regularly. The nurse must be aware of the most current health risks the individual has, which can affect how restraint is used.
- Per §9.174(a)(31)(H), nurses are responsible for relaying that health information to unlicensed service providers. The nurse is responsible for instructing unlicensed staff about the health needs of the individual which may include how to properly apply a restraint if warranted to keep the individual free from harm.
- Per §9.174(a)(31)(J)(i)(II), nursing assessments must be completed to include as needed assessments for health changes. Nurses must assess the individual's health regularly. If there are changes, this may warrant a revisit of whether restraint is still deemed safe for the individual.

## Critical Incidents

Citation: 40 TAC [§9.178\(t\)](#)

Presentation slide: Module 5, Slide 61

Guidance:

- Restraints must be reported as critical incidents. The program provider is required to enter the use of restraints by type in the HHSC data system, also referred to as CARE.

- Critical incidents must be entered no later than the last calendar day of the month the restraint occurred.
- All restraints must be documented in CARE as a critical incident, including those that are included in a behavioral support plan. This does not include restraints used as part of a medical or dental procedure, a protective device used for the purposes of protecting the individual from involuntary self-injury, or postural support.

## Documentation Requirements

Citation: 40 TAC [§9.174\(a\)\(31\)\(J\)](#); [§9.174\(a\)\(53\)\(I\)](#); [§9.174\(a\)\(53\)\(K\)](#); [§9.177\(a\)](#); [§9.177\(d\)\(1\)](#); [§9.178\(d\)\(1\)](#); [§9.178\(t\)](#)

Presentation slide: Module 5, Slide 62

Guidance:

- The person directed plan (PDP) must include the restraint (§9.174(a)(53)(K)).
- A nursing assessment must be completed (§9.174(a)(31)(J)).
- Training documents on the needs of the individual and the use of the restraint for staff must be kept (§9.177(d)(1)).
- Continuous availability of trained and qualified service providers in the use of the restraint must be provided (§9.177(a)).
- Emergency plans must be on file (§9.178(d)(1)).
- Critical incidents must be documented appropriately and must be entered into HHSC data system/CARE (§9.178(t)).
- The ICAP must be updated as needed with the most current information on the individual (§9.174(a)(53)(I)).

## Prohibition of Seclusion

Citation: 40 TAC [§9.180](#); [§9.584](#); [§9.153\(75\)](#); [§9.553\(63\)](#)

Presentation slide: Module 5, Slides 64-65

Guidance:

- Seclusion is the involuntary placement of an individual alone in an area from which the individual is prevented from leaving. It is defined as isolation.
- Seclusion is a prohibited practice in the HCS/TxHmL/CFC programs.
- Seclusion is defined as abuse in the TAC, under the definition of *physical abuse*.
- [Texas law](#) says anyone who thinks an adult with disabilities is being abused, neglected, or exploited must report it to Provider Investigations (reports of ANE are initiated from the same source through DFPS Statewide Intake and are routed to the appropriate party). This responsibility is true for program providers, surveyors, and everyday citizens alike. A person who reports abuse in good faith is immune from civil or criminal liability. Provider Investigations keeps the name of the person making the report confidential.

Anyone who does not report suspected abuse can be held liable for a misdemeanor or felony.

- Example of Seclusion:
  - An individual has a lock on the outside of their bedroom door preventing them from being able to exit their room when service providers lock it from the outside.
- *Example: Immediate Threat/Critical Violation*
  - A service provider was confirmed to have locked Individual #01 in a living area so they will not go into other areas of the house while the service provider is completing chores throughout the day. No one else is in that part of the home, so the individual is alone. The service provider stated they felt this was necessary to prevent elopement while they completed other tasks. The individual's record indicates a need for the individual to be kept in the service provider's line of sight to ensure safety. In this example a service provider locked an individual in a living area while they completed chores. The individual is required, according to records, to have line of sight supervision to ensure safety. The service provider said the lock was to prevent elopement.
  - Seclusion is prohibited in the HCS and TxHmL and is a critical violation requiring immediate action, which elevates it to the level of immediate threat.

## 7. Quality Assurance

Quality assurance can be described as a series of administrative and procedural activities implemented to ensure that requirements and goals for services are fulfilled.

### Coordination of Services

Citation: 40 TAC [§9.178\(a\)](#); [§9.580\(a\)\(1\)](#)

Presentation slide: Module 6, Slide 3

Guidance:

- Individuals and their LARs must be informed of the requirements for participating in the HCS and TxHmL programs and must be included in the service planning process and revisions.
- For example, they must be included during the development or revision of the initial and renewal IPC.
- The provider is also responsible for promoting cooperation with other providers, advocates, and other actively involved persons.

### Personalized Service Delivery

Citation: 40 TAC [§9.178\(b\)](#); [§9.580\(a\)\(7\)](#)

Presentation slide: Module 6, Slides 4-5

Guidance:

- Individuals in the HCS and TxHmL programs have the right to receive the services of their choice. It is the program provider's responsibility to assist the individual in accessing those services as much as possible.
- For example, the individual should have their choice of day habilitation providers available. If the day habilitation provider refuses to serve the individual or charges more than the reimbursement rate, the program provider must document good cause for choosing not to contract with the chosen provider and the individual should be given an alternate choice of providers. If the day habilitation provider is not willing to contract with the program provider to provide the services in accordance with TAC requirements, then the program provider would not be required to contract with the day habilitation provider.
- *Example: Non-Critical Violation*
- Three of four individuals in the contract informed the program provider that they would like to attend a different day habilitation program. The program provider informed all individuals in the contract that they will only contract with a specific day habilitation program, and all individuals in the contract must attend that program. If any individuals were harmed as a result, this could be a critical violation.

## On-site Inspection (HCS)

Citation: 40 TAC [§9.178\(c\)](#)

Presentation slide: Module 2, Slide 18; Module 6, Slides 6-7

Guidance:

- The program provider must perform an onsite inspection of the residence before providing services and at least annually to ensure that it meets the individual's needs, is suitable for the individual's abilities, and complies with regulations.
- The Service Coordinator must be provided with a copy of the inspection within five calendar days of completion of the inspection and the program provider should keep documentation that the notification was sent.
- The program provider must also complete any action that is identified in the on-site inspection, such as a repair or installation of a wheelchair ramp for example.
- 40 TAC §9.178(c)(2) is one of the most commonly cited HCS violations. This is the part of the requirement for the program provider to ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection.
- *Example: Non-Critical Violation*
  - The program provider failed to provide evidence that an onsite inspection was conducted prior to providing residential services to one out of four individuals residing in the home. This could result in failure to ensure an individual is living in a healthy, safe and comfortable environment which meets the individual's needs. This was not widespread and there was no adverse impact on the individual, therefore making this a non-critical violation.

## Emergency Plans (HCS)

Citation: 40 TAC [§9.178\(d\)](#)

Presentation slide: Module 6, Slides 8-10

Guidance:

- Preparative actions need to be taken before, during, and after an emergency.
- Emergencies that have happened or could happen in the area around the home must be identified along with actions for each emergency.
- Emergency plans must document all potential emergencies and their required actions and must include pertinent information for each person residing in the home.
- This would include any use of restraint, such as if the individual uses mittens or a helmet to prevent self-injurious behavior. It is important that any persons assisting during an emergency are aware of the appropriate use of restraint, as needed for the individual's safety.



- Providers must consider and customize their emergency plans for all individual needs and staff responsibilities; therefore, it is rare that any two emergency plans would be identical.
- Local emergency management offices can help identify the hazards in the area and outline the local plans and recommendations for each.
- *Example: Non-Critical Violation*
  - The program provider did not have the individual's emergency plans in one of five residences where residential services are provided. The emergency plans reviewed in the program provider's office did not address flooding or tornados, which are both common occurrences in the area. Review of the emergency drills completed in the residence showed they did not follow the protocol outlined in the plans. There were no copies of the emergency drills in the residence. Staff reported that they are required to send the documentation to the office at the end of the month and do not keep current drills in the residence.
- *Example: Critical Violation*
  - The program provider did not have the individuals' emergency plans in any of the five residences where residential services are provided. There has been major flooding in the area in the past year. The emergency plans reviewed in the program provider's office did not address flooding or tornados which are common occurrences in the area.

## Fire Safety Inspection (HCS)

Citation: 40 TAC [§9.178\(e\)\(1\)\(A\)](#)

Presentation slide: Module 6, Slides 11-12

### Guidance:

- Before providing residential support in a four-person residence, the residence must be certified as being in compliance with the Life Safety Code and International Fire Code by the fire safety authority, the fire marshal, or, in some cases, HHSC.
- Prior to requesting a fire marshal inspection, HHSC recommends that you contact your local fire marshal to determine what requirements are necessary to pass the inspection.
- Providers must officially request a fire marshal inspection from the local fire authority that has jurisdiction over the location.
- If the local fire authority refuses to complete an inspection, the refusal must be requested in writing. The program provider must then ask the State Fire Marshal to inspect the home. Information about the State Fire Marshal's Office can be obtained by calling 1-800-578-4677.
- *Example: Non-Critical Violation*
  - For 1 of 3 residences, there is no evidence that a fire safety authority inspected the residence prior to allowing a fourth individual to move in. The residence was in good condition, and the local fire marshal did complete the inspection a week after the fourth individual moved in.

## HHSC Approval of Residence (HCS)

Citation: 40 TAC [§9.178\(e\)\(1\)\(B\)](#); [§9.188](#)

Presentation slide: Module 6, Slides 13-14

Guidance:

- Providers must obtain HHSC approval before providing services in a 4-person residence.
- *Example: Non-Critical Violation*
  - The program provider moved a fourth individual into the residence prior to effective date of the 4-person residence approval.

## Documentation Required for HHSC Approval (HCS)

Citation: 40 TAC [§9.178\(e\)\(2\)](#)

Presentation slide: Module 6, Slides 15-17

Guidance:

- In a residence located in an area with a Fire Safety Authority, if both the local fire authority and the State Fire Marshal refuse to inspect the residence, the provider must obtain written refusal on [HHSC Form 5606 Life Safety Code Certification](#), and a request must be made to HHSC to complete the inspection.
- Program providers must use [HHSC Form 5604 Request for Life Safety Inspection-HCS Four-person Home](#) to request the inspection from HHSC.
- After initial full approval of a four-person residence, the program provider is required to maintain current annual fire marshal certifications to maintain HHSC approval of the residence.
- In an area without a local fire safety authority, there must be written documentation from the fire marshal's office that it refused to inspect the residence and [HHSC Form 5604 Request for Life Safety Inspection-HCS Four-person Home](#) must be submitted to HHSC to request inspection.
- *Example: Non-Critical Violation*
  - The program provider is in an area that is in the jurisdiction of the fire safety authority and state they are not able to obtain an inspection from the fire marshal. There is no evidence that the program provider attempted to obtain the inspection using the appropriate forms.
  - This could become critical if this non-compliance was widespread and individuals were at risk of harm due to the condition of the residence and the provider's failure to obtain an inspection.

## Annual Certification (HCS)

Citation: 40 TAC [§9.178\(e\)\(3\)](#)

Presentation slide: Module 6, Slides 18-19

Guidance:

- The program provider must obtain the certification annually.
- Each four-person residence must be in continuous compliance with all applicable local building codes and ordinances and state and federal laws, rules, and regulations.
- A four-person residence must keep a copy of the most recent fire marshal inspection in the home. A program provider can ask the local fire authority to complete [HHSC Form 5606 Life Safety Code Certification](#), in addition to the Fire Marshal Inspection. Please note that, if used, HHSC Form 5606 must be completed by the fire marshal, not by the provider.
- This form is optional, but it provides details on the type of certification used by the fire marshal. Form 5606 can also be used to document the local fire authority's refusal to complete the inspection.
- *Example: Non-Critical Violation*
  - One of the residences visited during the survey did not have a copy of the current fire marshal inspection inside the residence but had copies from past inspections.

## Consumer/Advocate Advisory Committee (HCS)

Citation: 40 TAC [§9.178\(f\)](#)

Presentation slide: Module 6, Slides 20-22

Guidance:

- The program provider must establish a consumer/advocate advisory committee that meets at least quarterly. The committee is responsible for making recommendations for improvements to the processes and operations of the provider. These meetings do not have to be held in person.
- Note that this rule refers to §9.178(k)(6), which is the requirement that the provider give to the committee all information the provider reviewed, evaluated, and created, including final, redacted reports of ANE.
- Even if all ANE cases are unconfirmed, the committee still needs to review the final reports. The requirement relates to all final investigative reports and is not specific to the outcome.
- *Example: Non-Critical Violation*
  - There was no evidence ongoing consumer/advocate advisory committee meeting were being conducted quarterly. Record review revealed documentation of an annual meeting of the committee, but there was no evidence the committee met quarterly as required.
- *Example: Non-Critical Violation*
  - There was no evidence that the required information was reviewed during any of the consumer/advocate advisory committee meetings held in the past year. Remember, the committee must review annually all information the provider reviewed, evaluated, and created, including final reports of ANE.

## Availability of Records

Citation: 40 TAC [§9.178\(g\)](#); [§9.580\(b\)](#)

Presentation slide: Module 2, Slide 12; Module 6, Slides 23-24

Guidance:

- §9.178(g) is one of the most commonly cited HCS violations.
- Provider records must be available and delivered as requested to all authorized agencies (e.g., CMS, HHSC, Provider Investigations, etc.).
- A violation can include the program provider not providing a copy of requested documentation, such as background check verification, or he provider's refusal to provide access to requested information or refusing an interview with a staff member. This is also cited when a program provider fails to participate in the survey such as restricting surveyor access to prevent survey, failure to show up for survey, or restricting access to the locations where the documentation is stored.
- *Example: Non-critical violation*
  - The HHSC Risk Assessment Coordinator requested additional documents related to the death of an individual, including the most recent Person Directed Plan and Implementation Plan. The program provider did not submit the requested documentation to the Risk Assessment Coordinator within the requested time frame and was unresponsive to follow-up requests.

## Satisfaction Survey

Citation: 40 TAC [§9.178\(h\)](#); [§9.580\(c\)](#)

Presentation slide: Module 6, Slides 25-26

Guidance:

- Program providers must assess for satisfaction at least yearly and address any areas of dissatisfaction.
- TAC §9.178(h) requires that a satisfaction survey of individuals and LARs be conducted at least annually, but the program provider may choose to include HH/CC providers as well. The rule requires the survey be conducted at least annually but does not specify a timeline of when during the year it must be completed.
- *Example: Non-Critical violation*
  - The program provider failed to show evidence that satisfaction surveys were sent to 9 out of 13 individuals in the survey sample. By not assessing the individuals' satisfaction with services, this failure placed individuals at risk of not having their needs met by the program provider.

## Approval of Restrictions (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(5\)](#)

Presentation slide: Module 6, Slides 27-29

Guidance:

- Sometimes there may be changes necessary in daily life restrictions to ensure the health and safety of an individual. The SPT must meet and approve these restrictions.
- *Example: Non-Critical Violation*
  - There was no evidence for one of the individuals in the contract that the SPT met to discuss restriction of water intake due to the individual's kidney disease. There were no other individuals found to have had their rights restricted.
- *Example: Critical Violation*
  - There are multiples instances in which the program provider was found to have implemented restrictions on individuals before the SPT met to discuss the restrictions. One of the individuals was injured as a result, and the Service Coordinator did not agree that it ever should have been in place.

## Complaint Process

Citation: 40 TAC [§9.178\(i\)](#); [§9.580\(d\)](#); [§49.309](#)

Presentation slide: Module 6, Slides 30-31

Guidance:

- 40 TAC §49.309 describes the complaint process and requirements related to contractors.
- The program provider must develop and implement written procedures for investigating and resolving a complaint about services provided, other than an allegation of ANE. There must be an internal process that follows the guidelines in §49.309 to address complaints.
- A complaint may be reported to the [Office of the IDD Ombudsman](#) by anyone by calling 800-252-8154 between 8 a.m. and 5 p.m. Monday through Friday.
- *Example: Non-Critical Violation*
  - The program provider does not provide the required information to the complainant following an investigation and resolution.

## Required Posting for Respite Facilities/Residences

Citation: 40 TAC [§9.178\(j\)](#); [§9.580\(e\)](#)

Presentation slide: Module 6, Slides 32-33

Guidance:

- Any respite facilities or residences in which service providers or program providers have a property interest must have the following information posted in a visible area:
  - the name, address, and phone number of the program provider;
  - the effective date of the contract; and
  - the name of the legal entity on the contract.

- *Example: Non-Critical Violation*
  - During one home visit, there was no evidence that the program provider posted the required information in the residence.

## Annual Evaluation (HCS)

Citation: 40 TAC [§9.178\(k\)\(1\)](#)

Presentation slide: Module 6, Slides 34-35

Guidance:

- TAC §9.178(h) referred to annual satisfaction surveys. The information obtained from these surveys must be evaluated by the provider at least annually to identify areas for process improvements.
- *Example: Non-Critical Violation*
  - There is no evidence that the program provider evaluated satisfaction surveys. The program provider indicated that the surveys were mailed late and they were unable to evaluate the results.

## Annual Review of Complaints

Citation: 40 TAC [§9.178\(k\)\(2\)](#); [§9.580\(f\)\(2\)](#); [§49.309](#)

Presentation slide: Module 6, Slides 36-37

Guidance:

- This rule refers to 40 TAC §49.309, which discusses the complaint process and requirements of contractors.
- The program provider is required to review all complaints at least annually to identify any improvements that are needed. Reviewing this information can assist in helping to improve satisfaction.
- *Example: Non-Critical Violation*
  - There is no evidence that the program provider has reviewed complaints received within the last certification year. This has resulted in an inability to resolve areas of dissatisfaction or improve program processes.

## Annual Review of Final Investigation Reports

Citation: 40 TAC [§9.178\(k\)\(3\)](#); [§9.580\(f\)\(1\)](#)

Presentation slide: Module 6, Slides 38-39

Guidance:

- A program provider must also review HHSC investigative reports at least annually.
- Analyzing this information provides the opportunity to understand any deficits in how services are delivered, any process improvement concerns, and can help address any patterns that may affect the health and safety of the individuals served.
- *Example: Non-Critical Violation*

- Review of the documentation reveals that the program provider did not review all of the final investigative reports.

## Annual Review of Terminations

Citation: 40 TAC [§9.178\(k\)\(4\)](#); [§9.580\(f\)\(3\)](#)

Presentation slide: Module 6, Slides 40-41

Guidance:

- Reviewing terminations and the information behind them can also help a program provider understand if there are areas that need improvement. This will bring to light if an individual was unhappy with a particular service provider, whether the provider addressed any concerns the LAR had, or whether there were any patterns to why individuals terminated services.
- Note that the TxHmL rule also requires a review of suspensions and transfers.
- *Example: Non-Critical Violation*
  - There was no evidence that the program provider reviewed the information related to three terminations that occurred during the program year and identified any related need for program process improvements.
  - This may become a critical violation if there was evidence of a trend in why the individuals terminated their services with the program provider.

## Annual Review of Critical Incident Data

Citation: 40 TAC [§9.178\(k\)\(5\)](#); [§9.580\(f\)\(4\)](#)

Presentation slide: Module 6, Slide 42

Guidance:

- The program provider must review critical incident data for patterns, widespread concerns, and to analyze how to improve service delivery.
- HHSC has a [website](#) that posts HCS aggregate restraint data. Providers can use the restraint aggregate data comparison in their review.
- When reviewing the data, it is important to note any high ratios of restraints. By using the spreadsheet, providers can compare their restraint ratio to the overall ratio in the program. This can help to identify where the program provider is at compared to other program providers. If the ratio is high, providers can investigate further to see if anything could have been done differently with services or behavioral interventions.

## Recommendations from the Consumer/Advocate Advisory Committee (HCS)

Citation: 40 TAC [§9.178\(k\)\(6\)-\(8\)](#)

Presentation slide: Module 6, Slides 43-44



Guidance:

- Once the program provider has reviewed and gathered the annual information required in (k)(1)-(k)(5) (e.g., satisfaction, complaints, terminations, and critical incident data), that data must be reviewed by the consumer/advocate advisory committee described in §9.178(f).
- The program provider must begin any process improvements identified as a result of this data and implement any recommendations from the committee.
- *Example: Non-Critical Violation*
  - The program provider gave incorrect or incomplete information to the committee, such as the actual incident rate of confirmed ANE, calls to 911, emergency room admissions, or other information.
- *Example: Non-Critical Violation*
  - During review of the information gathered and prepared by provider, it is found that the provider recommended a quality monitoring program for service delivery; however, this recommendation was never implemented.
- *Example: Non-Critical Violation*
  - The committee made a recommendation for refresher training on behavioral interventions in order to reduce incidents of physical and/or verbal abuse. The provider agreed with committee's recommendation but did not implement it.

## Personal Health Information (PHI)

Citation: 40 TAC [§9.178\(l\)](#); [§9.580\(g\)](#)

Presentation slide: Module 6, Slides 45-46

Guidance:

- PHI, such as names, addresses or records created or obtained by the program provider or its contractors, should not be used or disclosed unless this information is directly related to program use and there is a signed disclosure by the individual and/or the LAR.
- *Example: Non-Critical Violation*
  - During review of the consumer/advocate advisory committee meeting minutes, it was noted that the program provider did not redact the names of individuals described in the review of the Provider Investigations reports. There was no evidence that the individuals or LARs consented to the information being shared.
  - This could become a critical violation if individuals were harmed or placed at risk in multiple circumstances due to the provider's failure to protect this information.

## Room Costs (HCS)

Citation: 40 TAC [§9.178\(m\)\(1\)\(A\)](#)

Presentation slide: Module 6, Slides 48-49

Guidance:

- Room costs collected by the provider must be equal to a comparable, unfurnished home in the area in which the home is located.
- Ownership expenses (e.g., the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance) can be incorporated into the cost of the room.
- All individuals who reside in a 3-person or 4-person residence must have a written room and board agreement, even if the program provider is not the representative payee for the individual.
- Room and board calculations are based on the criteria outlined in TAC §9.178(m)(1), for room costs, and TAC §9.178(m)(2), for board costs. The cost cannot exceed this amount.
- Any changes that occur must be provided to the individual/LAR for agreement prior to the charges being assessed.
- *Example: Non-Critical Violation*
  - During review of the records there was evidence that at one of the residences the individuals were being charged at a higher rate than is comparable to the other residences in the neighborhood. The program provider took action to address this.
  - This may elevate to a critical violation if the individuals experienced financial strain as a result or if there were multiple areas of noncompliance.

## Other Allowable Room Costs (HCS)

Citation: 40 TAC [§9.178\(m\)\(1\)\(B\)](#)

Presentation slide: Module 6, Slides 50-52

Guidance:

- The program provider can also incorporate the following items into the overall room charges:
  - shared appliances, electronics, housewares, and furniture;
  - security or fire alarm system monitoring;
  - property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;
  - utilities, which are limited to gas, water, electricity, garbage collection, and a landline (not cell) phone; and
  - shared internet services used by the individuals living in the residence.
- Program providers can review the previous year's charges to establish a baseline for expenses that fluctuate each month, such as utilities. The room and board agreement would then include a statement such as, "no more than X dollars per month." If the charges exceed this amount and the provider chooses to request reimbursement, the program provider would obtain consent from the individual or LAR prior to assessing those charges to the individual's account.

- If the individual has a target behavior of property destruction that is being addressed through a BSP, any requirement to pay for damages should be included as part of the plan. However, if the individual destroys property and does not have a BSP, the program provider and the individual or LAR should discuss the damage and determine if the individual should be held responsible and if behavioral supports should be added to the IPC. With or without a BSP, the individual or LAR and the program provider should agree on the reimbursement amount for property damages. The program provider is required to obtain the individual or LAR's approval prior to charging the individual any amount for reimbursement or repair of destroyed items. Documentation of individual or LAR approval of reimbursement would be separate from the room and board agreement.
- *Example: Non-Critical Violation*
  - There was evidence that an individual was being charged for additional expenses aside from what is listed as acceptable. There was no evidence that the individual experienced financial harm and the program provider made an effort to rectify the situation and remove the additional costs.
- *Example: Critical Violation*
  - There was evidence that 9 out of 12 individuals were charged for multiple items, such as shared television and telephone use, which are acceptable costs, but there were no televisions or telephones present in the residences. When interviewed, several of the individuals reported feeling upset about the incident, thus experiencing emotional harm.

## Board Costs (HCS)

Citation: 40 TAC [§9.178\(m\)\(2\)](#)

Presentation slide: Module 6, Slides 53-55

Guidance:

- Program providers must collect a monthly board expense from the individuals in 3- and 4-person residences.
- The board cost must **only** consist of food costs, which includes supplies used for cooking and serving food, utensils, and paper products.
- Board does not have to be collected if it causes an individual receiving the Supplemental Nutrition Assistance Program (SNAP) to be ineligible.
- Individuals who wish to purchase their own food can do so, and the provider must not charge them for board. This must be documented in the implementation plan.
- *Example: Non-Critical Violation*
  - Review of one individual's implementation plan revealed that the individual purchases their own food. Review of the board charges revealed that for one month the individual was charged for food. The program provider became aware of the issue and evidence was provided that the individual was reimbursed
- *Example: Critical Violation*

- Review of 10 out of 12 individuals' finances revealed that, due to the cost of the board charges, the individuals became ineligible for the Supplemental Nutrition Assistance Program. There was no evidence that the program provider attempted to rectify the concern in any of these cases. Multiple individuals experienced financial harm due to the high board costs.

## Calculating Maximum Board Costs (HCS)

Citation: 40 TAC [§9.178\(m\)\(3\)](#)

Presentation slide: Module 6, Slides 56-58

Guidance:

- All individuals have the right to be informed orally and in writing of any charges assessed by the program provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status.
- All expenses must be divided evenly by the maximum number of individuals that can reside in the residence.
- To determine the maximum room and board charge for each individual, a program provider must:
  - Divide the room cost by the number of residents receiving HCS or similar services that the residence has been developed to support, plus the number of service providers and other persons who live in the residence.
    - ◊ For example, if the home can accommodate three individuals, room and utilities cost should be divided by three, even if only two individuals reside in the residence. If two individuals and two service providers reside in the residence, the room and utilities cost is divided by five.
  - Divide the board cost by the number of persons consuming the food.
  - Add the amounts calculated to get the total amount.
- Example:
  - Room cost is \$1200, and there are 4 individuals living in the home: divide \$1200 by 4, which equals \$300 each for the room.
  - Cost for board totals \$600 for 4 people: divide \$600 by 4, which equals \$150 per person for board.
  - Add the per person room (\$300) and board (\$150) costs to obtain the maximum allowable amount, or \$450 per individual for room and board.
- *Example: Non-Critical Violation*
  - There is no evidence in the record to show how the program provider calculated the room and board for the individuals in the survey sample.

## No Cost Increase When Residents Move (HCS)

Citation: 40 TAC [§9.178\(m\)\(4\)](#)

Presentation slide: Module 6, Slides 59-60

Guidance:

- When an individual changes residences, the individuals already living in that residence cannot be charged more because the individual that moved is no longer paying room and board. Individuals are free to move as they wish and this should not affect the other individuals in the residence.
- Room and board is calculated according to the number of people who **can** live in the residence, not the number of individuals who are actually living there.
- Room and board charges cannot change based on individuals moving in and out.
- *Example: Critical Violation*
  - Evidence in the record revealed that the rent of 3 out of 3 individuals residing in a four-person residence was increased due to one of their housemates leaving the residence. There was evidence that they experienced financial harm due to their increased rent and did not have funds remaining to pay for critical items.
  - This may be downgraded to non-critical if this occurred as an isolated incident and the individuals did not experience substantial financial harm as a result.

## Evidence of Calculation (HCS)

Citation: 40 TAC [§9.178\(m\)\(5\)](#)

Presentation slide: Module 6, Slide 61

Guidance:

- Room and board cannot exceed the calculated amount described in §9.178(m)(3). There must be evidence of how the room and board was calculated to ensure it was calculated properly.
- The program provider cannot charge higher room and board that exceeds amount determined according to rule, even if the individual or LAR approves a higher rate.

## Advance Notice of Room and Board (HCS)

Citation: 40 TAC [§9.178\(m\)\(6\)](#)

Presentation slide: Module 6, Slides 62-63

Guidance:

- Before the individual moves into a residence, the program provider must give the individual and LAR the actual cost of room and board in writing.
- This helps to ensure that the cost does not change mid-move, and that there is no confusion as to how much must be paid. The room and board agreement shows that the charges are agreed upon by all parties involved.
- *Example: Non-Critical Violation*

- There was no evidence that the program provider gave the individual or LAR written documentation of the room and board charges. This was confirmed during the interview with the individual and their LAR.

## Room and Board: HH/CC (HCS)

Citation: 40 TAC [§9.178\(m\)\(7\)-\(8\)](#)

Presentation slide: Module 6, Slide 64

Guidance:

- Room and board calculations described in TAC §9.178(m) only apply to individuals who reside in a 3-person or 4-person residence.
- Program providers cannot charge an individual for room reimbursement when they live in a HH/CC care setting, **unless** it is during the time when the individual is waiting for state or federal benefits to be approved.
- The program provider may seek reimbursement for these payments from the individual or LAR.

## Fund Management: HH/CC (HCS)

Citation: 40 TAC [§9.178\(m\)\(9\)](#)

Presentation slide: Module 6, Slides 65-66

Guidance:

- A program provider who manages an individual's personal funds who receives HH/CC may pay a room and board charge that is less than the foster/companion care provider's cost of room and board.
- Charges for room for an individual in a host home must be paid directly from the individual's account. This helps to track expenses and prevents the provider's and individual's funds from co-mingling.
- *Example: Non-Critical Violation*
  - Review of the individuals' financial records revealed that multiple host home providers received higher amounts for room and board than was determined in the calculation for the costs. There was no evidence that the program provider tried to rectify the issue or provide reimbursement for the discrepancy.

## Reasonable Charges

Citation: 40 TAC [§9.178\(m\)\(10\)](#); [§9.580\(h\)\(2\)](#)

Presentation slide: Module 6, Slides 67-68

Guidance:

- Individuals should not be charged more for items or services than what is comparable in the community. It's helpful to find at least 3 similar items for

comparison, especially for large purchases and attach a printed copy to their account statements.

- *Example: Critical Violation*
  - Review of 5 of 5 individuals' records revealed that they were being charged higher amounts for items that they were interested in than is comparable for what can be purchased in the local stores. There was no evidence that the program provider attempted to rectify the issue, and the individuals experienced financial harm due to the excessive overcharging for items that they desired to have purchased.

## Consent to Charges

Citation: 40 TAC [§9.178\(n\)](#); [§9.580\(h\)\(1\)](#)

Presentation slide: Module 6, Slide 69

Guidance:

- The LAR and individual must be made aware of any charges prior to the provider taking funds from the individual's personal account, and they must agree to these charges in writing.
- It is important that they have the choice whether to pay for these charges and that there is a discussion of why the charges are assessed.

## Reimbursed Expenses

Citation: 40 TAC [§9.178\(o\)](#); [§9.580\(i\)](#)

Presentation slide: Module 6, Slide 70

Guidance:

- Individuals are not financially responsible for costs of items that are covered by the program they participate in.
- An individual or LAR may choose to purchase an item that is reimbursable through the waiver, but the program provider must inform them that the items are covered by the waiver; however, they can choose to purchase items with their own funds.

## Money Management

Citation: 40 TAC [§9.173\(b\)\(30\)](#); [§9.580\(j\)\(1\)-\(2\)](#)

Presentation slide: Module 6, Slide 71

Guidance:

- An individual has the right to receive counseling concerning the use of his or her money.
- Program providers are obligated to manage an individual's money without charge to the individual or LAR upon written request from the individual or LAR.



- An individual should have personal spending money and be able to use this money as desired.
- The individual's ability to handle money should be assessed to get a better idea of what skills can be taught to help to reduce the risk of exploitation.
- An individual or LAR has the right to look at the individual's financial records at any time.
- The program provider must not commingle the individual's personal funds with the program provider's funds.
- See 40 TAC §9.173(b)(30)-(32).

## Record of Deposits/Expenditures

Citation: 40 TAC [§9.178\(p\)\(2\)](#); [§9.580\(j\)\(3\)](#)

Presentation slide: Module 6, Slides 72-73

Guidance:

- The program provider must track all expenses and deposits for the individual's account. This is to ensure there is adequate documentation on how the provider is managing the individual's account.
- Each document of deposit and withdrawal must include:
  - the amount of the expense or deposit;
  - the date; and
  - to whom an expenditure was made.
- If an individual receives funds for personal spending, they must sign a document stating they received the funds.
- *Example: Non-critical Violation*
  - Review of the financial records revealed that the program provider lumped charges together and was unable to provide receipts to indicate what the expenditures were for, or who they were paid to, for any of the individuals in the contract. Interview with the individuals revealed that they were not aware of what they were being charged for.

## Accrual of Expenses (HCS)

Citation: 40 TAC [§9.178\(p\)\(3\)-\(4\)](#)

Presentation slide: Module 6, Slides 74-76

Guidance:

- The program provider can accrue expenses for essential items the individual needs.
  - Examples include: room and board, medical and dental services, legal fees or fines, and essential clothing.
- If an expense is accrued for essential items described above, the LAR or individual must enter into a payment plan to reimburse the provider for the funds used.
- *Example: Non-Critical Violation of (p)(4)*

- There were no payment plans agreed to by individuals who accrued expenses, and the program provider had been collecting payment for the items purchased.

## Behavior Support Plans (BSPs); Rights Restrictions

Citation: 40 TAC [§9.178\(q\)](#); [§9.580\(k\)](#)

Presentation slide: Module 6, Slides 77-87

### Guidance:

- The individual needs an assessment of their needs and behavior severity to implement a restrictive behavior support plan. A behavioral support provider must develop a BSP that describes the individual's current behaviors, techniques to use, and the severity of behaviors. The behavioral support provider must also include in the BSP how behavioral techniques such as restraints can affect the individual. This helps staff and others who interact with the individual have a clear understanding of how to handle behavioral needs.
- The LAR and individual must be notified that the BSP can be discontinued at any time. If they choose to discontinue the plan, the SPT should discuss how the individual's health and safety needs can be addressed without the use of a BSP.
- Documentation that the individual and LAR were involved in the development of the BSP can include meeting notes demonstrating their attendance or a signature sheet for all members who participated.
- A BSP must be based on behavioral data collection from regular monitoring. The behavior plan must allow for a decrease and also allow for revisions based on response data and when techniques become ineffective.
- The BSP must consider the effects of the techniques on the individual's physical and psychological well-being in developing the plan.
- The LAR and individual must provide consent before beginning a BSP. They must be informed that the plan can be discontinued at any time if they wish.
- The service coordinator must also be notified of the plan. This notification helps to ensure the individual's team is aware of techniques to use to help manage the individual's behavioral needs.
- The BSP must be reviewed at least annually. The SC must be notified if the plan will continue. The team must discuss whether the techniques should be revised, removed, or continued. This helps to keep behavioral plans up-to-date and prevent unnecessary restrictive practices.
- For TxHmL, at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.
- *Example: Non-Critical Violation of §9.178(q)(1)(B)(i) and §9.580(k)(6)*
  - During review of an individual's BSP, there was no evidence that the individual or their LAR was able to provide input on the development or implementation of the plan. There were no other individuals affected by this noncompliance.

- *Example: Non-Critical Violation of §9.178(q)(2)(A) and §9.580(k)(7)*
  - During review of 5 out of 10 individuals' BSPs, it was found that the plans did not include information on how the behavioral data would be collected or monitored; however, there was evidence that this data was being collected.
- *Example: Critical Violation of §9.178(q)(2)(B) and §9.580(k)(8)*
  - There was no evidence for 10 out of the 10 individuals with BSPs that the plans allowed for the decrease in restrictive techniques. Based on behavioral data for all 10 individuals, there was no evidence that behaviors were displayed. This has the potential for actual emotional harm due to the unnecessary restrictions.
- *Example: Non-Critical Violation of §9.178(q)(3)(A) and §9.580(k)(2)*
  - For one of the individuals in the survey sample, there was no evidence that they or their LAR consented to the implementation of their BSP.
- *Example: Non-Critical Violation of §9.178(q)(4)(A) and §9.580(k)(11)*
  - There is no evidence that the program provider reviewed one individual's BSP during the certification year.
- *Example: Critical Violation of §9.178(q)(3)(B) and §9.580(k)(3)*
  - 4 out of 5 individuals with BSPs and their LARs expressed dissatisfaction with the plans and stated that they did not want to continue with them. The program provider did not comply, nor was there evidence that the program provider informed them of their right to discontinue the plans.
- *Example: Non-Critical Violation of §9.178(q)(4)(B)*
  - There is no evidence in one individual's records that the service coordinator was notified whether the BSP should continue.
- *Example: Critical Violation of §9.178(q)(4)(A) and §9.580(k)(11)*
  - There is no evidence that the program provider has reviewed any of the BSPs for the 5 individuals in the contract who have them. 4 out of the 5 individuals have significant decreases in behavioral outbursts and no longer require the restrictive measures outlined in their plans, yet they are still receiving them. There is no evidence that the program provider made an effort to address this.

## Reporting an Individual's Death

Citation: 40 TAC [§9.178\(r\)](#); [§9.580\(l\)](#)

Presentation slide: Module 6, Slides 88-89

Guidance:

- The LIDDA and HHSC must be notified of an individual's death by the end of the next business day after being aware of the death.
- [HHSC Form 8493 Notification Regarding a Death in HCS, TxHmL, and DBMD Programs](#) and accompanying documentation must be submitted to the Risk Assessment Coordinators within HHSC.
- Deaths may now be reported through the WSC Portal. Training and information on how to use the WSC Portal is available [here](#).
- *Example: Non-Critical Violation*

- Support documentation for Form 8493 was submitted more than 3 business days following the submission of Form 8493 to HHSC.

## Retaliation Prohibited

Citation: 40 TAC [§9.178\(s\)](#); [§9.580\(m\)](#)

Presentation slide: Module 6, Slides 90-92

Guidance:

- Program providers must not retaliate against **anyone** who files a complaint against them.
- This includes complaints regarding the use of restraints or seclusion.
- Employees have a right to file a complaint or report if they suspect ANE.
- Program providers must not retaliate against an individual because someone else filed a complaint or grievance on their behalf.
- *Example: Critical Violation*
  - Multiple individuals report that they are upset because they are no longer allowed to go on outings as a result of complaining about overcrowding in the house van. This is verified through record review and interview with staff.

## Reporting Critical Incident Data

Citation: 40 TAC [§9.178\(t\)](#); [§9.580\(n\)](#)

Presentation slide: Module 2, Slides 11 and 23; Module 6, Slides 93-94

Guidance:

- §9.178(t) and §9.580(n) are among the most commonly cited violations for both HCS and TxHmL program providers.
- Critical data must be entered into CARE no later than the last calendar day of the month that follows the month of report.
- The program provider must enter critical incident data within required timeframes. Noncompliance can include critical incident data that is entered after the last calendar day of the following month. For example, the program provider enters a critical incident that occurred in the month of March after April 30th. It can also include critical incident data not being entered into CARE at all.
- Compliance with this principle is not just about the timeliness of the entries but the content of the entries themselves. The data entered must be accurate and reflect the actual critical incidents that occurred.
  - Example: If there are "0"s entered for the entire month's entry but it is revealed that there were critical incidents that should have been reflected in the entry such as hospitalizations, 911 calls, etc., this would be a violation because in this example the provider failed to enter the actual data- they simply entered "0"s in lieu of reporting the data.
- *Example: Non-Critical Violation*

- The program provider does not enter all critical incident data. This is discovered by comparing CARE screen 286 to available information sources (including Provider Investigation reports, service delivery logs, MARS, critical incident forms, police reports, hospital discharge paperwork, etc.).

## Alternate Chief Executive Officer (CEO)

Citation: 40 TAC [§9.178\(u\)](#); [§9.580\(o\)](#)

Presentation slide: Module 6, Slides 95-99

### Guidance:

- There must be a backup CEO entered into CARE in case the appointed CEO is unavailable. Ensuring there is a backup will allow business to continue as usual with continuous oversight of services being delivered. This is done in screen C69.
- The alternate CEO must be a contact person if the actual CEO is involved in ANE allegations.
- *Example: Non-Critical Violation of §9.178(u)(1) and §9.580(o)(1)*
  - The program provider did not enter the name and phone number of an alternate to the CEO. Upon review of the CARE entry, it was determined that the program provider entered their own name and a false phone number in place of an alternate's name and phone number.
- *Example: Non-Critical Violation of §9.178(u)(2) and §9.580(o)(2)*
  - The program provider reported that the CEO is on vacation and would not be available to participate in the survey. They stated that no one would be available to provide access to the office or files for the annual recertification survey to be completed. The provider also stated that the alternate to the CEO would not be able to assist.
- *Example: Immediate Threat/Critical Violation of §9.178(u)(2) and §9.580(o)(2)*
  - The CEO is named as the alleged perpetrator in an allegation of neglect and exploitation. The CEO continues to be the primary contact for the investigation and continues to access all related documentation pertaining to the case. The CEO is still involved; therefore, there is ongoing risk to the individuals.

## 8. Rights of Individuals

### Parity of Rights (HCS)

Citation: 40 TAC [§9.173\(a\)](#)

Presentation slide: Module 7, Slide 3

Guidance:

- An individual in the HCS or TxHmL program has the same rights as anyone else.
- It is the program provider's responsibility to assist the individual in exercising their rights and to assist their LAR/family members with encouraging them to exercise their rights.

### Right: Manage Financial Affairs

Citation: 40 TAC [§9.173\(b\)\(1\)](#); [§9.580\(a\)\(4\)](#)

Presentation slide: Module 7, Slides 4-5

Guidance:

- It is important to recognize that some individuals will want to participate in their own financial affairs, while others will need more assistance.
- If the individual needs assistance from the program provider, the program provider is required to obtain a written request for assistance from the individual or LAR.
- If the individual wants to manage their own financial affairs but is not currently capable, the program provider should help the individual learn how to manage their finances.
- *Example: Non-Critical Violation*
  - During record review, a document titled "Consent for Financial Management of Consumer Funds," was found in one individual's record. The document contained no name in the consumer section or the consumer signature section. This failure resulted in one individual in the survey sample being unaware of the management of their finances.

### Right: Access Public Accommodations

Citation: 40 TAC [§9.173\(b\)\(2\)](#); [§9.580\(a\)\(3\)](#)

Presentation slide: Module 7, Slide 6

Guidance:

- Program providers must provide individuals with access to public accommodations.
- *Public accommodations* means places like restaurants, retail stores, libraries, doctor's offices, and pharmacies.

## Right: Be Informed of Requirements of Participation

Citation: 40 TAC [§9.173\(b\)\(3\)](#); [§9.580\(a\)\(1\)](#)

Presentation slide: Module 7, Slide 7

Guidance:

- The individual and LAR should be provided information related to participating in the HCS and TxHmL programs.
- This includes, but is not limited to, maintaining eligibility with the support of the LAR, guardian, service coordinator, or program provider and participation in services listed on the individual's IPC.

## Right: Be Informed of HCS/CFC Services (HCS)

Citation: 40 TAC [§9.173\(b\)\(4\)](#); [§9.154](#)

Presentation slide: Module 7, Slides 8-9

Guidance:

- The HCS program offers several services that can be incorporated into the individual's IPC. They include things like habilitation therapy, behavioral support, nursing, and residential services (see 40 TAC §9.154, *Description of the HCS Program and CFC*, for a complete list of services).
- It is the responsibility of the program provider to ensure the individual or their LAR is aware of these services.
- *Example: Non-Critical Violation*
  - During record review, it was revealed that the program provider had not informed the individual of a new HCS program service that was available to them.

## Right: Be Informed of Plans/Restrictions

Citation: 40 TAC [§9.173\(b\)\(5\)](#) ; [§9.580\(a\)\(8\)](#)

Presentation slide: Module 7, Slides 10-11

Guidance:

- The individual and their LAR may choose to participate in meetings in which plans, services, and supports are discussed and decisions about those plans are made.
- If the individual does not attend, they must still be informed of their IPC, implementation plan, transportation plan, and any rights restrictions. This information pertains to both proposed and imposed rights restrictions.
- *Example: Non-Critical Violation*
  - There was no evidence that one of the individuals in the survey sample was informed of the services on their IPC. During interview with the individual, they indicated that they requested this information from the program provider but were told they didn't need to worry about the



specifics of their services because and their SPT had already agreed upon them.

## **Right: Decisions (HCS)**

Citation: 40 TAC [§9.173\(b\)\(6\)](#)

Presentation slide: Module 7, Slides 12-13

Guidance:

- The individual has the right to participate in decisions and be informed of the reasons for decisions regarding plans for enrollment, service termination, transfer, relocation, or denial of HCS Program service or CFC services.
- The program provider needs to include the individual in decisions about their services and encourage the individual's participation in their service plan.
- This would include, but is not limited to, finding out what areas of the plan are going well and what areas may need to be changed. The individual and LAR, along with the service coordinator, should review the service plan as often as needed to see if it is working for if changes are needed.
- *Example: Non-Critical Violation*
  - Two individuals in the contract were relocated to new residences. There was no evidence provided that the individuals were given a choice in whether they would like to relocate or where they would like to locate to.

## **Right: Informed of Health**

Citation: 40 TAC [§9.173\(b\)\(7\)](#); [§9.580\(a\)\(6\)](#)

Presentation slide: Module 7, Slides 14-15

Guidance:

- The program provider should advocate on behalf of the individual to ensure they and/or their LAR are informed of the individual's mental and physical health, including the status of ongoing conditions. This could include things like having a medical professional explain a condition to the individual in terms that the individual understands or having a board-certified behavior analyst give updates to the individual and LAR on the individual's behavior plan.
- *Example: Critical Violation*
  - Interviews with multiple individuals and their LARs revealed that they were not informed of changes to the individuals' health and progress. One individual had a pressure injury that was reported to the LAR. However, when updates were requested regarding the progress and severity of the injury, there was no evidence that the information was provided despite the worsening of the wound. Another individual was experiencing significant, unplanned weight loss. The LAR requested that current weight information be provided regularly. The program provider did not respond to this request for 30 days.

## Right: Name/Qualifications Service Providers

Citation: 40 TAC [§9.173\(b\)\(8\)](#); [§9.580\(a\)\(7\)](#)

Presentation slide: Module 7, Slides 16-17

Guidance:

- The individual has the right to know the name and qualifications of any persons treating them.
- This is not limited to the staff who work on their home but other professionals like nurses, doctors, behaviorists, etc.
- If an individual prefers to have a certain available provider or to not see another, the program provider has a responsibility to protect and support that decision. A program provider should offer the individual choice in available staff, with the understanding that the preferred staff is not always available.
- *Example: Non-Critical Violation*
  - There was no evidence that one of the individuals in the survey sample was informed of the name and qualifications of their service providers, including their nursing staff.

## Right: Receive Visitors (HCS)

Citation: 40 TAC [§9.173\(b\)\(9\)](#)

Presentation slide: Module 7, Slides 18-19

Guidance:

- Generally speaking, the individual should be allowed to receive a visitor without prior notice.
- There are situations in which an individual cannot have visitors over without prior notice to the program provider. If an individual wanted his girlfriend to come over and they go into the individual's room and lock the door, the individual's roommate has now been locked out and cannot access his bedroom. This has infringed upon the rights of another individual. If the LAR of an individual has determined that certain people are not allowed over without permission, the individual does not have the right to see those visitors without prior notice.
- *Example: Non-Critical Violation*
  - The program provider failed to allow the LAR to visit an individual in the survey sample. Interview with the individual's LAR revealed that staff frequently told the LAR that they could not visit because "it wasn't a good time." This failure places the individual at risk of mental harm if not allowed to receive visitors.

## Right: Privacy in Visitation (HCS)

Citation: 40 TAC [§9.173\(b\)\(10\)](#)

Presentation slide: Module 7, Slides 20-21

Guidance:

- Individuals are allowed to have privacy with visitors. Visitors may include family, friends, girlfriend or boyfriend, and spouse if they do not reside in the same residence.
- If a court-appointed LAR requires the individual be monitored with all visitors, this would be a rights restriction and would need to follow the procedure outlined in [§9.178\(q\)](#) regarding implementing techniques that restrict the individual's rights.
- *Example: Critical Violation*
  - The program provider reported that they require their service providers to supervise all visitation that occurs in every one of their residences to ensure that visits are appropriate. During interview, an individual stated that staff told them that they were going to watch them during their family visit. The staff member said not to say anything about recent incidents in which the individual had felt that the staff was being aggressive. The individual was fearful and wanted to move.

## Right: Phone Calls

Citation: 40 TAC [§9.173\(b\)\(11\)](#); [§9.580\(a\)\(9\)](#)

Presentation slide: Module 7, Slides 22-23

Guidance:

- The individual is allowed access the telephone for making and receiving calls.
- *Example: Non-Critical Violation*
  - During record review of the individual's person-directed plan, it was revealed that one of their favorite hobbies is to talk to their friends and family on the phone. The individual reported that they were only permitted to use their cell phone during certain hours of the day established by the program provider.

## Right: Mail (HCS)

Citation: 40 TAC [§9.173\(b\)\(12\)](#); [§9.580\(a\)\(9\)](#)

Presentation slide: Module 7, Slides 24-25

Guidance:

- The individual has the right to send and receive mail without anyone opening it, reading it, or discussing its contents.
- Mail must be directly given to the individual without being opened. Any and all mail that is addressed to the individual should be provided to them.
- *Example: Non-Critical Violation*
  - During a home visit, the surveyor observed the staff open the mail that had arrived for the individuals and distribute the contents to them. During interview the individuals reported that sometimes the mail is opened for them depending on which staff is working at that time.

## Right: Religious Practice

Citation: 40 TAC [§9.173\(b\)\(13\)](#); [§9.580\(a\)\(10\)](#)

Presentation slide: Module 7, Slides 26-27

Guidance:

- An individual has the right to practice any religion of choice and participate in any religious activities in the community.
- *Example: Non-Critical Violation*
  - During record review and interview, it was revealed that an individual would like to attend the same church that their family and friends attend on Sundays. The provider stated that the other individuals in the residence do not attend church, so they do not allow for the individual to attend.

## Right: Participate in Pre-Discharge Plan (HCS)

Citation: 40 TAC [§9.173\(b\)\(14\)](#)

Presentation slide: Module 7, Slide 28

Guidance:

- To ensure the individual has the services they will need after leaving the program, the program provider should encourage the individual to participate in the pre-discharge plan development.

## Right: Free of Unauthorized Restraints

Citation: 40 TAC [§9.173\(b\)\(15\)](#); [§9.580\(a\)\(11\)](#)

Presentation slide: Module 7, Slides 29-30

Guidance:

- Note that, per [§9.179\(a\)](#), restraints are only authorized:
  - in a behavioral emergency;
  - as part of a BSP that addresses inappropriate behavior exhibited voluntarily by an individual;
  - during a medical or dental procedure if necessary to protect the individual or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;
  - to protect the individual from involuntary self-injury; and
  - to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning.
- *Example: Critical Violation*
  - Review of critical incident report data and MARs indicates that multiple individuals were given a PRN Ativan every night at 10PM. There was no evidence that the staff called the RN prior to giving the Ativan. The record indicated that staff may administer PRN when the individual becomes agitated and is unable to sleep. There is no further information regarding

what meets the threshold for agitation/unable to sleep. Interview with the LAR for one of the individuals reveals that the individual likes to stay up past 10PM to watch TV in the living room, and they become upset if they're not able to stay up. As a result, the staff administer the PRN Ativan every night at 10pm to avoid the disagreement with the individual and ensure they go to sleep at the service provider's desired time.

## **Right: Live in Normative Environment (HCS)**

Citation: 40 TAC [§9.173\(b\)\(16\)](#)

Presentation slide: Module 7, Slides 31-32

Guidance:

- Individuals have the right to live in a home that functions like a residence.
- There should not be locks on the outside of bedroom doors that could keep the individual locked inside, whether staff use them or not.
- If an individual's home is damaged, it is the program provider's responsibility to find accommodations for the displaced individuals that mirror a normative residential living environment.
- Even during an emergency, individuals cannot reside or be housed inside of a day program facility or habilitation facility. Individuals may only reside in within an approved residence, hotel, family residence, etc., that is safe and appropriate to meet their needs. The program provider's emergency plans should address where individuals will be temporarily located in an emergency.
- *Example: Critical Violation*
  - The program provider failed to provide a normative living environment where the individuals had working smoke detectors, plumbing, appliances, and adequately stocked food. There was expired food in the refrigerators and pantries in all three of the 4-person residences in the contract.

## **Right: Attend School (HCS)**

Citation: 40 TAC [§9.173\(b\)\(17\)](#)

Presentation slide: Module 7, Slides 33-34

Guidance:

- An individual has the right to attend public school until they turn 22 years old.
- *Example: Non-Critical Violation*
  - An individual is receiving in-home education from their host home provider who is not their LAR. The individual expresses to the program provider that they would like to attend school in the community but there is no evidence that the program provider has made any effort to establish this.

## Right: Proximity to Treatment/Services (HCS)

Citation: 40 TAC [§9.173\(b\)\(18\)](#)

Presentation slide: Module 7, Slides 35-36

Guidance:

- The program provider must protect the individual's right to have reasonable access to their doctors, therapists, day habilitation sites, work, etc.
- *Example: Non-Critical Violation*
  - An individual had been receiving speech therapy services. They were relocated to another city, which was a substantial distance away from any available speech therapists. The program provider placed the service on hold due to the distance between the individual's new residence and available providers.

## Right: Personalized Plans (HCS)

Citation: 40 TAC [§9.173\(b\)\(19\)](#)

Presentation slide: Module 7, Slides 37-38

Guidance:

- An individual's IPC, implementation plan, and transportation plan must be individualized. An individual should not have a "standard" plan, but rather one that has been fitted personally for them based on their specific strengths, needs, and abilities.
- Input should not only from the individual, family, medical and behavioral personnel, and staff, but also from documentation like incident reports and assessments.
- *Example: Non-Critical Violation*
  - The individual's IPC includes \$2000 for dental treatment. Review of the record indicates the individual has dental cleanings twice a year, historically costing \$150 each. There is no new dental treatment plan or other identified need for additional dental treatment. The dental treatment included on the individual's IPC is not based on assessment of the individual's needs.

## Right: Input on Plans (HCS)

Citation: 40 TAC [§9.173\(b\)\(20\)](#)

Presentation slide: Module 7, Slide 39

Guidance:

- The individual and/or LAR have the right to assist in the development of an implementation plan that the individual will work on throughout the year and a transportation plan.

- Getting buy-in from the individual on the objectives they want to work on, how they want to accomplish them, and what supports they'll need is critical to the success of the objectives.

## **Right: Inform of Progress on Plans**

Citation: 40 TAC [§9.173\(b\)\(21\)](#); [§9.580\(a\)\(12\)](#)

Presentation slide: Module 2, Slide 32; Module 7, Slides 40-41

Guidance:

- 40 TAC §9.580(a)(12) is one of the most commonly cited TxHmL violations.
- The individual has the right to know how they are progressing in their implementation and transportation plans. The program provider has a responsibility to inform the individual of their progress towards outcomes and objectives.
- How often the individual is updated would depend on how the goals are written in the individual's implementation plan.
- Examples of possible violations may include that the program provider is missing documentation of the individual's progress or lack of progress towards goals, or there is no documentation demonstrating that this information was shared with the individual or LAR.
- *Example: Non-Critical Violation*
  - There was no evidence that two individuals were informed of their progress. During interview, the program provider stated that the information had not been shared with the individuals as they would not be able to fully comprehend the information. This failure could result in the individuals not being aware of their progress, not being included in decisions to change their goals and outcomes, or ensuring their needs are met based on progress towards their desired outcomes.

## **Right: Choice of Services (HCS)**

Citation: 40 TAC [§9.173\(b\)\(22\)](#)

Presentation slide: Module 7, Slide 42

Guidance:

- An individual has the right to the same services available to all community members including but not limited to OT/PT, Speech services, behavioral supports, adaptive aids, minor home modifications and other services needed to achieve identified outcomes and purposes.

## **Right: Annual Evaluation (HCS)**

Citation: 40 TAC [§9.173\(b\)\(23\)](#)

Presentation slide: Module 7, Slides 43-45

Guidance:

- The program provider is responsible for ensuring that the individual is evaluated at least annually, but more often if needed, to ensure that the implementation and transportation plan are still appropriate and effective for the individual. Ongoing communication between the program provider's staff and the individual and LAR is necessary to ensure that the implementation plan reflects services and approaches that meet the needs and preferences of the individual and LAR.
- *Example: Non-Critical Violation*
  - Record review revealed that the individual's implementation plan for day habilitation hadn't been updated in two years. Documentation indicates that day habilitation service providers assist with occupational therapy stretches. Review of the occupational therapy assessment shows the individual's short- and long-term objectives were changed last year, but these changes are not reflected in the individual's current implementation plan for day habilitation.
- *Example: Critical Violation*
  - An individual who was a registered sex offender was recently released from jail and did not have the appropriate related information reflected in their implementation plan. The implementation plan for behavioral services did not address the need for monitoring and supervision when around others to ensure the support needs of the individual and to ensure the safety of others around them. The individual was left unsupervised in the residence and sexually assaulted another person. The program provider acknowledged awareness of the individual's history and sex offender status.

## **Right: Complain to Staff/Service Provider**

Citation: 40 TAC [§9.173\(b\)\(24\) and \(42\)](#); [§9.580\(a\)\(18\)](#)

Presentation slide: Module 7, Slides 46-47

Guidance:

- The individual has the right to complain to a program provider regardless of when or why. The list of possible complaints is infinite, but the program provider must protect the individual's right to complain.
- The individual or LAR should be given the information on how to file a formal complaint with the HHSC IDD Ombudsman office.
- *Example: Non-Critical Violation*
  - A staff member is observed to be dismissive of an individual when the individual complains that the staff have been bossing them around. During the interview, the individual confirms that they have expressed concerns about staff's behavior but they were told to stop complaining.

## **Right: Support/Encouragement (HCS)**

Citation: 40 TAC [§9.173\(b\)\(25\)](#)

Presentation slide: Module 7, Slide 48



Guidance:

- An individual has the right to have treatment and services that are best for them. An individual can change their mind about any or all of the services being received.
- The program provider and staff should appropriately support an individual's decisions about their services or if they feel their rights are being violated.

## **Right: Free of Abuse, Neglect, Exploitation (ANE)**

Citation: 40 TAC [§9.173\(b\)\(26\)](#); [§9.580\(a\)\(14\)](#)

Presentation slide: Module 7, Slides 49-50

Guidance:

- An individual has the right to live a safe and comfortable life free from ANE. The program provider is responsible for creating this environment and training employees not to engage in behaviors that would constitute ANE.
- *Example: Immediate Threat/Critical Violation*
  - Based on observation, interview and record review, the program provider failed protect and promote the rights of the individual to live free from ANE in a healthful, comfortable, and safe environment for one of six individuals reviewed. Evidence showed a service provider continued to work with the individual after an allegation that the provider physically abused the individual. The individual was observed to have circular wounds on their legs as well as bruises over several areas of their body. This is an immediate threat, as the service provider continues to provide services to the individual.

## **Right: Decisions Regarding Environment (HCS)**

Citation: 40 TAC [§9.173\(b\)\(27\)](#)

Presentation slide: Module 7, Slides 52-53

Guidance:

- An individual has a say in where they want to live, what furniture they'll purchase or have, who is going to live with them, and other types of decisions related to their own living environment. Many individuals like living in certain cities or towns so they can be close to family. Some individuals want to pick out the comforter and rugs for their room. These decisions about how and where they live can be important to individuals and the program provider is responsible for ensuring they get to participate in the process.
- *Example: Non-Critical Violation*
  - Based on observation, interview, and record review, the program provider failed to protect and promote the right of the 1 of 6 individuals reviewed for violation of rights. The provider failed to allow the individual to participate in the decision regarding having a bed in her bedroom. The

surveyor observed a mattress on the floor of the individual's room. When interviewed, the individual indicated they would like to have a bed, not just a mattress. This failure affected the individual by denying them the right to participate in decisions regarding the furnishings in their living environment.

## **Right: Responsive Service Providers (HCS)**

Citation: 40 TAC [§9.173\(b\)\(28\)](#)

Presentation slide: Module 7, Slides 54-55

Guidance:

- Program providers and service providers should be responsive to the needs of individuals. The individual's needs may change over time, and the provider must be responsive to those changes. This may include things such as a change in health status, appropriate levels of staffing, or obtaining equipment.
- *Example: Critical Violation*
  - Based on interview and record review, it was discovered the program provider failed to be responsive of the needs of one out of six individuals interviewed. Evidence revealed the individual required and had requested to have cataract surgery due to worsening vision related to his cataracts. The program provider failed to be responsive to the individual by not ensuring he received his cataract surgery. Failure to address the individual's need for cataract surgery placed him at significant risk of severe vision impairment including blindness.

## **Right: Civil and Self-Advocacy Rights**

Citation: 40 TAC [§9.173\(b\)\(29\)](#); [§9.580\(a\)\(15\)](#)

Presentation slide: Module 7, Slides 56-57

Guidance:

- Civil and self-advocacy rights include:
  - Making complaints
  - Registering to vote
  - Obtaining citizenship information
  - Obtaining education
  - Obtaining advocacy services, such as through Disability Rights Texas.
  - Obtaining guardianship
- Individuals should have support and assistance with making use of these rights and having access to [Disability Rights Texas](#).
- *Example: Non-Critical Violation*
  - Multiple individuals indicate a desire to make a complaint but are unable to write or dial a phone independently. The program provider and staff do not provide assistance to the individuals in making a written complaint or reporting their complaint by phone.

## Right: Receive Financial Counseling (HCS)

Citation: 40 TAC [§9.173\(b\)\(30\)](#)

Presentation slide: Module 7, Slide 58

Guidance:

- Regardless of the individual's abilities or skills, the individual has the right to financial counseling.
- Depending on the individual, this could be as simple as identifying types of cash and coins or something more complex like saving money and budgeting.

## Right: Possess/Use Money (HCS)

Citation: 40 TAC [§9.173\(b\)\(31\)](#)

Presentation slide: Module 7, Slides 59-60

Guidance:

- The program provider must allow the individual to possess their own money based on the individual's abilities and preferences. The program provider may also assist the individual by teaching them how to handle their money and develop skills in this area.
- *Example: Non-Critical Violation*
  - During interview, an individual reports that they have not been provided with their personal spending money and they would like to purchase items for themselves. Review of the individual's financial record confirms that they have not received their spending money, as agreed upon.
  - This would elevate to a critical violation if this was pervasive throughout the contract or there was evidence that individuals were harmed by the failure to allow them to spend their money as requested.

## Right: Access Financial Records (HCS)

Citation: 40 TAC [§9.173\(b\)\(32\)](#); [§9.580\(a\)\(8\)](#)

Presentation slide: Module 7, Slides 61-62

Guidance:

- The program provider must allow the individual to look at his/her own financial records.
- *Example: Non-Critical Violation*
  - There was no evidence that 3 of the 10 individuals in the contract were provided with copies of their financial records.
  - This would elevate to a critical violation if there was no evidence that any or most of the individuals in the contract were provided access to their financial records, or if the failure resulted in financial hardship given their lack of awareness of the content of these records.

## Right: Privacy During Treatment/Personal Needs

Citation: 40 TAC [§9.173\(b\)\(33\)](#); [§9.580\(a\)\(16\)](#)

Presentation slide: Module 7, Slides 63-64

Guidance:

- To ensure the dignity of the individual, the program provider should ensure they are set up to provide privacy for individuals during personal care.
- *Example: Non-Critical Violation*
  - During a survey it was observed that the program provider failed to ensure that two individuals in the survey sample had doors to their bedrooms to allow privacy when in their bedrooms. This failure places the individuals at risk of harm including emotional harm due to lack of privacy during personal care needs.

## Right: Spouses (HCS)

Citation: 40 TAC [§9.173\(b\)\(34\)-\(35\)](#)

Presentation slide: Module 7, Slides 65-68

Guidance:

- If an individual and spouse live in different residences, the individual and spouse can have privacy when the spouse visits.
- If an individual is married and lives in a residence with others who receive HCS services, the individual and spouse can share a room. This includes in HH/CC settings. The HH/CC service provider would need to ensure that the individual could share a room with their spouse if that was their choice.
- *Example: Non-Critical Violation of §9.173(b)(34)*
  - An individual lives apart from their spouse, and the program provider does not allow them time alone in the residence during their visits together.
- *Example: Non-Critical Violation of §9.173(b)(35)*
  - An individual and their spouse live in the same residence, but the program provider has not permitted them to share a room together. Both have requested to share a room.

## Right: Labor (HCS)

Citation: 40 TAC [§9.173\(b\)\(36\)](#)

Presentation slide: Module 7, Slide 69

Guidance:

- While there are certain chores that are normal for any person living in a residence, this protects individuals from being used as labor when living with persons other than family.

- Examples of serving as a source of labor would be routinely cleaning the whole residence while other individuals nap or building a fence for the residence.

## **Right: Association (HCS)**

Citation: 40 TAC [§9.173\(b\)\(37\)](#)

Presentation slide: Module 7, Slide 70

Guidance:

- The program provider cannot restrict who the individual interacts with and must allow them to meet privately if the individual wishes, unless this violates the rights of another individual.

## **Right: Participate in Activities (HCS)**

Citation: 40 TAC [§9.173\(b\)\(38\)](#)

Presentation slide: Module 7, Slides 71-72

Guidance:

- The program provider cannot restrict an individual from engaging in social, recreational, and community group activities that occur in the community.
- The program provider should encourage individuals to engage in community events, such as local dances, church BBQs, and bingo.
- *Example: Non-Critical Violation*
  - Multiple individuals indicate a desire to participate in the upcoming basketball season. The program provider has informed them that they will not be able to participate and fails to pursue the request further. There is no indication there is a barrier to their participation or evidence that alternative activities of interest were offered or provided.

## **Right: Involvement of LAR**

Citation: 40 TAC [§9.173\(b\)\(39\)](#); [§9.580\(a\)\(17\)](#)

Presentation slide: Module 7, Slides 73-74

Guidance:

- If an individual has an LAR, the LAR must be notified and involved in all decisions related to the planning and provisions of services. Being an LAR means they are authorized under law to consent and represent the behalf of the individual.
- *Example: Non-Critical Violation*
  - During record review, there is no evidence that the LAR has been informed of the rights and responsibilities for the individual in the program. During interview, the LAR confirms that they have never been provided information regarding the individual's rights and responsibilities.

## Right: Option to Transfer (HCS)

Citation: 40 TAC [§9.173\(b\)\(40\)](#)

Presentation slide: Module 7, Slides 75-76

Guidance:

- The individual and their LAR have the option to transfer to another program provider at any time. It's the responsibility of the program provider to ensure they are informed of this.
- The program provider should not prevent the individual from transferring to another program provider.
- If the LAR has requested to transfer the individual and the individual is not in agreement, remember that the LAR has authority to make decisions on behalf of the individual.
- *Example: Non-Critical Violation*
  - During interview, multiple individuals and LARs reported that they were unaware of their ability to transfer to a new program provider. One individual who recently transferred to the program provider stated they wanted to transfer again to a different provider, but the current program provider responded that they need to give it time because they had recently transferred into the contract.

## Right: Be Informed of Charges (HCS)

Citation: 40 TAC [§9.173\(b\)\(41\)](#)

Presentation slide: Module 7, Slides 77-79

Guidance:

- An individual or LAR must be informed of any charges assessed by the provider and the reason for it. The individual also has the right to know how the charges impact their financial status.
- This information should be relayed to the individual and LAR both verbally and be put in writing. There should be documentation of any charges or credits and the current status of the account. Surveyors may ask to see documentation of any charges that occurred during the certification period to verify how finances were managed throughout the year.
- *Example: Non- Critical Violation*
  - The program provider is the representative payee for multiple individuals in the contract. There is evidence that they have provided the individuals with information regarding the charges and purpose of charges assessed against their personal funds. However, there is no evidence that the individuals were informed about the effect of the charges on their financial status.
- *Example: Critical Violation*
  - The program provider is the representative payee for several individuals in the contract. There is no evidence that they have provided the individuals orally or in writing the impact of the charges to their accounts.

Multiple individuals had charges to their accounts that were not reflected in the room and board agreement and suffered financial harm as a result. One of the individuals was being charged \$150/month for groceries even though they were receiving enteral nutrition via g-tube.

## **Right: Complain to Office of the Ombudsman**

Citation: 40 TAC [§9.173\(b\)\(42\)](#); [§9.580\(a\)\(18\)](#)

Presentation slide: Module 7, Slides 80-81

Guidance:

- When an individual is unhappy with the resolution, or lack thereof, of a complaint, the program provider should provide them with the Office of the Ombudsman phone number which is 800-252-8154.
- The rule language references the DADS Office of Consumer Rights and Services. These complaints used to go to DADS Office of Consumer Rights and Services, but the function has now transitioned to the HHSC Office of the IDD Ombudsman.
- *Example: Non-Critical Violation*
  - An individual's LAR reports to the survey team that they have attempted to communicate concerns regarding a specific staff member to the program provider, but no apparent action has been taken and the issue persists. The LAR reports that the program provider has not informed them of how to escalate their concern and they are unsure of who to contact.

## **Right: Freedom from Seclusion**

Citation: 40 TAC [§9.173\(b\)\(43\)](#); [§9.580\(a\)\(19\)](#)

Presentation slide: Module 7, Slides 82-83

Guidance:

- The use of seclusion is expressly prohibited here and in rule [§9.180](#) for HCS and [§9.584](#) for TxHmL. Seclusion is defined in [§9.153](#) and [§9.553](#) as "the involuntary placement of an individual alone in an area from which the individual is prevented from leaving."
- *Example: Immediate Threat/Critical Violation*
  - During a home visit it was revealed that the individual had a lock on the outside of their bedroom door which prevented their egress from the room when they were inside and the lock was engaged. The host home provider stated that they lock the door at night to ensure the individual does not roam around the house while the host home provider is asleep.

## **Right: Bedroom Door Lock (HCS)**

Citation: 40 TAC [§9.173\(b\)\(44\)](#)

Presentation slide: Module 7, Slides 84-85

Guidance:

- If the individual wants a lock on their door, this rule details the type of lock and condition of the lock that an individual can have. This rule allows for the lock on an individual's door to be unlocked with a key from the outside of the door by the program provider.
- *Example: Non-Critical Violation*
  - An individual requested to have a lock on their bedroom door to secure their belongings and provide privacy. The program provider informed them that they were not allowed to have a lock on their door because it would be a safety concern if staff were not able to enter the room when they wanted to check on the individual.

## Request to Transfer (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(2\)](#)

Presentation slide: Module 7, Slides 86-87

Guidance:

- The program provider must assist and cooperate with the individual and/or their LAR when a request is made to go to another provider.
- An individual can change providers at any time and the program provider is required to honor the request.
- *Example: Non-Critical Violation*
  - An individual in the survey sample stated they were not satisfied with the services that they are receiving from the program provider. The individual also stated they have made multiple requests to transfer to a new program provider. The program provider failed to present any evidence that they made an effort to coordinate with the service coordinator to assist the individual with transferring to a new provider.

## Approval of Restrictions by SPT (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(5\)](#)

Presentation slide: Module 7, Slide 88

Guidance:

- A restriction cannot be implemented before the SPT has approved it.

## Access to Records (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(8\)](#)

Presentation slide: Module 7, Slides 89-90

Guidance:



- The individual and their LAR have the right to review any records related to the individual's services and finances while in the TxHmL program and the program provider must furnish those records.
- *Example: Non-Critical Violation*
  - During an interview with an individual and their LAR, they reported that were not aware of the status of the individual's finances that the provider was responsible for managing. They reported multiple requests for this information. The program provider failed to present evidence that they responded to this request or provided access to these documents during the certification year.

## Phone and Mail Assistance (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(9\)](#)

Presentation slide: Module 7, Slides 91-92

Guidance:

- The program provider must allow access and assist an individual with communication via phone or e-mail. There are no restrictions on who they can communicate with unless a service planning team has agreed that a rights restriction is justified and needs to be in place.
- *Example: Critical Violation*
  - During record review it was revealed that multiple individuals in the contract made requests to their CFC PAS/HAB service provider to be able to make phone calls to family members. During interview, the individuals reported that they were not allowed to use the telephone or contact their family members. The LARs reported that this was greatly distressing to the individuals and was leading to an increase in concerning behavior that put the individuals at risk of harm.

## Receive/Act Upon Complaints (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(13\)](#)

Presentation slide: Module 7, Slides 93-94

Guidance:

- If a program provider receives a complaint from the individual, they are required to act on the complaint. This is not limited to any type of action but depends on the type of complaint the program provider received from the individual or LAR.
- *Example: Critical Violation*
  - During review of the complaints that were submitted by individuals during the certification year, there was no evidence that the program provider followed up on any of the 25 complaints. The program provider reported that the complaints that were received were from individuals who were dishonest and made things up when they got upset with their service providers.

- This may be a non-critical violation if the issue was isolated to one complaint and the program provider made an effort to implement a policy to address their lack of responsiveness.

## Inform LAR (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(20\)-\(21\)](#)

Presentation slide: Module 2, Slide 26; Module 7, Slides 95-98

Guidance:

- The program provider is required to notify the individual and LAR of the requirements covered in §9.580(a)(1)-(19) when the individual is enrolled in their program, if the rules change, or if the legal status of the individual changes.
- If a program provider notifies the individual/LAR via letter, they must obtain acknowledgement that it was received by obtaining a signature from the individual or LAR, the program provider staff who gave the information, and a witness.
- TAC does not define *third-party witness*; therefore, the witness may be employed by the provider.
- 40 TAC §9.580(a)(21)(c), the requirement to obtain a third-party witness acknowledgement of the notification, is one of the most commonly cited TxHmL violations.
- *Example: Non-Critical Violation of §9.580(a)(20)*
  - During review of the record for a new enrollment into the program provider's contract, there was no evidence that the individual or their LAR received the required information in writing. During interview with the individual they stated that they were informed during the admission process but they did not receive any documentation.
- *Example: Non-Critical Violation of §9.580(a)(21)*
  - Record review revealed that for multiple individuals in the contract there was no signature of a third-party witness. There was no evidence that the failure to include this information resulted in an adverse outcome to the individual.

## Notify SC of Interest in CDS Option (TxHmL)

Citation: 40 TAC [§9.580\(a\)\(22\)](#)

Presentation slide: Module 7, Slides 99-100

Guidance:

- If an individual or their LAR expresses interest in the CDS option for their services, the program provider must notify the individual's service coordinator, so they can provide information to the individual and their LAR.
- *Example: Non-Critical Violation*
  - During interview with an individual and their LAR, they informed the surveyor that they were very interested in pursuing the CDS option for

their services. There was no evidence the program provider had assisted them with pursuing this any further. During record review there was a note indicating that the individual expressed an interest in CDS during a meeting with a staff member. There was no evidence that the individual's service coordinator was notified or that the request was acted upon.

## 9. Abuse, Neglect, Exploitation (ANE)

### Key Definitions

#### Physical Abuse

Citation: 40 TAC [§9.153\(81\)](#) and [§9.553\(69\)](#)

Presentation slide: Module 8, Slide 4

Guidance:

- Physical abuse is an act or failure to act that causes physical injury or death, or places an individual at risk of physical injury or death.
- Excessive force or corporal punishment is considered abuse, even if it doesn't result in physical injury.
- Unjustified use of restraint is also considered physical abuse, as is seclusion.

#### Sexual Abuse

Citation: 40 TAC [§9.153\(108\)](#) and [§9.553\(92\)](#)

Presentation slide: Module 8, Slide 5

Guidance:

- Sexual abuse is defined as any unwelcomed or non-consensual sexual activity.
- Even if consensual, sexual activity between an individual and any staff member, volunteer, or service provider is considered sexual abuse, unless the sexual relationship started before the individual was placed under their care.

#### Verbal/Emotional Abuse

Citation: 40 TAC [§9.153\(127\)](#) and [§9.553\(108\)](#)

Presentation slide: Module 8, Slide 6

Guidance:

- Verbal/emotional abuse is any communication or act that results in the individual becoming distressed or that causes harm to the individual.
- This can include harassment, intimidation, humiliation or degradation.

#### Neglect

Citation: 40 TAC [§9.153\(73\)](#) and [§9.553\(63\)](#)

Presentation slide: Module 8, Slide 7

Guidance:

- Neglect is defined as an act or omission that causes injury or death or puts an individual at risk of injury or death.
- An example of neglect would be not giving an individual prescribed medication.

## Exploitation

Citation: 40 TAC [§9.153\(33\)](#) and [§9.553\(27\)](#)

Presentation slide: Module 8, Slide 8

Guidance:

- Exploitation is the act of using an individual or their resources for personal gain.
- An example of exploitation would be a provider using an individual's money to purchase things for themselves.

## Volunteer

Citation: 40 TAC [§49.102\(67\)](#); [§9.153\(129\)](#); [§9.553\(110\)](#)

Presentation slide: Module 8, Slide 9

Guidance:

- It's important to understand the definition of a volunteer as we go through the ANE rules, as program providers are responsible for ensuring that volunteers are in compliance. Any volunteer that works for the program provider must follow the requirements specified throughout this chapter.
- Chapter 49 defines *volunteer* as a person who works for a contractor without compensation, other than reimbursement for actual expenses.

## Controlling Person

Citation: 40 TAC [§49.102\(21\)](#); [§9.153\(24\)](#); [§9.553\(21\)](#)

Presentation slide: Module 8, Slide 10

Guidance:

- Any person who meets the definition of a controlling person must follow the requirements specified throughout this chapter.
- Chapter 49 defines *controlling person* as a person who:
  - has a controlling ownership interest;
  - is a managing employee;
  - has been delegated the authority to obligate or act on behalf of an applicant or contractor;
  - is an officer or director of a corporation that is an applicant or contractor;
  - is a partner in a partnership that is an applicant or contractor;
  - is a member or manager in a limited liability company that is an applicant or contractor;
  - is a trustee or trust manager of a trust that is an applicant or contractor;
  - is a spouse of a person who is an applicant or contractor; or

- because of a personal, familial, or other relationship with an applicant or contractor, is in a position of actual control or authority with respect to the applicant or contractor, regardless of the person's title.

## Training and Instruction

Citation: 40 TAC [§9.175\(a\)](#); [§9.585\(a\)](#)

Presentation slide: Module 2, Slides 16 and 24; Module 8, Slides 11-18

Guidance:

- Both §9.175(a)(3) and §9.585(a)(3), regarding staff training on ANE, are among the most commonly cited violations for HCS and TxHmL.
- Providers are required to report any allegations or suspicions of ANE to DFPS Statewide Intake, which will route the investigation to HHSC Provider Investigations if the alleged perpetrator is a staff member, service provider, or volunteer.
- The program provider must:
  - educate the individual and their legally authorized representative about protecting the individual from ANE before or at the time the individual begins receiving services and annually thereafter;
  - ensure that each staff member, service provider, and volunteer are trained and knowledgeable of signs and symptoms of ANE;
  - conduct training activities related to ANE before a staff member, service provider, or volunteer assumes job duties and at least annually thereafter.
- Staff members, service providers, and volunteers must be trained on and knowledgeable of:
  - acts that constitute ANE;
  - signs and symptoms of ANE; and
  - methods to prevent ANE.
- HHSC has developed training for ANE that satisfies the ANE training requirements described in the rules. Information regarding the HHSC ANE training is located in [Appendix XII](#) of the HCS Handbook and [Appendix IX](#) of the TxHmL Handbook.
- An HCS or TxHmL program provider has the option of having their staff members, service providers and volunteers complete HHSC's ANE Competency Training. If program providers use HHSC's training for this purpose:
  - Participants must sign up on the [HHSC Learning Portal](#). The ANE training is found in Medicaid Long Term Services and Supports Training under the Health and Human Services Commission Courses tab.
  - Participants must receive a score of at least 80% on the final test.
  - The program provider must maintain a copy of the certificate generated from the final test for each staff member, service provider and volunteer.
- Each staff member, service, provider, and volunteer should be instructed to report to DFPS immediately but no later than one hour after becoming aware of ANE. These instructions must be provided in writing. People can report by

calling the DFPS Abuse hotline 1-800-647-7418 or using the [DFPS Abuse Hotline website](#).

- A staff member can refer to a posting to demonstrate knowledge of ANE reporting requirements, as long as staff are trained and knowledgeable on where the correct ANE reporting requirements can be easily accessed.
- Training for staff members, service providers and volunteers must occur before they provide any services to the individual and must be repeated at a minimum of annually
- *Example: Non-Critical Violation of (a)(1)*
  - The program provider failed to inform the individuals and LAR of how to report ANE, did not provide the phone number, and did not educate about protecting the individuals from ANE for 2 of 10 individuals in the survey sample.
- *Example: Critical Violation of (a)(1)*
  - The program provider failed to provide evidence that any of the individuals or LARs in their contract were informed how to report allegations of ANE. This failure places the individuals ' health and safety at risk by not being able to report ANE.
- *Example: Immediate Threat/Critical Violation of (a)(2)*
  - The program provider failed to train their newest employee on ANE including acts, signs, methods for identifying ANE, and the proper reporting procedures. During the employee's shift an individual returned from the day habilitation program behaving out of the ordinary, refusing to eat, and with visible bruising. The individual informed the staff that they feared the day habilitation staff member. No follow up action was completed. There were no other staff that were found to be out of compliance with these requirements. In this example, the provider did not train their new employee in ANE and the proper reporting procedures. The employee did not follow up as required.
- *Example: Non-Critical Violation of (a)(3)*
  - The program provider failed to train all of their new employees on the acts, signs, and symptoms of ANE prior to the start of their first shift. All of the employees were working with a properly trained staff member on the shift, and there was no evidence that an individual was harmed. The employees received training by the end of their first week of working in the field.

## Requirement to Report

Citation: 40 TAC [§9.175\(b\)](#); [§9.585\(b\)](#)

Presentation slide: Module 8, Slides 19-20

Guidance:

- If a **program provider, staff member, service provider, volunteer, or controlling person** knows or suspects that an individual is being or has been abused, neglected, or exploited, the program provider must report or ensure that the person with knowledge or suspicion reports the allegation to

DFPS immediately, but no later than one hour after having knowledge or suspicion.

- People can report by calling the DFPS Abuse hotline 1-800-647-7418 or using the [DFPS Abuse Hotline website](#).
- *Example: Critical Violation*
  - When reviewing cases, the survey team discovers that the program provider failed to report any of the ANE allegations within the one-hour time frame.

## **Alleged Perpetrator Not a Service Provider**

Citation: 40 TAC [§9.175\(c\)](#); [§9.585\(c\)](#)

Presentation slide: Module 8, Slides 21-23

Guidance:

- In the event ANE is perpetrated by a non-service provider, the program provider still has responsibilities. It is the responsibility of the program provider to:
  - immediately obtain any necessary medical or psychological services for the individual;
  - assist in obtaining ongoing medical or psychological services for the individual, if needed;
  - discuss with the individual or LAR alternative residential settings and additional services that may help ensure the individual's safety. An alternative residential setting could be removing an individual from an abusive host home to a 3- or 4-person residence, for example;
  - avoid compromising the investigation or further traumatizing the individual; and
  - preserve and protect evidence related to the allegation.
- This could include providing the individual with a new residential setting, setting up a team meeting, incorporating a backup plan, etc.
- *Example: Critical Violation*
  - The program provider's case manager was told by 4 of 5 individuals in the contract that they are being emotionally abused by housemates in their Own Home/Family Home residences. No evidence was found that the case manager discussed alternate residential settings available to the individuals who reported concerns of emotional abuse.
- *Example: Immediate Threat/Critical Violation*
  - An individual was alleged to have been sexually assaulted by a person not employed by or associated with the program provider. There has been an increase in noticeable personality changes including violence towards others and self-harm. The individual has repeatedly expressed to service providers a desire to commit suicide. The program provider had the individual assessed by medical professionals following the assault but failed to pursue behavioral support services and have the individual assessed by a licensed professional to support them psychologically as they recovered from the assault.



- This example would constitute an immediate threat, as there is evidence there is ongoing psychological trauma for which the provider failed to provide psychological intervention. The individual was seriously harmed, and there is as a risk of the individual continuing to be harmed including the risk of death. There is a need for immediate action to prevent the harm from continuing.

## Program Provider Responsibilities

Citation: 40 TAC [§9.175\(d\)](#); [§9.585\(d\)](#)

Presentation slide: Module 2, Slide 20; Module 8, Slides 24-30

Guidance:

- 40 TAC §9.175(d)(5), regarding the provider's responsibility to notify the individual, LAR, and service coordinator of allegations of ANE, is one of the most commonly cited HCS violations.
- The program provider must obtain immediate medical and/or psychological services if needed.
  - Example: if an individual is clearly physically injured the provider would be required to assist with medical attention.
  - Example: if an individual is withdrawn and acting differently, options for counseling could be discussed with the SPT and offered to the individual and allow the individual to choose counseling if they want it.
- Program providers must ensure the safety of the individual until the investigation is complete. This may include removing the alleged perpetrator from providing care to any individuals until completion of the investigation.
- TAC requires a program provider to take actions to secure the individual's safety, which may include ensuring the alleged perpetrator does not have access to the individual, if necessary. This applies even if the alleged perpetrator is the individual's LAR or host home provider.
- The alleged perpetrator cannot work with the individual who is the alleged victim or any other individuals until the investigation is resolved.
- If a report alleges ANE by a service provider, staff member, volunteer, or controlling person; or if a program provider is notified by HHSC of an
- allegation of ANE by a service provider, staff member, volunteer, or controlling person, the program provider must:
  - avoid compromising the investigation or further traumatizing the individual; and
  - preserve and protect evidence related to the allegation.
- Whenever a program provider reports or is notified of an ANE allegation, the provider is required to notify the individual who is the alleged victim, the LAR (if applicable), and the service coordinator of both the allegation report and the actions the provider has taken or is going to take as a result of this information. The action needed is based on the nature of the allegation and the nature/severity of harm to the individual. This notification must occur as soon as possible but no later than 24 hours after the provider reports an

allegation or is notified of an allegation. Maintaining evidence that all parties were notified can serve as documentation of the notification.

- The provider also needs to provide information about actions taken to secure the safety of the individual, including if necessary, ensuring the alleged perpetrator does not have contact with the individual or any other individuals until HHSC completes the investigation.
- *Example: Immediate Threat/Critical Violation for (d)(2)*
  - A service provider was accused of the physical abuse, sexual abuse and neglect of three individuals in the contract. Record review revealed no evidence that actions were taken to secure the safety of the individuals, including ensuring that the alleged perpetrator does not have contact with the individual or any other individual until HHSC completes their investigation. The staff member in question had been working double shifts. The program director stated they were unable to restrict access because they were short-handed. Further investigation revealed that the program provider had no policy for restricting access by the alleged perpetrator.
- *Example: Non-Critical Violation of (d)(4)*
  - An allegation of neglect was made for the program provider failing to contact EMS when an individual was showing signs that their condition was rapidly deteriorating and they needed to go to the hospital for evaluation and treatment. Two of the service providers gave evidence that they notified the program director via text message and e-mails of the person's condition. The program director stated that the text messages and e-mails were no longer available because they had since been erased. No medical attention was secured for the individual and they died in the residence. This was the only report during the certification year.
- *Example: Non-Critical Violation of (d)(5)*
  - During the survey the program provider failed to provide evidence that the individual, LAR, and the service coordinator were notified of the allegation report, the condition of the individual, and their corrective action in response to the allegation.

## Cooperation with HHSC Investigation

Citation: 40 TAC [§9.175\(e\)](#); [§9.585\(e\)](#)

Presentation slide: Module 8, Slides 31-32

Guidance:

- During an investigation of a service provider, staff member, volunteer or controlling person, the program provider must:
  - cooperate with the investigation including providing documentation and participating in an interview;
  - provide HHSC access to sites, individuals and records; and
  - ensure that staff members, service providers, volunteers, and controlling persons comply with these rules.

- *Example: Non-Critical Violation*
  - During review of a recent final investigation report it was noted that a service provider involved in the investigation failed to respond to the investigator's request for an interview. During interview the program provider stated that they cannot make the service provider complete an interview with the investigator. There was no evidence the program provider made any attempt to ensure that the service provider completed the interview.
  - This would become a critical violation if there were multiple instances of noncompliance or if the outcome of the investigation was jeopardized due to not being able to interview the service provider.

## **Actions Upon Receiving Final Investigation Report**

Citation: 40 TAC [§9.175\(f\)](#); [§9.585\(f\)](#)

Presentation slide: Module 8, Slides 33-45

Guidance:

- If the allegation of abuse, neglect, or exploitation is **confirmed** by HHSC, the program provider must review the report and take appropriate action as necessary. Examples of appropriate action include:
  - disciplinary action against the service provider or staff member;
  - staff training; and
  - updating the program provider's policies.
- If the allegation of abuse, neglect, or exploitation is **unconfirmed**, **inconclusive**, or **unfounded** the program provider must review the report, including any concerns and recommendations made by HHSC, and take appropriate action within the program provider's authority, as necessary.
- Immediately, but no later than **five calendar days** after receiving the HHSC final investigative report, the program provider must notify the individual, LAR, and service coordinator of:
  - the outcome of the investigation;
  - actions taken by the program provider;
  - how to appeal the investigation findings;
  - how to request a copy of the investigative report; and
  - what action will be taken regarding the final allegations. This would include any disciplinary action and a discussion of what that entails.
- An individual and LAR have the right to request an appeal of the investigation findings if they are not happy with the final conclusions. The provider must educate them on the appeal process and how to request a copy of the investigative report.
- Appeals must be requested within 60 calendar days of the HHSC report signature. Request an appeal by calling the Provider Investigations Appeals Hotline at **1-888-778-4766**.
- A program provider is not required to notify HHSC if an individual or LAR chooses to appeal a decision. If the appeal results in a change in the report,

the program provider must submit the updated final report per (f)(4) once it is received.

- A program provider must notify the HHSC RAC within 14 calendar days of receiving the final investigative report by completing [HHSC Form 8494 Notification Regarding an Investigation of ANE](#) and uploading it to the [WSC Portal](#).
- The provider must:
  - address confirmed allegations;
  - address any concerns or recommendations noted by Provider Investigations; and
  - attach any required documentation.
- Providers should **NOT** send the entire case file, just the HHSC Form 8494 and the documentation requested.
- Program providers are not required to submit Form 8494 for administrative referrals; this is only for completed investigations.
- If HHSC receives a final ANE report and identifies that a program provider has not submitted HHSC Form 8494, a Risk Assessment Coordinator will contact the program provider to request a report. If the provider becomes aware of an ANE allegation from HHSC and they have not received a final report, then they should contact Provider Investigations to request a copy.
- HHSC Provider Investigation will send a final report to the program provider unless the administrator and the secondary designee are the alleged perpetrator.
- The provider is responsible for attaching documentation when submitting Form 8494 to include a response for how the provider handled any confirmed allegations or HHSC concerns or recommendations. In-services and termination paperwork are examples of acceptable documentation.
- Providers must give a copy of the de-identified case record to the individual and/or LAR, if requested. The program provider must:
  - remove any information that would reveal the reporter's identity;
  - remove any information that would reveal the identity of any individual who is not the alleged victim; and
  - provide this request in a timely manner.
- Please remember to black out any other names or identifying information if sending out the case copy.
- *Example: Critical Violation of (f)(1)*
  - The program provider received confirmation that three direct care staff physically abused an individual and the provider failed to take disciplinary action.
  - This violation could be considered an immediate threat if the staff members were still providing services to individuals in the contract.
- *Example: Critical Violation of (f)(2)*
  - Multiple final investigation reports for unconfirmed cases revealed that the program provider did not follow-up on concerns related to the level of supervision for the individuals in a three-person residence. There was no evidence the program provider made any efforts to convene meetings with the individuals' SPTs or made any adjustments in the support

- provided by the individuals' service providers in the residence. During the home visit the surveyor identified that the service provider was inattentive to the needs of the individuals and was not providing adequate supervision.
- This violation would **not** be critical there was only one instance of noncompliance and the recommendations noted were not critical to the health and safety of the individual.
  - *Example: Non-Critical Violation of (f)(3)*
    - The program provider failed to show evidence that the individual, the LAR, and the service coordinator had been notified of the investigation findings or the action taken by the provider. The program provider also failed to notify the individual or LAR of the process to request an appeal or how to request a copy of the final investigative report. An interview with the individual verified that they did not receive the notifications.
  - *Example: Non-Critical Violation of (f)(4)*
    - The program provider failed to notify HHSC within 14 calendar days after receiving the final investigative reports. An interview with the Program Director revealed that the program provider was not aware that they had to notify HHSC within 14 days of receiving the final investigative report.
  - *Example: Non-Critical Violation of (f)(5)*
    - During review of an investigation it was revealed that the LAR asked to receive a copy of the final investigation report. The documentation showed that the LAR was not provided with a copy for three months after the program provider received the final report. There were no additional areas of noncompliance discovered with the other reports made during the certification period.
  - *Example: Critical Violation of (f)(5)*
    - During review of the documentation related to multiple investigations that occurred during the certification period, it was revealed that all of the LARs for the individuals had requested to receive a copy of the final report. None of the copies of the reports provided had been de-identified.

## 10. Service Delivery

### Requirement to Deliver Services

Citation: 40 TAC [§9.174\(a\)\(1\)-\(2\)](#); [§9.578\(a\)](#)

Presentation slide: Module 9, Slide 2

Guidance:

- **Unless the program provider has reached its service capacity**, the provider must serve all eligible applicants without regard to age, sex, race, or level of disability.
- The expectation is that a program provider is able to provide the array of services available based on each individual's needs.
- A program provider cannot place restrictions on the type of individual they will serve based on age, sex, race, or level of disability.
  - For example, a program provider cannot solely provide services to individuals on the autism spectrum, or only provide services to individuals who need host home/companion care.
- It is the responsibility of the program provider to ensure their census and service limit capacity is updated in the CARE system.
- *Example: Non-Critical Violation of §9.174(a)(1)*
  - HHSC received a complaint from a service coordinator stating that a program provider refused to serve an individual who selected them to be their program provider. A review of the HHSC Data System revealed that the program provider has not reached their service capacity. A surveyor interviewed the program provider who stated they didn't think they could serve the individual because of their behavioral issues.
- *Example: Non-Critical Violation §9.174(a)(2)*
  - HHSC received a complaint from an individual receiving services stating that the program provider refused to serve them due to their disabilities. The individual stated they require assistance with all activities of daily living because of their disabilities. An interview was conducted with the program provider who stated they could not serve the individual due to their level of disabilities.

### Provide/Obtain Services Without Delay (HCS)

Citation: 40 TAC [§9.174\(a\)\(3\)](#)

Presentation slide: Module 9, Slide 3

Guidance:

- HCS program providers must either provide or obtain all needed HCS and CFC program services without delay. For more information, see [IL 2008-81 Service Provision Requirements for all HCS Program Providers](#).

- TAC does not specify the length of time which would constitute a delay in service, as the length of time can be impacted by numerous factors, such as availability of service providers or the need to acquire a location for residential supports.
- Typically, services should be provided within 90 days of the SPT identifying the service need.
- The program provider should document all attempts to obtain services, such as documentation of phone calls or e-mails to potential service providers. This can be used as evidence to justify the length of time taken to obtain services. The program provider must keep all documentation justifying any delay in service.
- *Example: Non-Critical Violation*
  - During record review there was no evidence that the program provider obtained speech services for an individual. During an interview with the program provider they stated that they were not aware the individual had speech services on their IPC.
- *Example: Immediate Threat/Critical Violation*
  - During record review there was no evidence that the program provider obtained dietary services for an individual who has dietary services on their IPC. Further review of the record revealed that the individual has had significant weight loss over the past six months and was recently hospitalized due to being malnourished and underweight. During the interview with a direct care staff working at the three-person residence where the individual lives, the staff reported that the individual refused meals often and they documented the meal refusals and reported the refusals to the nurse. The staff stated the individual seemed to be losing weight, but nothing was done to address the meal refusals and weight loss.

## **Deliver Services Per Plan (TxHmL)**

Citation: 40 TAC [§9.578\(d\)](#)

Presentation slide: Module 2, Slide 27

Guidance:

- 40 TAC §9.578(d)(1) is one of the most commonly cited TxHmL violations.
- This rule refers to services not being provided in accordance with the individual's PDP, IPC, implementation plan, or transportation plan.
- As service delivery requirements are not included in the certification principles, as they are in HCS, this violation refers to any services that are not in line with the individual's goals, assessment and service delivery needs.
- Violations can include the type of service being provided and/or the number of units for each service being insufficient or inappropriate for the individual.

## **Choice of Residence (HCS)**

Citation: 40 TAC [§9.174\(a\)\(4\)](#)



Presentation slide: Module 9, Slide 4

Guidance:

- Providers must ensure that each individual or their LAR chooses where the individual will live from available options that are consistent with the individual's needs.
- Program providers are expected to develop resources for HCS Program and CFC services to meet an individual's needs.
- Compliance with this certification principle can be demonstrated through documentation (such as signatures or service log notes) that the individual or LAR participated in decisions.
- The residential options available to the individual will be based on numerous factors, such as the individual's financial situation and their service needs. The individual's 'wants' may not match their 'needs,' such as an individual wanting to live somewhere that exceeds their monthly budget.
- The expectation is not for the program provider to fulfill every want of an individual, but that the individual and LAR are empowered to make choices based on available options.
- *Example: Non-Critical Violation*
  - During an interview with an individual they stated that they wanted to live with their mother, and they wanted their mother to be their host home provider. The individual stated they were told by the program provider that they had to live in a four-person residence. During record review the PDP noted that the individual's desire was to live with their mother. During an interview with the program provider, they stated they were not aware that they could contract with the individual's mother to provide host home services or that the individual wanted to live with their mother.

## Encourage Involvement (HCS)

Citation: 40 TAC [§9.174\(a\)\(5\)](#)

Presentation slide: Module 9, Slide 5

Guidance:

- Providers must encourage the involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as possible.
- It is important the program provider allow the LAR or individual's family members and friends to be involved in the individual's life. This can be demonstrated through service logs and through interviewing the individual to obtain their information on how the provider encourages full participation of family and friends in their lives.
- *Example: Critical Violation*
  - During an interview with an individual they stated that they have not had any contact with their family in the past year. The individual stated that they asked the program provider to assist them with contacting their



family, but the program provider told them that they didn't think the individual's family wanted to be involved. During record review the individual's PDP noted that the individual had family who wanted to be involved in their life.

## Individuals Under 22 (HCS)

Citation: 40 TAC [§9.174\(a\)\(6\)-\(8\)](#)

Presentation slide: Module 9, Slides 6-9

### Guidance:

- For individuals under the age of 22 who are receiving supervised living or residential support, program providers must request from and encourage the parent or LAR to provide them with the following information:
  - their name, address, and telephone number;
  - their driver's license number and state of issuance, OR personal identification card number issued by the Department of Public Safety; and
  - their place of employment and the employer's address and telephone number.
- In addition, the provider must request the name, address, and telephone number of a family member or other person who may be contacted in an emergency. A statement should be obtained indicating the relationship between that person and the individual, and, if the parent or LAR chooses:
  - that person's driver license number and state of issuance or personal identification card number; and
  - the name, address, and telephone number of that person's employer.
- This documentation should be maintained in the individual's record and kept up-to-date if any changes occur.
- The program provider must also request a signed acknowledgement of responsibility stating that the parent or LAR agrees to notify the program provider of any changes to the contact information submitted and make reasonable efforts to participate in the individual's life and planning activities.
- If the person accepting responsibility changes, then an updated acknowledgement should be obtained.
- The parent or LAR must be informed that if the information requested is not provided or is not accurate, and the service coordinator and HHSC are unable to locate the parent or LAR, HHSC will refer the case to DFPS.
- It is recommended that providers keep documentation in writing of the information provided to the parent or LAR.
- Providers are expected to make reasonable accommodations to promote the participation of the parent or LAR in all planning and decision-making regarding the individual's care. This includes participation in any meetings conducted by the program provider.
- Providers must also assist the Local IDD Authority (LIDDA) with permanency planning by:
  - allowing access to an individual's records or providing other information in a timely manner if requested by the local authority or HHSC;

- participating in meetings to review the permanency plan; and
- helping to identify activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA to help prepare the individual for an alternative living arrangement.
- The provider must help the individual continue supportive and nurturing relationships by encouraging regular contact between the individual and the LAR and, if desired, between the individual and advocates and friends in the community.
- Providers must keep a copy of the individual's current permanency plan in the individual's record and must refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional or community setting.
- If an emergency situation occurs, providers must attempt to notify the parent or LAR and service coordinator as soon as the situation allows and request a response from the parent or LAR. If unable to locate the parent or LAR, the provider must notify the service coordinator of the inability to contact them.
- *Example: Non-Critical Violation of (a)(6)*
  - Record review revealed no evidence that the program provider requested contact information an individual's (whom is under 22 years of age) LAR. During an interview the program provider, they were not aware that the individual had a LAR.
- *Example: Non-Critical Violation of (a)(7)*
  - Record review revealed no evidence that the program provider informed the individual's LAR that if they do not provide contact information or the information is incorrect, and the service coordinator and HHSC is unable to locate the LAR then HHSC will refer the case to DFPS. The surveyor interviewed the LAR for the individual and there confirmed that they had not been informed by the program provider.
- *Example: Non-Critical Violation (a)(8)(A)*
  - During record review the surveyor did not find evidence that the individual's LAR attended meetings conducted by the program provider. Interview with the LAR revealed that the program provider did not invite them to any of the meetings.
- *Example: Non-Critical Violation (a)(8)(B)*
  - The surveyor interviewed the LIDDA for an individual under 22 years of age. The LIDDA stated that the program provider has not been cooperating with them, has not provided access to the individual's record or participated in the permanency planning for the individual. Record review revealed that the permanency plan for the individual was out of date.
- *Example: Non-Critical Violation (a)(8)(C)*
  - During a record review an incident report noted that the individual was arrested and taken to jail. The record did not note whether the program provider attempted to notify the LAR and service coordinator of the individual's arrest. An interview was conducted with the LAR who stated they were not notified of the individual's arrest.

- *Example: Non-Critical Violation (a)(8)(D)*
  - During an interview with program provider they reported to the surveyor that they have not been able to locate the individual's LAR. The record review revealed no evidence that the program provider notified the service coordinator. When the surveyor asked the program provider if they notified the service coordinator when they were unable to locate the individual's LAR, the program provider stated they had not notified the service coordinator.

## Access to Individual (HCS)

Citation: 40 TAC [§9.174\(a\)\(9\)](#)

Presentation slide: Module 9, Slide 10

Guidance:

- Providers must allow the individual's family members and friends access to the individual without arbitrary restrictions, unless exceptional conditions are justified and documented in the PDP. In the event an emergency order is issued, some requirements may be temporarily suspended, like we've seen with COVID-19.
- *Example: Non-Critical Violation*
  - A surveyor conducted an interview with an individual. During the interview the individual stated that they have not been allowed to see their parents. The individual stated that the program provider refused to allow them to come visit him at his residence. Review of the record did not note any restrictions or reasons for restricting visits between the individual and his parents.

## Notify Service Coordinator (SC) of Changes (HCS)

Citation: 40 TAC [§9.174\(a\)\(10\)](#)

Presentation slide: Module 9, Slide 10

Guidance:

- Providers must notify the SC if there are any changes in an individual's age, skills, attitudes, likes, dislikes, or conditions that would require a change in the individual's residential, educational, or work settings.
  - Examples: the individual changes schools or begins working
- *Example: Non-Critical Violation*
  - A surveyor interviewed an individual regarding their satisfaction with their living environment. The individual stated that they disliked living in their 3-person residence. The individual stated she had told the program provider and they were going to have a meeting with the SC, but the meeting never happened. A record review was conducted and there was no evidence that the program provider had communicated the individual's dislike of her current residential setting.

## Maximize Community Interaction (HCS)

Citation: 40 TAC [§9.174\(a\)\(11\)](#)

Presentation slide: Module 9, Slide 10

Guidance:

- Providers are also required to ensure that an individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with members of the community as much as possible.
- *Example: Non-Critical Violation*
  - A surveyor conducted a visit to a four-person residence and found that the four-person residence was in a remote location. An interview conducted with direct care staff revealed that the individuals living in the four-person residence have little to no interaction with people in the community.

## Individual Plan of Care (IPC) Renewal (HCS)

Citation: 40 TAC [§9.174\(a\)\(12\)](#); [§9.166](#)

Presentation slide: Module 9, Slides 11-15

Guidance:

- The program provider must ensure that the IPC for each individual is renewed or revised in accordance with §9.166.
  - The SC is responsible for ensuring the development and submission of the **initial** IPC.
  - Program providers are responsible for IPC **renewals and revisions**.
- It is the program provider's responsibility to ensure the IPC is renewed annually before the expiration date.
- It is important that the program provider document any attempts to obtain updated documentation from the SC. This can be done by saving e-mail communications and phone calls. Coordination and communication between the SC and program provider is essential to ensure individual service needs are met within required timeframes.
- Program providers must make sure the electronically transmitted IPC contains information that is identical to that on the original proposed IPC.
- The program provider must provide all HCS Program CFC services in the implementation plan, which is based on the PDP and IPC.
- Transportation must also be provided according to the transportation plan.
- If an emergency requires an HCS or CFC service to ensure the individual's health and safety, the program provider may provide the service, even if it is not on the IPC or if the service exceeds the amount on the IPC.
- *Example: Non-Critical Violation*
  - A review of the record revealed an expired IPC. The surveyor conducted an interview with the program provider regarding the expired IPC. The program provider stated that they were not aware that the IPC was expired.

## Implementation Plan

Citation: 40 TAC [§9.174\(a\)\(13\)](#); [§9.578\(c\)\(2\)](#)

Presentation slide: Module 9, Slides 16-17

Guidance:

- Program providers must ensure that all services identified in the implementation plan and transportation plan are provided in an individualized manner.
- The services must be based on the results of assessments of the individual's and the family's strengths, goals and needs, and not based on which services are available or on service provider convenience.
- These assessments can include the nursing assessment or a behavioral support plan, for example. The PDP should be used as a resource to identify the individual's strengths, goals, and needs, as well as those of the individual's family members.
- While multiple individuals may be receiving the same services, their implementation plans should be tailored based on the individual's specific strengths, goals, and needs.
- In addition to the development of the IPC, TAC §9.174(a)(26) requires that the provider ensures that an individual has a current implementation plan. The implementation plan must be based on the current IPC.
- The HCS Handbook provides additional guidance on implementation plan development in [Section 7000](#). It is recommended that program providers review this section of the handbook to ensure all required elements are included on the implementation plan and that all necessary signatures are obtained.
- *Example: Non-Critical Violation*
  - Record review of the PDP and Implementation Plan revealed that the individual has a goal to obtain supported employment services so that he can keep his job and continue to improve his skills to stay on task. Surveyor interviewed the individual who stated that they never received the supported employment because the program provider did not have anyone to provide those services.
- For TxHmL, the program provider must develop an implementation plan and, if transportation as a community support activity is identified on the PDP, a transportation plan. §9.578(c)(2)(B), the requirement to develop the transportation plan, is one of the most commonly cited TxHmL violations. A transportation plan is used to document how transportation will be delivered to support the individual's desired outcomes identified in the PDP. [HHSC Form 3598 Individual Transportation Plan](#) is used for this purpose.

## Evaluation of Progress

Citation: 40 TAC [§9.174\(a\)\(14\)](#); [§9.578\(f\)](#); [HCS Provider Handbook](#)

Presentation slide: Module 2, Slide 28; Module 9, Slides 18-21

Guidance:

- 40 TAC §9.578(f) is one of the most commonly cited TxHmL violations. This rule refers to the documentation of the individual's progress or lack of progress towards their goals.
  - This documentation may not include observable and measurable terms or may not directly relate to the individual's specific goals. Additionally, this violation may include a lack of documentation that the progress/lack of progress has been made available to the individual's SC.
- Providers are required to document each individual's progress or lack of progress toward desired outcomes. This should be documented in observable, measurable, or outcome-oriented terms.
  - Observable means that staff are able to use one or more of the five senses (sight, hearing, touch, smell or taste) to evaluate performance on the implementation strategy.
  - Measurable means that calculations are made to determine progress.
  - Outcome oriented progress means that an event occurred that was identified in the implementation strategy.
- *Example: Non-Critical Violation*
  - A record review revealed no evidence of the individual's progress or lack of progress. Surveyor conducted an interview with the program provider who stated they had forgotten to document the individual's progress or lack of progress.

## Opportunities for Peer Relationships

Citation: 40 TAC [§9.174\(a\)\(15\)](#)

Presentation slide: Module 9, Slide 22

Guidance:

- Program providers must ensure that all individuals they serve have access to the same opportunities as other members of the community.
- This includes making sure that each individual has opportunities to develop relationships with peers with and without disabilities and receives the necessary support if he or she chooses to develop those relationships.
- *Example: Non-Critical Violation*
  - A review of the individual's PDP noted a goal for the individual to meet more people and develop more relationships. During an interview with the individual she stated that she has not had any opportunities to meet new people so she can try to develop relationships.

## Work: Wages

Citation: 40 TAC [§9.174\(a\)\(16\)](#); [§9.578\(h\)](#)

Presentation slide: Module 9, Slide 23

Guidance:

- If an individual chooses to work for the program provider, the individual must be paid on the basis of their production or performance and at wages that are comparable with that paid to persons without disabilities who would otherwise perform that work.
- Compensation must also be based on local, state, and federal regulations, including Department of Labor regulations.
- *Example: Critical Violation*
  - A surveyor observed an individual in the sample answering phones and filing paperwork at the program provider's office. The surveyor conducted an interview with the individual regarding satisfaction with their services and work she is performing for the program provider. The individual reported to the surveyor that she is unsatisfied because she has been working at the program provider's office and has not been paid for the work she has performed.

## Work: Marketable Goods and Services

Citation: 40 TAC [§9.174\(a\)\(17\)](#); [§9.578\(j\)](#)

Presentation slide: Module 9, Slide 24

Guidance:

- Individuals who produce marketable goods and services in habilitation training programs must be paid at the same wages paid to persons who are without disabilities, and compensation must be based on requirements contained in the Fair Labor Standards Act.
  - These requirements include accurate recordings of individual production or performance; valid and current time studies or monitoring as appropriate; and prevailing wage rates.
- The program provider must maintain documentation of the required compensation requirements.
- *Example: Critical Violation*
  - A surveyor conducted a visit to the day habilitation center attended by several individuals in the program provider's contract. The surveyor observed individuals making bird houses at the day habilitation center. The surveyor interviewed several of the individuals who stated that the bird houses they are making are being sold by the day habilitation center staff and they are not being compensated for their work.

## Work: Training, Supervision, or Care

Citation: 40 TAC [§9.174\(a\)\(18\)](#); [§9.578\(i\)](#)

Presentation slide: Module 9, Slide 25

Guidance:

- Individuals must not provide any training, supervision, or care to other individuals **unless** they are qualified and compensated in accordance with local, state, and federal regulations.



- Individuals who are providing care must meet all staff requirements included in §9.177 or §9.579.
- *Example: Non-Critical Violation*
  - A surveyor conducted a visit to a three-person residence. The surveyor observed an individual receiving services performing check and change on another individual. The surveyor interviewed the direct care staff at the three-person residence who stated that she allows the individual to assist with check and change when she gets busy and the individual just wants to be "helpful." The record review conducted had no evidence that the program provider ensured the individual performing care to another individual was qualified or compensated for the tasks performed.
- *Example: Critical Violation*
  - A surveyor conducted a visit to a four-person residence. The surveyor observed an individual receiving services providing supervision to another individual receiving services during meal time. The individual being supervised by the other individual was supposed to be one-to-one supervision during meals due to a history of choking. The surveyor observed the direct care staff in another room providing care to another individual during the home visit. The direct care staff was interviewed, and they reported to the surveyor that they asked the individual to supervise the other individual because their housemate had an accident and needed assistance with changing their clothes.

## Leisure Time

Citation: 40 TAC [§9.174\(a\)\(19\)](#); [§9.578\(k\)](#)

Presentation slide: Module 9, Slide 26

Guidance:

- Unless contraindications are justified and documented by the service planning team, an individual's routine must provide opportunities for leisure time activities, vacation periods, religious observances, holidays and days off, consistent with their choice and the routines of other members of the community.
- *Example: Critical Violation*
  - An interview was conducted with an individual receiving services. During the interview, the individual stated that they never get to take a day off from going to the day habilitation center. The individual stated they asked the program provider if they could take a day off for their birthday, but they were told no. A review of the record revealed that the individual attended day habilitation on his birthday and was not allowed to take the day off as requested.

## Retirement

Citation: 40 TAC [§9.174\(a\)\(20\)](#); [§9.578\(l\)](#)

Presentation slide: Module 9, Slide 27



Guidance:

- If the individual is of retirement age, he or she must have opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice.
- Any contraindications must be justified and documented by the SPT.
- *Example: Non-Critical Violation*
  - During an interview with an individual receiving services they reported to the surveyor that they wanted to retire from the day habilitation center. The individual stated they would like to stay home and relax, but they were told they could not. The individual stated that he has been having more behaviors at the day habilitation center because he doesn't want to go there anymore and wants to retire. Record review revealed multiple incident reports where the individual had behavioral outbursts at the day habilitation center. The staff also noted the individual stated he wanted to retire and was tired of attending.

## Community Activities/Experiences

Citation: 40 TAC [§9.174\(a\)\(21\)](#); [§9.578\(m\)](#)

Presentation slide: Module 9, Slide 28

Guidance:

- Unless contraindicated, the provider must ensure that each individual is offered the same choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities.
- Contraindications must be justified and documented by the SPT.
- *Example: Non-Critical Violation*
  - Record review of the individual's PDP revealed that the individual enjoyed going out into the community to attend various activities such as attending festivals, parades, and music events. A review of service delivery logs did not indicate that the individual has been able to attend community activities. The individual was interviewed, and they stated that they have not been allowed to attend any activities in the community.

## Community Services/Resources (HCS)

Citation: 40 TAC [§9.174\(a\)\(22\)](#)

Presentation slide: Module 9, Slide 29

Guidance:

- Providers must also assist the individual to meet as many of his or her needs as possible by using generic community services and resources in the same way and during the same hours as used by the community at large.
  - Example: using the community grocery store, pharmacy, or library resources that are available to the general public.
- *Example: Non-Critical Violation*

- An individual's LAR tells the program provider that an individual needs assistance obtaining a state issued ID to vote at the local election next month. The program provider says that they will assist the individual in the next few weeks. A surveyor asks the individual how their services are going, the individual states they are disappointed because they cannot participate in the local election next week because they were not able to get assistance getting a state issued ID card. The program provider stated they couldn't assist the individual to get a state ID card because the individual attends day habilitation during the time the Tax Office is open.

## Service Coordination (HCS)

Citation: 40 TAC [§9.174\(a\)\(25\)](#)

Presentation slide: Module 9, Slide 31

Guidance:

- Together with the SC, the program provider must ensure the coordination and compatibility of HCS Program and CFC services with non-HCS Program and non-CFC services.
- Non-waiver services may include traditional Medicaid services, home health, school supports, or natural supports. Waiver funding should be the 'payor of last resort,' and the program provider is expected to assist the individual, together with the SC, in accessing available non-waiver services.
- It may also be necessary to communicate with non-waiver service providers to coordinate an individual's health care needs. Documentation of communication with non-waiver providers and with the SC should be maintained in the individual's record.
- *Example: Non-Critical Violation*
  - During interview with the program provider's RN they informed the surveyor that the individual had been attending a DAHS day program for the past two years, which is not a billable waiver service. Record review revealed that the individual had day habilitation units on the IPC. There was no evidence that the program provider attempted to make arrangements for the individual to attend an HCS day program that was more appropriate to meet their needs.

## Residential Requirements (HCS)

Citation: 40 TAC [§9.174\(a\)\(23\)\(A\)-\(F\)](#)

Presentation slide: Module 9, Slide 32

Guidance:

- For any individual receiving HH/CC, residential support, or supervised living, the program provider must ensure that the individual lives in a residence that is a typical residence within the community. The residence, neighborhood, and community must meet the needs and choices of the individual and

provide an environment that ensures their health, safety, comfort, and welfare.

- There must be a sufficient supply of hot water at sinks and in bathing facilities to meet the individual's needs
- The temperature of the hot water must not exceed 120 degrees Fahrenheit unless the program provider conducts a competency-based skills assessment documenting that all individuals in the residence can independently regulate the temperature of the hot water from all sinks and bathing facilities.
- Unless contraindicated, (and remember, all contraindications must be justified and documented by the service planning team), the individual must live near family and friends if needed or desired. Community resources should be consistent with the individual's choice, if possible.
- Except in the case of an emergency, providers must ensure that the individual or LAR is involved in planning an individual's residential relocation. The program provider is not responsible for fulfilling all the individual's wants if they are outside the means of their current circumstances, but must ensure the individual or LAR is involved in the planning and decision-making.
- *Example: Non-Critical Violation of (a)(23)(A)*
  - A surveyor arrived at the address listed for a three-person residence and observed an office building and not a three-person residence. The program provider was interviewed, and they stated that they could not find a home to rent or buy at the time, so they placed the individuals into an office building until they could find a home to rent or buy.
- *Example: Non-Critical Violation of (a)(23)(B)*
  - A surveyor conducted an interview with an individual. During the interview the individual stated that she did not feel safe in her neighborhood. She stated that she hears gun shots at night and someone attempted to break into the four-person residence a couple of weeks ago. During the visit the surveyor observed damage to the front door of the residence. An interview with the staff confirmed that the damage to door was due to an attempted break-in. The staff stated that the program provider had not done anything to fix the door or relocate the individuals to a safer neighborhood.
- *Example: Non-Critical Violation of (a)(23)(C)*
  - During a visit at the host home for an individual, the surveyor tested the water temperature in the home. The surveyor found that the home did not have an adequate supply of hot water in the individual's bathroom. The surveyor attempted to turn the hot water knob and no water came out of the faucet. The host home provider was interviewed by the surveyor and they informed the surveyor that they had issues with the faucet and they were working to get it repaired.
- *Example: Critical Violation of (a)(23)(C)*
  - A surveyor conducted visit at a host home for an individual. The surveyor tested the water temperatures at the home and found an inadequate supply of hot water throughout the home. The water temperature for the hot water was measured to be 56 degrees. The surveyor interviewed the host home provider who stated that they have had a broken hot water

- heater for about six months. The host home provider stated that they could not afford to get a new water heater at this time. If they needed hot water, they boiled water on the stove.
- *Example: Critical Violation of (a)(23)(D)*
    - During a visit at the 4-person residence for an individual receiving services, the surveyor tested the hot water temperatures. The surveyor discovered that the hot water temperature for the sink in the main bathroom was 125 degrees. The water temperature for the bathroom tub faucet was 124 degrees. An interview with staff was conducted and they stated that the water seemed too cold, so they adjusted the hot water heater. A record review reveals no evidence of an assessment for the individual to independently regulate the hot water. Surveyor did not find evidence of any individuals living in the home receiving injuries due to the hot water temperatures in the residence. The program provider presented evidence that they placed a lock box on the hot water heater temperature valve, so staff could not adjust the water temperature. The program provider presented evidence that water temperature was below 120 degrees and that staff were trained that they could not adjust the hot water heater temperature.
  - *Example: Immediate Threat/Critical Violation of (a)(23)(D)*
    - During a visit at the 4-person residence for an individual receiving services, the surveyor tested the hot water temperatures. The surveyor discovered that the hot water temperature for the sink in the main bathroom was 130 degrees. The individuals in the residence were unable to adjust the water temperatures independently, and one individual suffered burns on their hands as a result.
  - *Example: Non-Critical Violation of (a)(23)(E)*
    - A surveyor conducted an interview with an individual and during the interview the individual stated that they were not happy with their current living environment because they could not visit their family. The individual stated that their family lived 6 hours away from them and so they rarely came to visit. The individual stated that she had asked to move closer, but she was told no. A review of the record did not list any contraindications to the individual living closer to her family.
  - *Example: Non-Critical Violation of (a)(23)(F)*
    - During an interview with an individual receiving services they reported that they were not happy because the program provider moved them to another residence without asking them if they wanted to move or telling them why they were moving. A review of the SPT meeting notes discussing the recent move revealed no evidence of the individual or LAR being involved. The reason for the move was not documented.

## Hot Water Assessment (HCS)

Citation: 40 TAC [§9.174\(i\)](#)

Presentation slide: Module 9, Slide 33

Guidance:

- If the program provider conducts the competency-based skills assessment described, the assessment must:
  - be conducted by a staff member who is not a service provider of residential support, supervised living, or HH/CC who works or lives in the residence;
  - must be conducted for each individual who lives in the residence;
  - must evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance from each sink and bathing facility in the residence; and
  - must be based on a face-to-face demonstration by the individual.
- The provider must complete the assessment at least annually, document the results of the assessment, and keep a copy of the results in the residence.
- *Example: Non-Critical Violation*
  - During a home visit at a HH/CC residence, it was revealed that a competency-based skills assessment for the individual to safely regulate the hot water independently was completed by the host home provider. The HH/CC provider confirmed during interview that they completed the assessment.
- *Example: Critical Violation*
  - During a home visit at a 4-person residence, the hot water temperature was measured to be 127 degrees. There were competency-based skills assessments for 3 of 4 individuals in regard to their ability to safely regulate the hot water temperature. However, there was no evidence that the program provider's case managers who completed the documents conducted the assessments face-to-face or updated the assessment annually. There was one individual in the residence who did not have a competency-based skills assessment. During the assessments conducted during the survey it was revealed that 2 of 4 individuals required support to safely regulate the water. Record review revealed that one of the individuals had previously suffered burns when taking a shower independently that was too hot. The individual was able to communicate their need for assistance and the burns were not life-threatening.

## Door Locks (HCS)

Citation: 40 TAC [§9.174\(a\)\(23\)\(G\)-\(H\)](#)

Presentation slide: Module 9, Slide 34

Guidance:

- Unless contraindicated and this justification is documented by the SPT, the provider must ensure the individual has a door lock on the inside of his or her bedroom door, if it is requested by either the individual or LAR.
- The door lock installed must be a single action lock, it must be able to be unlocked with a key from the outside of the door by the program provider,

and it must not be purchased or installed at the individual's or LAR's expense.

- *Example: Non-Critical Violation of (a)(23)(G)*
  - A surveyor conducted an interview with an individual receiving services. During the interview the individual stated that they were upset because they have been asking for a lock on their bedroom door. They stated that they discussed the request at his most recent PDP meeting, but he hasn't gotten the lock on his door. Surveyor requested to see the individual's room and did not observe a lock on the individual's bedroom door. A review of the PDP noted that the team discussed the individual's request for a lock on his bedroom door and did not find any contraindications.
- *Example: Critical Violation of (a)(23)(H)*
  - During a visit at a residence, the surveyor observed a lock on an individual's doorknob. The locking mechanism was not on the inside of the door, but the outside. Interview was conducted with the direct care staff and they stated that the individual has behavioral outburst and when they do, they request that the individual go to their room. The staff stated they lock the individual in their room until they are calm.
- *Example: Non-Critical Violation of (a)(23)(H)*
  - During a visit at the residence the surveyor observed a lock on the individual's bedroom door. During an interview the individual stated that they had to pay for the lock out of their own personal funds. A record review was conducted of the individual's finances and revealed that the lock for the individual's bedroom door was purchased with the individual's own funds.

## Adaptive Aids (HCS)

Citation: 40 TAC [§9.174\(a\)\(24\)](#)

Presentation slide: Module 9, Slide 35

Guidance:

- Adaptive aids must be provided in accordance with the individual's PDP, IPC, implementation plan, and Appendix C of the HCS waiver application.
- Adaptive aids include the full range of lifts, mobility aids, control switches or pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids. For a full list of billable adaptive aids, please see the [HCS Billing Guidelines](#), Appendix VII.
- Providers are also responsible for the repair and maintenance of the aids as needed.
- *Example: Non-Critical Violation*
  - A review of an individual's IPC revealed that the individual had adaptive aids on their IPC. A review of the PDP noted that the individual had a communication device. The surveyor attempted to interview the individual but was unable to due to the individual's communication device needing repairs. The program provider was interviewed by the surveyor and they informed the surveyor that they have been in contact with a company

- that can repair the communication device. They have scheduled an appointment with the company for next Tuesday.
- *Example: Immediate Threat/Critical Violation*
    - A surveyor conducted a visit at the four-person residence. The surveyor observed a mechanical lift that appeared to be in poor condition. The surveyor conducted an interview with the direct care staff who stated that the lift has not been working for at least three months. The direct care staff stated that they told the program provider when the lift first stopped working and the program provider stated they would get someone out to repair the lift. The direct care staff stated there hasn't been anyone out to repair the lift and they have continued to remind the program provider about the broken lift, but nothing has been done. The direct care staff reported that they have been manually lifting the individual since the lift is broken. The direct care staff reported that they accidentally dropped the individual last week while trying to transfer him from the bed to his wheelchair. The individual taken to the ER after the fall and he suffered a fracture to his right arm. A review of the individual's record revealed a report from the ER noting the individual had suffered a fall during transfer and was diagnosed with a fracture to the right ulna and radius bones.

## Professional Therapy Services (HCS)

Citation: 40 TAC [§9.174\(a\)\(27\)](#)

Presentation slide: Module 9, Slide 36

Guidance:

- Providers must ensure that professional therapy services are in accordance with the individuals PDP, IPC, implementation plan and Appendix C of the waiver application.
- Professional therapy services include:
  - audiology services;
  - speech/language pathology services;
  - occupational therapy services;
  - physical therapy services;
  - dietary services;
  - social work services;
  - behavioral support; and
  - cognitive rehabilitation therapy.
- If the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider and SC must assist the individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and that a qualified professional provides and monitors the provision of cognitive rehabilitation therapy.
- TAC [§9.177\(q\)](#) describes the required qualifications for therapy professionals.
- *Example: Non-Critical Violation*



- A surveyor conducted a record review and did not find evidence that the individual receiving services received professional therapy services in accordance with their PDP, implementation plan, and IPC. The individual was supposed to receive occupational therapy, physical therapy, and cognitive rehabilitation therapy. During the interview with the program provider they stated that they had been having problems finding service providers for occupational therapy, physical therapy, and cognitive rehabilitation therapy. The program provider stated they were unaware they needed to coordinate with the SC in assisting in obtaining cognitive rehabilitation therapy services.
- *Example: Non-Critical Violation*
  - Record review of a behavioral support consultation noted the need for the individual to receive neurology services and have their psychiatry services re-evaluated. There was no evidence that the program provider assisted the individual with obtain these services.
  - This would become a critical violation if there were numerous instances of non-compliance throughout the contract and/or an individual was harmed by the program provider's failure to assist them with obtaining these services.

## Day Habilitation (HCS)

Citation: 40 TAC [§9.174\(a\)\(28\)](#)

Presentation slide: Module 9, Slide 37

Guidance:

- The program provider must ensure day habilitation is provided and that it is consistent with the individual's preferences and needs. Day habilitation consists of:
  - assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills that are necessary to reside successfully in the community;
  - providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;
  - complementing any professional therapies listed in the IPC;
  - reinforcing skills or lessons taught in school, therapy, or other settings;
  - training and support activities that promote the individual's integration and participation in the community;
  - providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and
  - providing transportation as needed for the individual to participate in any day habilitation activities. For example, if the day habilitation activity includes a trip to the movies, the day habilitation provider must provide transportation to and from the movie theater.
- Surveyors may review service logs from day habilitation sites and conduct interviews with the individual and their day habilitation staff to determine how services are being provided.



- If a program provider contracts with day habilitation services, it is important that contracted staff are made aware of the individual's PDP, IPC, and implementation plan to ensure that services are working towards the individual's goals and meeting their needs.
- *Example: Non-Critical Violation*
  - A surveyor conducted a record review and did not find evidence that the individual receiving services received day habilitation services in accordance with their PDP, implementation plan, and IPC. During an interview with the program provider they reported that they were not aware that the individual had day habilitation services on the IPC.

## Dental Services (HCS)

Citation: 40 TAC [§9.174\(a\)\(29\)](#)

Presentation slide: Module 9, Slide 38

Guidance:

- The following dental services must be provided as needed, if dental services are included in the IPC and implementation plan:
  - emergency dental treatment;
  - preventive dental treatment;
  - therapeutic dental treatment; and
  - orthodontic dental treatment, excluding cosmetic orthodontia.
- Documentation should be provided by the dentist or dental hygienist to ensure that services are in accordance with the individual's plan and waiver requirements.
- *Example: Non-Critical Violation*
  - A surveyor completed a record review which revealed no evidence of the individual receiving dental treatment per their PDP, IPC, and Implementation Plan. Surveyor interviewed the individual receiving services who stated that he hasn't seen a dentist in the past year. The individual stated he hasn't had any pain or other issues with his teeth.
- *Example: Critical Violation*
  - A surveyor completed a record review which revealed no evidence of the individual receiving dental treatment per their PDP, IPC, and Implementation Plan. Surveyor interviewed the individual receiving services who stated they have been having tooth pain. He stated that he told his direct care staff, but nothing has been done. He stated that he has not been sleeping well due to the pain his tooth has been causing him. The surveyor observed the individual's face to be swollen.

## Minor Home Modifications (HCS)

Citation: 40 TAC [§9.174\(a\)\(30\)](#)

Presentation slide: Module 9, Slide 39

Guidance:

- The SPT may decide that minor home modifications are required to accommodate the individual's needs. If this is the case, the provider must ensure they are completed in accordance with the implementation plan. Home modifications allowed through the HCS program include:
  - purchase and repair of wheelchair ramps;
  - modifications to bathroom facilities, such as grab bars in the shower;
  - modifications to kitchen facilities;
  - specialized accessibility and safety adaptations or additions; and
  - repair and maintenance of minor home modifications that are not covered by a warranty.
- For a complete list of billable minor home modifications, please see the [HCS Billing Guidelines](#).
- Program providers should maintain documentation of bids and estimates provided for home modifications.
- Surveyors will observe completed minor home modifications during on-site surveys.
- It is important that the program provider stays updated on any necessary repairs needed for minor home modifications to ensure that any modifications continue to meet the needs of the individual and that they are in good repair, so it is safe for the individual and service providers to use.
- *Example: Non-Critical Violation*
  - A record review revealed that the individual receiving services had minor home modifications on their IPC. According to the individual's PDP she required wheelchair ramps, modifications to the bathroom, and modifications to the kitchen. A surveyor conducted a home visit and observed that the wheelchair ramp at the home needed repairs. The individual's bathroom and kitchen were in good repair. During an interview with the program provider they stated that they have someone coming to assess the repairs that are needed to repair the wheelchair ramp.

## Nursing Services

Citation: 40 TAC [§9.174\(a\)\(31\)](#); [§9.578\(p\)](#)

Presentation slide: Module 9, Slide 40

Guidance:

- The program provider must ensure nursing services are performed in accordance with state law and the Board of Nursing rules.
- Texas BON website: <https://www.bon.texas.gov/>
- HHSC & BON FAQ : [BON FAQ](#)

## Nursing: Medications (HCS)

Citation: 40 TAC [§9.174\(a\)\(31\)\(A\)-\(B\)](#)

Presentation slide: Module 2, Slide 17; Module 9, Slide 41

Guidance:

- 40 TAC §9.174(a)(31)(B), related to medication monitoring, is one of the most commonly cited violations for HCS providers.
  - These violations can be related to the program provider medication administration records (MAR), such as a missing MAR, or the MAR missing documentation of administration or including inaccurate information, such as medication dosage not matching the individual's prescription.
  - These violations can also be related to doctor's orders being missing or out of date, such as the medications observed in the home not matching the doctor's orders on file.
- Nursing services include the services of an RN or LVN and consist of performing health care activities and monitoring the individual's health conditions, including:
  - administering medication; and
  - monitoring the individual's use of medications.
- During a survey, a thorough review of the nursing assessment and nursing service logs provide documentation of how nursing services are being delivered to individuals.
- The RN and LVN must operate on the scope of their license, as there are certain tasks that only an RN can complete.
- *Example: Immediate Threat/Critical Violation of (a)(31)(A)*
  - An individual was discharged from the hospital with prescriptions for multiple medications to aid in their recovery. There was no evidence that the program provider's RN procured or administered the medications. The individual's condition rapidly declined after being discharged and they had to be readmitted to the hospital a few days later. Review of the other individuals in the sample revealed there were multiple individuals who had been prescribed new medications that the RN failed to procure and administer. There was no evidence that the program provider began to administer any of the missing medications.
- *Example: Non-Critical Violation of (a)(31)(B)*
  - Record review revealed that an individual was out of vitamins that were listed in their current medication list. There was no evidence that the individual experienced an adverse outcome as a result of the missing vitamins and the program provider obtained the vitamins for the individual during the course of the survey.
- *Example: Critical Violation of (a)(31)(B)*
  - During a home visit, the surveyor observed that there were several discrepancies on the Medication Administration Records and the medications found in the residence. Interview with the residential services providers revealed that multiple medications for critical psychiatric and cardiovascular conditions had run out and had not been refilled. The service providers stated that they notified the RN of the missing medications. There was no evidence that the RN attempted to refill the prescriptions or that they had assessed the individual to determine the impact of the missed doses. There were multiple additional areas of

noncompliance found in which other individuals were also missing critical life-sustaining medications.

## **Nursing: Monitoring Health Risks (HCS)**

Citation: 40 TAC [§9.174\(a\)\(31\)\(C\)](#)

Presentation slide: Module 9, Slide 42

Guidance:

- Nursing services also include monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment.
- *Example: Immediate Threat/Critical Violation*
  - Record review revealed that an individual has a seizure disorder. However, there was no record that the individual's seizure activity was being monitored by the RN of the service providers. During interview with the RN and service providers they stated that the individual does not have a seizure disorder. However, this differs from the physician's records which all state the individual has a seizure disorder and have multiple medications for seizure disorder being administered to the individual by the service providers. Further interview with the LVN revealed that the individual does have seizure activity that requires monitoring. There was no evidence that this was occurring. Record review of the service delivery logs revealed that the individual fell on multiple occasions during seizure activity that resulted in significant injuries.

## **Nursing: Securing Emergency Services (HCS)**

Citation: 40 TAC [§9.174\(a\)\(31\)\(D\)](#)

Presentation slide: Module 9, Slide 42

Guidance:

- Nursing services also include assisting the individual to secure emergency medical services.
- *Example: Immediate Threat/Critical Violation*
  - Record review revealed that an individual reported to the RN of excruciating pain in their foot. The RN assessed the individual and determined that the individual needed to go to the emergency room for a possible fracture. Records indicate that the LVN was instructed to ensure the individual was taken to the hospital. The LVN notes state that the program provider did not have someone available to transport the individual until the following day. Service Delivery Logs confirm that the individual continued to complain throughout the night of being in extreme pain.

## Nursing: Referrals (HCS)

Citation: 40 TAC [§9.174\(a\)\(31\)\(E\)](#)

Presentation slide: Module 9, Slide 42

Guidance:

- Nursing services also include making referrals for appropriate medical services.
- *Example: Immediate Threat/Critical Violation*
  - An autopsy report states that an individual died from asphyxiation following a choking incident in which the individual consumed food that was not in line with their dietary needs. Interview with the service provider stated that the individual can eat anything. However, record review revealed that following a prior choking incident a recommendation for a mechanical soft diet was noted in addition to a referral for dietary services. There was no evidence that the program provider's nurse made an attempt to follow-up on the referral for dietary services. There are multiple individuals in the contract with specialized dietary needs.

## Nursing: Health Care Procedures (HCS)

Citation: 40 TAC [§9.174\(a\)\(31\)\(F\)](#)

Presentation slide: Module 9, Slide 42

Guidance:

- Nursing services also include performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN.
- *Example: Non-Critical Violation*
  - An individual was prescribed to receive an injectable medication. The RN inappropriately delegated this task to the residential service provider. There was no indication that the injections had started to occur and the RN corrected this error upon discovery.
- *Example: Non-Critical Violation*
  - Record review revealed that an individual's physician ordered that the individual's blood sugar level be checked to monitor their diabetes following multiple instances of dangerously high levels. There was no evidence that this occurred for three of the months in the certification period. Record review for the rest of the sample revealed that three additional individuals also required blood sugar checks to be completed to their diabetes and there were discrepancies in this information being obtained consistently.

## Nursing: Delegation (HCS)

Citation: 40 TAC [§9.174\(a\)\(31\)\(G\)-\(I\)](#)

Presentation slide: Module 9, Slide 43

Guidance:

- Nursing services also include:
  - delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;
  - teaching an unlicensed service provider about the specific health needs of an individual; and
  - performing an assessment of an individual's health condition.
- If a task is under the scope of an LVN license and is supervised by an RN, it may be completed by an LVN. The Board of Nursing website and TAC referenced in 9.174(a)(31) provide rules related to the scope of practice.
- Any tasks delegated to an unlicensed service provider are operating under the supervision of the RN and their license. Therefore, it is important that the RN is knowledgeable of any health-related needs of the individuals and that this information is routinely updated to remain accurate.
- *Example: Non-Critical Violation of (a)(31)(G)*
  - Record review revealed that an individual was prescribed Ritalin which was being administered by the day habilitation staff. There was no evidence that the program provider's nurse delegated to the staff prior to them beginning to administer the medication. The program provider's nurse delegated to the staff to resolve the concern. There was no additional evidence of other areas of noncompliance. Delegation records were confirmed for all of the remaining individuals in the sample.
- *Example: Immediate Threat/Critical Violation of (a)(31)(G)*
  - During a home visit at 2 of 4 residences, the residential service providers indicated that they had not been delegated or trained on the medications for any of the individuals in the residences. The individuals were prescribed critical life-sustaining medications for significant medical diagnoses. Records revealed that the service providers had been administering the medications for several months. The service providers were not knowledgeable of the purpose or side effects of the medications.
- *Example: Non-Critical Violation of (a)(31)(H)*
  - Record review revealed that individual required repositioning throughout the day and a specialized diet due to their risk of injury as a result of their inability to ambulate and other medical conditions. The service provider indicated in interview that they were not trained on these items by the program provider's nurse. The nurse provided training during the survey and there were no additional areas of noncompliance discovered in the survey sample. The program provider presented evidence that the nurse conducted an assessment of the individual and confirmed that the individual had not been injured.
- *Example: Immediate Threat/Critical Violation of (a)(31)(I)*
  - During a home visit to a four-person residence a Hoyer lift was observed for one of the individuals in the residence. The individual was observed to have a cast on their arm. The service providers were unable to describe how to properly transfer and position in the Hoyer lift properly. They reported that the program provider's nurse has not provided them with

any training and the individual fell and broke their arm during a recent transfer. There was no evidence in the record or in the interview with the program provider's nurse that any training on the use of the Hoyer lift was conducted.

- *Example: Immediate Threat/Critical Violation of (a)(31)(I)*
  - An individual was admitted to the hospital multiple times following gastric bypass surgery. There was no evidence that the program provider's nurse conducted an assessment of the individual after the bypass surgery or the subsequent hospital visits. The individual developed pneumonia and their health condition continued to decline. There was no evidence that the RN attempted to resolve this concern.

## **Nursing: Nursing Assessment (HCS)**

Citation: 40 TAC [§9.174\(a\)\(31\)\(J\)](#)

Presentation slide: Module 9, Slide 44

Guidance:

- An RN is responsible for the completing the nursing assessment; the nursing assessment cannot be completed by an LVN, as it is not within the scope of their license.
- For more information on nursing assessments, please see [Section 4](#) above.
- *Example: Non-Critical Violation*
  - One of the individuals in the survey sample did not have a nursing assessment in their record. The program provider's RN confirmed that she did not yet have time to complete a nursing assessment, though he transferred to the contract 6 months prior. Interview with the individual and their LAR revealed that the individual was in stable health and did not have any diagnoses that required critical medications. The program provider's RN scheduled a time to complete the assessment. There was no evidence that any of the other individual's in the contract did not have a nursing assessment.
  - This would become a critical violation and potentially an immediate threat if there were multiple individuals who did not have a current nursing assessment, or individual(s) experienced adverse outcomes due to them and their service providers not having the current information outlined in the nursing assessment.

## **Nursing: No Nursing Assessment Required**

Citation: 40 TAC [§9.174\(c\)](#); [§9.578\(q\)](#)

Presentation slide: Module 2, Slide 31; Module 9, Slide 45

Guidance:

- 40 TAC [§9.578\(q\)\(1\)](#), relating to completing HHSC Form 1572, is one of the most commonly cited TxHmL violations. This requires that the individual does not have nursing units on their IPC.



- Examples of violations may include the program provider completed a Nursing Task Screening Tool and it is discovered that an unlicensed service provider is providing a nursing task, such as medication administration.
- A program provider may determine that an individual does not require a nursing assessment if:
  - nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on [HHSC Form 1572 Nursing Tasks Screening Tool](#); or
  - a physician has delegated the task to an unlicensed provider as a medical act.
- *Example: Non-Critical Violation*
  - An individual refused nursing services on the IPC and review of the record revealed no evidence that the program provider completed the Nursing Tasks Screening Tool for the individual. Interview with the individual and LAR confirmed that the individual did not have medical needs that required assistance from the individual's service providers. Interviews with the service provider did not reveal any evidence that they were performing nursing tasks.
  - This would become a critical violation if the majority or all of the individuals who refused a nursing assessment did not have a Nursing Task Screening tool or if an individual who refused a nursing assessment was receiving support with nursing tasks from an unlicensed service provider without delegation by a physician.

## Nursing: Individual Refusal, Service Limits

Citation: 40 TAC [§9.174\(d\)](#); [§9.578\(r\)](#)

Presentation slide: Module 2, Slide 30; Module 9, Slide 46

### Guidance:

- If an individual refuses a nursing assessment, the program provider cannot provide the following services:
  - HH/CC;
  - Residential Support Services;
  - Supervised Living;
  - Supported Home Living;
  - Respite;
  - Employment Assistance;
  - Supported Employment;
  - Day Habilitation; or
  - CFC PAS/HAB
- **UNLESS** the unlicensed service provider does not perform nursing tasks and the program provider can ensure the health, safety, and welfare in the provision of the services as documented on HHSC Form 1572 Nursing Tasks Screening Tool.



- 40 TAC §9.578(r)(2)(A), relating to the prohibition on providing certain services unless the unlicensed provider doesn't perform nursing tasks, is one of the most commonly cited TxHmL violations.
  - If an individual or LAR refuses a nursing assessment, the program provider must ensure that unlicensed service providers do not perform nursing tasks while providing services to an individual.
  - An RN is required to oversee nursing services, so having unlicensed service providers perform tasks that need to be supervised by an RN but are not is a serious problem.
- [HHSC Form 1572 Nursing Tasks Screening Tool](#), is used to determine if a nursing assessment must be completed when an individual or their LAR have refused to include sufficient number of nursing units on their IPC for an RN nursing assessment.
- *Example: Critical Violation*
  - Multiple individuals in the contract refused nursing services. However, during the interview with the day habilitation staff revealed that they were administering medication to the individual. The program provider's nurse was unaware of this information due to the refusal of nursing service. However, the case manager indicated that she was aware the individual was receiving the medication but did not think it was required to follow-up because the individual refused nursing.

## **Nursing: Individual Refusal, Health/Safety**

Citation: 40 TAC [§9.174\(e\)](#); [§9.578\(s\)](#)

Presentation slide: Module 9, Slide 47

Guidance:

- If a program provider cannot ensure health, safety, and welfare of the individual while providing services and the individual/LAR refuses a nursing assessment, then the program provider must immediately in writing notify the individual or LAR and the individual's service coordinator of their determination.
- This notification must include the reason for the determination and the services that will be affected.
- The program provider should use information obtained from the Nursing Tasks Screening Tool in their determination.
- *Example: Non-Critical Violation*
  - An individual refused their nursing services and there was no indication that the program provider notified the SC that the individual refused the assessment or whether the program provider was able to safely support the individual without providing oversight of nursing services.

## **Nursing: Individual Refusal, Notification**

Citation: 40 TAC [§9.174\(f\)](#); [§9.578\(t\)](#)

Presentation slide: Module 9, Slide 48

Guidance:

- Once a program provider submits the written notification to the SC, the SC is required to have a conversation with the individual or LAR on how their refusal of a nursing assessment will impact the services they receive. Following that conversation, the SC will notify the program provider if the individual or LAR continues to refuse a nursing assessment. Once notified by the SC that the individual or LAR continues to refuse a nursing assessment, the program provider must immediately contact the HHSC regional program manager with their concerns.
- *Example: Non-Critical Violation*
  - During interview with the program provider they reported that one of the individuals in the survey sample had refused the nursing assessment as reported by the individual's service coordinator. The program provider reported that the individual needed support with medical tasks including administration of medication and monitoring seizure activity. The program provider stated that they could not ensure that services could be safely delivered to the individual. There was no evidence in the record that the program provider provided written notification to HHSC.

## Nursing: Delegation (HCS)

Citation: 40 TAC [§9.174\(a\)\(31\)\(K\)](#)

Presentation slide: Module 9, Slide 49

Guidance:

- In accordance with Texas Human Resources Code, [Chapter 161](#), the RN may allow an unlicensed service provider to administer medication to an individual without the delegation or oversight of an RN if:
  - an RN has performed a nursing assessment and, based on the results has determined that the individual's health permits the administration of medication by an unlicensed provider; and
  - the medication is an oral medication, a topical medication, or a metered dose inhaler.
  - the medication is administered for a predictable or stable condition and the unlicensed service provider has been trained on medication administration by an RN or an LVN under the direction of an RN, and is determined to be competent. This includes a demonstration of proper technique by the unlicensed service provider.
- The provider must ensure that an RN, or an LVN under the supervision of an RN, reviews medication administration by the unlicensed service provider at least annually and after any significant change in the individual's condition.
- *Example: Non-Critical Violation*
  - Record review revealed that the program provider's nurse had not completed a current BON exclusion form for one of the host home providers in the survey sample. There were no additional areas of noncompliance identified in the survey sample.

- *Example: Critical Violation*
  - Record review revealed that an individual's physician noted that the individual's diabetes was poorly controlled and resulted in vision loss, kidney disease, and an increase in skin problems. There was no evidence that the host home provider was adequately supporting his diagnosis or that the program provider's nurse addressed the inadequate care. There was no evidence that the assessed or monitored the host home provider's competency to administer the individual's insulin injection. There were additional areas of noncompliance discovered across the contract. There was no evidence that for any of the service providers in those circumstances were assessed by the nurse for competency in administering medication.

## Physician Delegation (HCS)

Citation: 40 TAC [§9.174\(a\)\(57\)](#)

Presentation slide: Module 9, Slide 50

Guidance:

- 9.174(57) discusses actions to take if the program provider has a concern about a medical act that a physician has delegated to an unlicensed service provider. The program provider must communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.
- Any communication made to a physician should be well documented either by e-mail or documentation of a phone call. It should include the date/time, who was involved and what information was communicated. Service logs should demonstrate what actions the program provider took to ensure the health and safety of the individual while concerns were being addressed. For example, the RN may complete medication administration, rather than an unlicensed service provider, until the concerns can be resolved.

## Supported Home Living (SHL): Eligibility (HCS)

Citation: 40 TAC [§9.174\(a\)\(32\)](#)

Presentation slide: Module 9, Slide 55

Guidance:

- SHL is an HCS program service provided to individuals who live in their own home or family home.
- SHL is not available to individuals who receive HH/CC, supervised living, or residential support.
- SHL is available to individuals who receive foster care services from DFPS.
- Within the addition of CFC PAS/HAB, the utilization of SHL is only associated with transportation as a SHL activity. Other residential service supports are provided through CFC PAS/HAB.

- *Example: Non-Critical Violation*
  - A record review conducted revealed that an individual receiving services who resided in a HH/CC setting was also receiving SHL services. During an interview with the program provider revealed that they were not aware the individual could not receive SHL while residing in a HH/CC setting.

## Supported Home Living (SHL): Services (HCS)

Citation: 40 TAC [§9.174\(a\)\(33\)](#)

Presentation slide: Module 9, Slide 54

Guidance:

- The supports must be in accordance with the individual's PDP, IPC, implementation plan and Appendix C of the waiver application.
- *Example: Non-Critical Violation of (a)(33)*
  - An interview as conducted with an individual receiving services. The individual stated that she was supposed to be receiving transportation to the grocery store twice a week, but transportation had not been provided to her in the past 3 months. Record review revealed no evidence that the program provider was ensuring SHL transportation was being provided per the individual's PDP, IPC, and transportation plan. An interview with the program provider revealed that the program provider was not aware that the individual had been without SHL transportation services for at least 3 months.

## HH/CC: Requirements (HCS)

Citation: 40 TAC [§9.174\(a\)\(34\)](#)

Presentation slide: Module 9, Slide 56

Guidance:

- Providers must ensure that HCS HH/CC is provided:
  - by a HH/CC provider who lives in the residence in which there are no more than 3 individuals or other persons receiving similar services at any one time; and
  - in a residence in which the program provider does not hold a property interest.
- If there are more than 3 individuals being served in the residence, it is considered a health and safety risk for one staff member to be responsible for the care of all the individuals in the home.
- While many HH/CC providers are contracted providers, and often are family members of the individual(s) served, it is still a requirement that any services delivered are in accordance with rule and documented to demonstrate that compliance. Service providers of HH/CC must also complete training requirements in accordance with §9.177.
- Individuals living with family members who are providing HH/CC services are not considered to be in an own home/family home situation. Therefore, these

residences must have a designated location code in CARE. If multiple individuals live in one HH/CC, there should only be one location code assigned to that address, and the one location code would be assigned to all individuals living at that address.

- *Example: Non-Critical Violation*
  - A surveyor conducted a home visit at a host home. Upon entering the home, the surveyor observed several people living in the residence. The surveyor conducted an interview with the host home provider who stated that she was the host home provider for four of the individuals residing in her home. She stated (and provided documentation) that she was contracted by two different program providers to provide host home services. Two of the individuals are with the program provider being surveyed.
- *Example: Non-Critical Violation*
  - In an interview, the host home provider for an individual receiving services stated that the program provider owned the home. The host home provider presented a rental contract listing the program provider as the owner of the property.

## HH/CC: Services (HCS)

Citation: 40 TAC [§9.174\(a\)\(35\)](#)

Presentation slide: Module 9, Slide 54

Guidance:

- The supports must be in accordance with the individual's PDP, IPC, implementation plan and Appendix C of the waiver application.
- Service logs completed by HH/CC service providers are critical to demonstrate the activities that are occurring during the provision of HH/CC. Program providers should ensure that service providers have access to current PDP, IPC, and implementation plan to ensure that HH/CC services provided are in line with the individual's identified goals and needs.
- *Example: Non-Critical Violation of (a)(35)(A):*
  - A surveyor conducted a home visit at the host home where an individual resides. The surveyor observed the individual wearing clothing that appeared to be dirty and the individual had an odor as if they hadn't showered recently. In an interview, the host home provider stated that the individual was fully capable to bathing and dressing himself. A review of the individual's PDP noted that the individual needed assistance with bathing, grooming, dressing, and personal hygiene.
- *Example: Non-Critical Violation of (a)(35)(B):*
  - In an interview, the individual stated that he is not happy with his current home. He stated that his host home provider makes him cook his own meals and he doesn't know how to. He stated he is supposed to be getting assistance with preparing and cooking his meals. A review of the individual's PDP noted that he requires assistance with meals.
- *Example: Non-Critical Violation of (a)(35)(C):*

- A review of the individual's expense record revealed multiple charges to the individual's account for Uber transportation services. In an interview, the host home provider stated that they were not aware they were required to provide transportation for the individual. If the individual wants to go somewhere, they tell the individual to get an Uber.
- *Example: Non-Critical Violation of (a)(35)(D):*
  - During a home visit, the surveyor observed the individual's room to be full of trash and dirty plates. The surveyor observed dirty clothes all over the individual's bedroom floor. In an interview, the host home provider stated the individual is capable of cleaning his own room but refuses to do so. A review of the individual's PDP revealed that the individual required assistance with housekeeping from his host home provider.
- *Example: Immediate Threat/Critical Violation of (a)(35)(E):*
  - During a home visit the surveyor observed the individual walking with his walker unassisted. The individual appeared to be extremely unsteady while ambulating. In an interview, the host home provider stated that the individual was able to ambulate on his own. A record review revealed the individual required assistance when ambulating. A review of his nursing assessment noted the individual was at a very high risk for falls and has a history of falls causing serious injury.

## Supervised Living (SL): Requirements (HCS)

Citation: 40 TAC [§9.174\(a\)\(36\)](#)

Presentation slide: Module 9, Slide 57

Guidance:

- SL occurs in a 4-person residence that is approved in accordance with TAC §9.188 or a 3-person residence.
- SL is provided by a service provider who is present in the residence and able to respond to the needs of the individuals during normal sleeping hours.
- An individual under the age of 22 may only reside in SL with special approval by HHSC.
- Often in a residence providing SL, the staff member will be a live-in staff member. Per §9.153, the residence cannot be the residence of any other person than the service provider, their spouse (or person with whom they have a spousal relationship), and a person receiving services.
- *Example: Non-Critical Violation of (a)(36)(A):*
  - Record review revealed that 1 out of 7 residences did not have direct care staff available during normal sleeping hours to respond to the needs of the individuals.
  - This would become a critical violation if there were multiple areas of noncompliance or someone was harmed as a result of the residence not being inspected by the local fire marshal where SL was being provided.

## Supervised Living (SL): Services (HCS)

Citation: 40 TAC [§9.174\(a\)\(37\)](#)

Presentation slide: Module 9, Slide 54

Guidance:

- The supports must be in accordance with the individual's PDP, IPC, implementation plan and Appendix C of the waiver application.
- Service logs completed by residential support staff are critical to demonstrate the activities that are occurring during the provision of residential services. Program providers should ensure that staff have access to current PDP, IPC, and implementation plan to ensure that residential services provided are in line with the individual's identified goals and needs.
- *Example: Non-Critical Violation of (a)(37)(A):*
  - A complaint was received regarding the care that an individual was receiving inside of a three-person residence. Interview with the program provider revealed that the individual was living alone and unsupported by service providers because he had recently begun to barricade himself inside of the residence and only allowed for food to be dropped off to him. The individual had expressed an interest in a different residential service and with the assistance of his SPT complied with a transfer. There were no additional areas of noncompliance in the survey sample.
  - This would become a critical violation and possibly an immediate threat if the individual had not transferred and was still barricading himself in the residence at the time of the survey or if there were multiple areas of noncompliance discovered in the survey sample.
- *Example: Critical Violation of (a)(38)(C):*
  - Interviews with multiple staff in multiple 3-person residences revealed that they did not have access to a vehicle to provide transportation to the individuals in the residence throughout the week.
- *Example: Non-Critical Violation of (a)(38)(D):*
  - Home visits to multiple 3-person residences where individuals were receiving SL revealed that the service providers were not assisting the individual with housekeeping as required by their special needs and characteristics.

## Residential Support Services (RSS): Requirements (HCS)

Citation: 40 TAC [§9.174\(a\)\(38\)](#)

Presentation slide: Module 9, Slide 58

Guidance:

- RSS occurs in a 4-person residence that is approved in accordance with TAC §9.188 or a 3-person residence, but differs from SL in the following requirements:



- A service provider must be present in the residence and awake whenever an individual is present in the residence.
- Service providers must be assigned on a daily shift schedule that includes at least one complete change of service providers each day.
- *Example: Critical Violation*
  - In an interview, the RSS provider revealed that they had not been relieved and was providing continuous care for multiple days. There were multiple instances of the program provider failing to relieve RSS providers for one complete shift change in multiple 4-person residences. This would not be a critical violation if the concern was isolated, no harm was evident to the individuals, and the program provider made an effort to prevent recurrence of the issue by providing adequate relief to the service provider.

## **RSS: Services (HCS)**

Citation: 40 TAC [§9.174\(a\)\(39\)](#)

Presentation slide: Module 9, Slide 54

Guidance:

- The supports must be in accordance with the individual's PDP, IPC, implementation plan and Appendix C of the waiver application.
- Service logs completed by residential support staff are critical to demonstrate the activities that are occurring during the provision of residential services. Program providers should ensure that staff have access to current PDP, IPC, and implementation plan to ensure that residential services provided are in line with the individual's identified goals and needs.
- *Example: Non-Critical Violation*
  - In an interview, a RSS provider indicated that the individual does not require any support with toileting or bathing. However, the individual's record revealed, in addition to interviews with other service providers, that the individual required total assistance in these areas. The program provider presented evidence that the service provider received training in this area. There were no additional areas of noncompliance discovered.
- *Example: Critical Violation*
  - Personnel records for the RSS providers did not have valid driver's licenses and the company vehicles did not have valid insurance or registration and could not be used. The unlicensed RSS were found to be routinely providing transportation for the individuals. There was no evidence that alternate transportation methods were provided to ensure that the individuals could be transported throughout the week.

## **RSS: Documentation (HCS)**

Citation: 40 TAC [§9.174\(a\)\(40\)](#)

Presentation slide: Module 9, Slide 59



Guidance:

- If the SPT makes a recommendation for RSS, there must be documentation supporting the recommendation which must include:
  - the individual's medical condition;
  - a behavior displayed by the individual that poses a danger to the individual or to others; or
  - the individual's need for assistance with activities of daily living during normal sleeping hours.
- Documentation must be available in the individual's record to demonstrate the need for RSS.
- *Example: Non-Critical Violation*
  - Record review revealed that there was no documentation noting the rationale for RSS including the individual's medical condition, their behavioral support needs, or their need for assistance during normal sleeping hours. Interview with the individual and their LAR revealed that the individual did not require this level of assistance and they were not sure why the service had been recommended. The individual stated that they are often alone during sleeping hours because they do not require support and always sleep through the night. There were no additional areas of noncompliance discovered in the survey sample.

## Respite: Eligibility (HCS)

Citation: 40 TAC [§9.174\(a\)\(41\)](#)

Presentation slide: Module 9, Slide 60

Guidance:

- HCS program providers must ensure that respite is available to individuals living in their family homes. Respite must be available in 24-hour increments, but it may be used in smaller increments.
- Respite may only be provided to individuals who are not receiving RSS, SL, or HH/CC care, and only when the unpaid caregiver is temporarily unavailable to provide supports.
- Respite is provided for the planning or emergency short-term relief of an unpaid caregiver who is in the same residence. This explains why it is only available in a family home situation, as the residential settings have 24-hour paid caregivers and an individual living in their own home does not have an unpaid caregiver.
- *Example: Non-Critical Violation*
  - During an interview with an individual's LAR it was revealed that the individual was not receiving respite services on a 24-hour increment because there were no service providers available to provide the service to the individual.

## Respite: Services (HCS)

Citation: 40 TAC [§9.174\(a\)\(42\)](#)

Presentation slide: Module 9, Slide 61

Guidance:

- Respite includes:
  - training in self-help and independent living skills;
  - providing (not charging) room and board when respite is provided in a setting other than the individual's normal residence; and
  - assisting with ongoing provision of needed waiver services securing and providing transportation.
- Again, respite is only available when the unpaid caregiver is unavailable to provide supports. Service logs will be reviewed to demonstrate the activities included in the provision of respite are in accordance with the individual's PDP, IPC and implementation plan.
- *Example: Non-Critical Violation*
  - During record review it was revealed that an individual had respite services listed in the PDP and IPC. However, there was no evidence that respite services had been provided accordingly. Another individual in the survey sample also had respite services which they had been receiving the services, but they were not receiving training in self-help and independent living skills.
  - This would become a critical violation if there were additional areas of noncompliance and an individual experienced an adverse outcome as a result of the provider's failure to provide respite services accordingly.

## Limitations on Where Respite May Be Provided

Citation: 40 TAC [§9.174\(a\)\(43\)](#); [§9.578\(o\)](#)

Presentation slide: Module 9, Slides 62-63

Guidance:

- Respite may be provided in the individual's home, or in other locations, including residences in which HH/CC, SL, or RSS are provided. Having an individual receive respite in one of the residential settings does not allow the setting to exceed its capacity.
  - For example, a HH/CC or 3-person residence cannot accept a fourth individual who is receiving respite services. A 4-person residence cannot include a fifth individual who is receiving respite.
- The respite setting must ensure the health, safety, comfort, and welfare of the individual.
- If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.
- Respite cannot be provided in an institution, such as an ICF/IID, nursing facility, or hospital.

- Respite may be provided in a respite facility or camp that meets HCS Program requirements. The program provider must ensure that such a facility is not a residence and serves no more than six individuals at a time.
- If three or more individuals reside in the respite facility at any one time, the provider must obtain written approval from the local fire authority that the facility and its operation meet the local fire ordinances. The program provider must have this documentation available in the individual's record.
- If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.
- Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.
- *Example: Non-Critical Violation*
  - During a home visit at a 4-person residence, one of the individuals residing there temporarily was receiving crisis respite in the residence and therefore was not listed on the consumer roster for the location. There was no evidence in the other 3 individuals' records that they consented to the individual residing in the residence to receive the respite services. Interview with the program director revealed that she was not aware that the individuals were required to provide permission.
  - This would become a critical violation if there were multiple areas of noncompliance and the individuals did not consent to the individuals receiving respite services in their residences.

## Employment Assistance/Supported Employment (HCS)

Citation: 40 TAC [§9.174\(a\)\(44\)-\(45\)](#)

Presentation slide: Module 9, Slides 64-65

Guidance:

- **Employment assistance** is assistance provided to an individual to help them locate and obtain competitive employment in the community.
- An HCS program provider must provide employment assistance if the individual wants to get a job and employment assistance is listed on the IPC and implementation plan.
- Before including employment assistance on an individual's IPC, the program provider must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);
- Employment assistance consists of a service provider performing the following activities:
  - identifying the individual's employment preferences, job skills, and requirements for a work setting and work conditions;

- locating prospective employers that are consistent with the individual's identified preferences, skills, and requirements;
- contacting a prospective employer on behalf of the individual and negotiating employment;
- transporting the individual to help them locate competitive employment in the community; and
- participating in SPT meetings.
- **Supported employment** is assistance provided to an individual to help them sustain competitive employment. It is for individuals who, because of a disability, require intensive, ongoing support to be self-employed, work from home, or perform in a work setting where persons without disabilities are employed.
- Supported employment consists of:
  - making employment adaptations, supervising, and providing training related to the individual's needs;
  - transporting the individual to and from their place of employment; and
  - participating in SPT meetings.
- Employment assistance and supported employment may not be provided with the individual present at the same time that respite, SHL, day habilitation, supported employment, or CFC PAS/HAB is provided.
- Remember, employment services are meant to help an individual obtain and keep a job that pays the same wages that would be paid to someone without a disability doing the same work.
- This does not include sheltered work or other similar types of vocational services furnished in specialized facilities.
- Medicaid funds may not be used for incentive payments, subsidies, or unrelated vocational training expenses.
- For example:
- Medicaid waiver funds **cannot** be used:
  - as payment to the employer to encourage an employer to hire an individual, or to supervise, train, support, or make adaptations for the individual that the employer typically makes available to other workers without disabilities filling similar positions;
  - as payment to the individual as an incentive to participate in supportive employment or for expenses related to the start-up costs or operating expenses of the individual's business.
- *Example: Non-Critical Violation of (a)(44)*
  - Interview with an individual and their LAR revealed that they had employment assistance on their IPC but that the service provider was not actively assisting with completing applications or identifying viable positions to pursue for employment.
- *Example: Non-Critical Violation of (a)(45)*
  - Record review for an individual receiving supported employment services revealed that the individual's service delivery logs were prefilled for the upcoming month and contained identical information throughout the past several months. During interview with the individual and the LAR they reported that the service provider had not been providing assistance with

all of the areas identified in the service delivery logs. Upon notification the program provider reassigned the staff and provided evidence that the new service provider was adequately trained to deliver the service per the individual's employment support needs and goals.

## CFC Personal Assistance Services/Habilitation

Citation: 40 TAC [§9.174\(a\)\(46\)-\(48\)](#); [§9.578\(w\)](#)

Presentation slide: Module 9, Slide 66

### Guidance:

- Community First Choice (CFC) services include personal assistance services/habilitation (PAS/HAB).
- CFC PAS/HAB is designed to help an individual reside successfully in a community setting by:
  - assisting the individual with activities of daily living (ADLs) and instrumental activities of daily living (IADLs);
    - ◇ ADLs: Basic personal, everyday activities (e.g., eating, toileting, grooming, dressing, bathing, and transferring)
    - ◇ IADLs: Activities related to independent community living (e.g., meal planning/preparation, managing finances, shopping, household chores, communicating by phone/media, traveling around community)
  - assisting the individual in acquiring, retaining, and improving self-help, socialization, and daily living skills; and
  - training the individual on ADLs and IADLs.
- Program providers must provide CFC PAS/HAB in accordance with the individual's PDP, IPC, and implementation plan. [HHSC Form 8510, HCS/TxHmL CFC PAS/HAB Assessment](#) is used with the individual's PDP to determine the amount of CFC PAS/HAB assistance an individual requires.
- CFC PAS/HAB is available only to individuals who are not receiving HH/CC, SL, or RSS.
- Program providers are also responsible for ensuring that CFC support management is provided if requested by the individual or LAR.
- For more information about CFC PAS/HAB, see the [CFC billing guidelines](#).
- *Example: Non-Critical Violation of (a)(46)*
  - Interview with the program provider revealed that the individual was receiving CFC PAS/HAB services in a host home residential setting. The service provider of CFC PAS/HAB stated that they were not aware the individual had a host home provider. The HH/CC provider was confirmed. The program provider was confirmed to have attempted billing for both services.
- *Example: Non-Critical Violation of (a)(47)*
  - Record review revealed that an individual had CFC PAS/HAB services for transportation on their IPC. However, none of the units had been utilized for the past two years. Interview the program provider revealed that the individual's mother was the service provider but had since passed away. Another family member was designated as the back-up service provider;

- however, there was no evidence that the backup had been trained or had begun to deliver the service.
- This would become a critical violation if there were multiple areas of noncompliance identified in the survey sample and an individual expressed an adverse outcome as result of the program provider's failure to provide the services to the individuals timely.
  - *Example: Non-Critical Violation of (a)(48)*
    - During an interview with one individual's LAR, they reported that they requested for the individual to receive CFC PAS/HAB support management in addition to their standard CFC PAS/HAB services, but the service has not been provided. Record review confirmed a contact note in which the case manager noted that the LAR requested for CFC support management to be included on their plan. However, the program provider did not present evidence that this service was provided or attempted to be provided to the individual.

## CFC Emergency Response Services (ERS)

Citation: 40 TAC [§9.174\(a\)\(46\)-\(48\)](#); [§9.578\(x\)](#)

Presentation slide: Module 9, Slides 67-74

### Guidance:

- ERS is the other service offered under Community First Choice (CFC).
- CFC ERS is provided only to an individual who lives alone (or is alone or has no regular caregiver for significant parts of the day) and would otherwise require extensive routine supervision and who is not receiving HH/CC, SL, or RSS.
- CFC ERS equipment must be installed within 14 business days after one of the following dates, whichever is later:
  - the date HHSC authorizes the proposed IPC that includes CFC ERS; or
  - the effective date of the individual's IPC as determined by the SPT.
- On or before the installation date, attempt to obtain the names and phone numbers of at least two responders (e.g., relatives or neighbors). Public emergency personnel can be responders if the individual does not name responder(s). Document the names and contact numbers of all responders in the individual's record.
- At the time of installation, the program provider must ensure that:
  - equipment is installed according to the manufacturer's instructions;
  - an initial test of the equipment is made;
  - equipment has an alternate power source in case of a power failure; and
  - the individual is trained on the use of the equipment (i.e., demonstrating how it works and having the individual activate an alarm call).
- The program provider must explain to the individual that they must participate in a monthly system check and contact the CFC ERS provider if their phone number or address changes or if any of their responders change.
- The program provider must also inform the individual that if the alarm is activated, a responder may forcibly enter the individual's home if necessary.

- Program providers are responsible for ensuring that the date and time of the CFC ERS equipment installation are documented in the individual's record.
- At least once during each calendar month, the program provider must ensure that a system check is conducted on a date and time agreed to by the individual, and that the date, time, and result of the system check is documented in the individual's record.
- If, as a result of the system check the equipment is working properly, but the individual is unable to successfully activate an alarm call, the program provider must ask the SC to convene the SPT to determine whether CFC ERS still meets the individual's needs.
- If the equipment is not working properly, the program provider must ensure that the equipment is repaired or replaced within 3 calendar days of the system check.
- If for any reason a system check is not conducted, the program provider must ensure that the failure to comply is because of good cause and that the good cause is documented in the individual's record.
- Program providers must ensure that an alarm call is responded to 24 hours a day, 7 days a week, and that, if an alarm call is made, the CFC ERS provider:
  - attempts to contact the individual within 60 seconds of the call to determine whether an emergency exists;
  - immediately contacts a responder if an emergency is confirmed or the CFC ERS provider is unable to communicate with the individual; and
  - documents in the individual's record, when the information becomes available, the individual's name, the date and time of the call (recorded in hours, minutes, and seconds), the response time (recorded in seconds), the time the individual is contacted in response to the call (recorded in hours, minutes, and seconds), the name of the responder, a brief description of the reason for the call, and (if an emergency) how the emergency was resolved.
- If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that the SC receives written notice (maintained in the individual's record) of the alarm call within one business day after the alarm call.
- If the CFC ERS provider is a contracted provider, the program provider must receive written notice from the contracted provider within one business day after the alarm call. Maintain this notice in the individual's record.
- If an equipment failure occurs, other than during a system check, the individual must be informed of the equipment failure and the equipment must be replaced within one business day after the failure becomes known by the CFC ERS provider.
- If for some reason individual is not informed of the equipment failure and the equipment is not replaced, the program provider must ensure that the failure to comply is because of good cause and the individual is informed of the equipment failure and the equipment is replaced as soon as possible.
- If the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period, a visit to the individual's home must be made to conduct a



system check within 5 business days after the signals occur. If the battery is defective, the battery must be replaced during the visit.

- If a system check or battery replacement is not made within 5 business days, the failure to comply must be because of good cause, and a system check and battery replacement must be made as soon as possible.
- Document in the individual's record the date the equipment failure/low battery signal became known to the CFC ERS provider, the equipment or subscriber number, a description of the problem, the date of repair/replacement, and, if applicable, the good cause for failure to comply.
- *Example: Non-Critical Violation of §9.174(j)(1)*
  - Record review revealed that CFC ERS was being provided to an individual who was receiving HH/CC services and was not alone for a significant period of time throughout the day. Interview with the host home provider revealed that the service was an additional precaution to ensure the individual's safety. The program provider stated that they were not aware of the requirements for the service.
- *Example: Non-Critical Violation of §9.174(j)(2)*
  - During interview with an individual residing in their apartment the individual reported that they were supposed to begin receiving CFC ERS services, as they were unsupervised for the majority of the day and had experienced a number of health emergencies. The program provider did not produce evidence that the services had been arranged for the individual. Record review revealed that the individual's PDP and IPC indicated that they were to begin receiving the service.
  - This could be a critical violation if there were multiple instances of noncompliance discovered in the contract.
  - This could become an immediate threat if the individual was experienced a health emergency before the equipment was installed or was at substantial risk of one occurring.
- *Example: Non-Critical Violation of §9.174(j)(3)*
  - Record review revealed that an individual receiving CFC ERS services did not have their equipment installed for 3 months after the effective date of the individual's IPC as determined by their SPT.
  - This could become a critical violation if there were multiple areas of noncompliance or an individual was harmed as a result of the delay in the equipment installation.
- *Example: Non-Critical Violation of §9.174(j)(4)*
  - During a home visit to an individual's residence where they lived alone CFC equipment was observed. When interviewed about the equipment the individual said that she was given the equipment but that no one came to assist her with the installation, and she did not believe it was installed correctly. The program provider did not provide any evidence that they completed the installation, completed an initial test of the equipment, ensured there was an alternate power source, or trained the individual. Assistance was provided to the individual during the survey.



## Responding to Changes

Citation: 40 TAC [§9.174\(a\)\(49\)-\(51\)](#); [§9.578\(g\)](#)

Presentation slide: Module 9, Slide 75

### Guidance:

- Program providers are required to inform the SC of any changes related to an individual's residential setting that do not require a change to their IPC.
  - Example: the individual moves to a new address but continues to receive the same type of residential support
- Providers must maintain a system of delivering HCS and CFC services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs.
- The SPT must meet to discuss and, if needed, change the services in the PDP, IPC and implementation plan to respond to these changes.
- Providers must ensure that all appropriate staff members, service providers, and the SC are informed of any circumstance or event that may affect the provision of services to the individual.
- *Example: Non-Critical Violation of §9.174(a)(49)*
  - During an interview with an individual and their HH/CC provider, they reported that they recently moved to a new residence. There was no evidence that the program provider notified the SC of their change of address.
- *Example: Critical Violation of §9.174(a)(50)*
  - Interview with the day habilitation service provider revealed that the individual has recently fell on multiple occasions while at the day habilitation program. Minor injuries were sustained as a result. However, the service provider stated that they had not informed the program provider's nurse or completed incident reports to report this information. There were multiple areas of noncompliance found throughout the survey sample.
  - This would not be a critical violation if the failure to report the change in the individual's condition was isolated to one service provider and the program provider provided evidence that they had trained the service provider to appropriately document and report health changes for the individuals they supported in the delivery of service.
- *Example: Critical Violation of §9.174(a)(51)*
  - During interview with an individual's host home provider and the program provider's nurse, it was revealed that the individual recently suffered a stroke that resulted in changes to their ability to ambulate independent, their communication style, and their dietary needs. However, there was no evidence provided that the day habilitation staff who support the individual or the individual's SC were notified of the changes to the individual's condition. There were multiple areas of noncompliance found throughout the survey sample in which the program provider failed to inform the individuals' SCs of changes to their condition.

## Updating Information in CARE (HCS)

Citation: 40 TAC [§9.174\(a\)\(52\)](#)

Presentation slide: Module 9, Slide 76

Guidance:

- Program providers must maintain current information in the CARE data system about the individual and the individual's LAR, including:
  - the individual's full name, address, location code, and phone number; and
  - the LAR's full name, address, and phone number.
- It is important that this information is kept current to ensure HHSC is able to locate an individual and their LAR, if applicable. This information is most relevant to residential visits that HHSC conducts annually at all 3-person, 4-person and HH/CC residences.
- *Example: Non-Critical Violation*
  - During a home visit it was determined that the individuals in the residence did not match the information listed in CARE for the location. There were multiple individuals who resided in other locations than what was listed.
  - This would become a critical violation if this was a widespread issue throughout the majority or all of the program provider's contract.

## Individual Record

Citation: 40 TAC [§9.174\(a\)\(53\)](#); [§9.578\(b\)](#)

Presentation slide: Module 9, Slide 77

Guidance:

- Each individual must have a single record of the HCS Program or TxHmL Program and CFC services provided.
- The record must contain the ID/RC Assessment, the PDP, the IPC, and the CFC PAS/HAB Assessment form (if applicable).
- For HCS, the record must also contain:
  - the implementation plan, if applicable;
  - a behavior support plan, if one has been developed;
  - a transportation plan, if one is required;
  - documentation of the individual's progress or lack of progress on the implementation plan;
  - documentation of any changes to the individual's personal goals, condition, abilities, or needs;
  - documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;
  - results and recommendations from assessments that support the individual's current need for each service in the IPC;
  - documentation of any use of restraints;

- documentation related to the suspension of the individual's HCS Program services or CFC services; and
- a copy of the permanency plan if the individual is under age 22.
- *Example: Non-Critical Violation of §9.174(a)(53)*
  - Review of an individual's record revealed that there was no ICAP booklet or score sheet. The program provider stated that they had no evidence to provide and did not provide the documentation during the survey.
- *Example: Non-Critical Violation of §9.174(a)(53)*
  - The program provider did not maintain a single record for multiple individuals in the contract. They presented several separate manila envelopes with the documentation for the individual separated for each category.
- *Example: Non-Critical Violation of §9.174(a)(53)*
  - There was no evidence in the survey sample that the provider developed implementation plans or complete the ICAPs for the individuals. The program provider stated they were completed but could not provide evidence that these documents were completed and maintained as required.

## **Service Coordinator Access to Record (HCS)**

Citation: 40 TAC [§9.174\(a\)\(54\)-\(55\)](#)

Presentation slide: Module 9, Slide 78

Guidance:

- The program provider and SC must work together as a team to ensure the best outcomes for the individual. This includes ensuring that documentation is openly shared with the SC.
- Program providers must:
  - allow the SC access to the record;
  - give the SC legible copies of documents in the record at no charge; and
  - give the SC a copy of the IPC and ID/RC.
- *Example: Non-Critical Violation of (a)(54)*
  - Record review revealed that an individual's SC requested access to documentation from the individual's record to be able to complete their PDP and other information pertinent to the individual's services. Evidence revealed that the program provider did not provide the information timely and the SC missed critical deadlines as a result.
  - This would become a critical violation if this was a widespread issue impacting the majority or all of the SCs' requests to access records.
- *Example: Non-Critical Violation of (a)(55)*
  - Record review revealed that the program provider failed to give the individual's SC a copy of the individual's IPC and ID/RC Assessment. There were additional areas of noncompliance in the survey sample. The program provider confirmed that the information had not been provided, and there was no evidence they attempted to send the information during the survey.

## Notification to Service Coordinator (HCS)

Citation: 40 TAC [§9.174\(a\)\(56\)](#)

Presentation slide: Module 9, Slide 79

Guidance:

- Providers must notify the SC if they have any reason to believe that the individual is no longer eligible for HCS and CFC services or if the individual or LAR has requested termination of all HCS or CFC services.
- Document any communication with the SC regarding individual's eligibility or termination. This can be achieved either through saving e-mail communication or documenting phone calls. Include the date/time of the communication, who was involved, and what information was provided.
- Example: Non-Critical Violation
  - During an on-site inspection regarding the death of an individual it was revealed that the program provider failed to notify the SC that the individual was admitted to the hospital, placed on temporary discharge, and ultimately released into a nursing home, at which time services were terminated. The program provider did not present any evidence that this information was provided to the SC of the individual.
  - This would become a critical violation if there were multiple areas of noncompliance identified in the survey sample and an individual was harmed as a result of the failure of the program provider to provide this information to the SC.

## Back-up Plans

Citation: 40 TAC [§9.174\(a\)\(58\)](#); [§9.578\(n\)](#)

Presentation slide: Module 9, Slide 80

Guidance:

- If any HCS/TxHmL/CFC service on the PDP is critical to meeting the individual's health and safety, the program provider must develop a back-up plan to ensure that the service continues. For more information, see [IL 2013-57 Service Backup Plan Requirements](#).
- A back-up plan is required for HH/CC.
- The back-up plan must:
  - contain the name of the critical service;
  - specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and
  - document the actions the program provider will take if a service interruption occurs that results in an adverse effect.
- If the action in the service backup plan identifies a natural support, the natural support must receive pertinent information about the individual's needs and must be able to protect the individual's health and safety

- If a person identified in the service backup plan is paid to provide the service, they must meet the qualifications described in §9.177 or §9.579.
- If the service backup plan is implemented, the program provider must:
  - discuss the implementation of the service backup plan with the individual and service providers or natural supports to determine whether or not the plan was effective;
  - document whether or not the plan was effective; and
  - revise the plan if it was determined to be ineffective.
- HCS providers may use [HHSC Form 1742 Service Back-up Plan for HCS, TxHmL and CFC Services](#) to develop a service backup plan or may use their own documentation that includes all required elements.
- Example: Critical Violation
  - Review of multiple individuals' records revealed that there were services marked as critical on the service back-up plan. However, there was no evidence that the program provider identified back-up service providers for the individuals.
  - This would not be critical if the concern was isolated to one individual and/or the program provider resolved the issue when they became aware of the missing information.

## Nursing Home Transition Responsibilities (HCS)

Citation: 40 TAC [§9.174\(a\)\(59\)-\(60\)](#)

Presentation slide: Module 9, Slide 81

### Guidance:

- Program providers must take certain actions when an individual is enrolling in HCS as a transition or a diversion from a nursing facility.
  - They must participate as a member of the SPT, which includes attending all SPT meetings scheduled by the SC.
  - They must complete any tasks assigned to them in the implementation of the individual's transition plan.
  - They must be physically present for the pre-move site review and assist the SC during the review as requested.
  - For 365 calendar days after the individual has enrolled in the HCS Program, the provider must:
    - ◊ be physically present for each post-move monitoring visit and assist the SC as needed;
    - ◊ assist in the implementation of the individual's transition plan;
    - ◊ participate as a member of the SPT, which includes attending all SPT meetings scheduled by the SC; and
    - ◊ notify the SPT within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility.
- *Example: Non-Critical Violation of (a)(59)*
  - Record review of an individual who recently transitioned from a nursing facility to the HCS program revealed that the program provider was not

- included in the SPT, did not assist in the implementation of the individual's transition plan, and was not physically present for the pre-move site visit. The individual's LAR confirmed that the program provider was not involved in this process.
- *Example: Non-Critical Violation of (a)(60)*
    - During an interview with the individual's LAR they reported that the program provider was not present for the post-move monitoring visits, had not assisted the SC, and did not assist in the implementation of the individual's transition plan. The individual experienced a medical emergency and was at risk of readmission to a nursing facility. There was no evidence that the program provider notified the SPT of the medical emergency.
    - This would become a critical violation if there were multiple areas of noncompliance or the individual required immediate intervention to prevent further harm from occurring.

## Transition Assistance Services (HCS)

Citation: 40 TAC [§9.174\(g\)](#)

Presentation slide: Module 9, Slide 82

Guidance:

- For an individual who is **not** receiving RSS, SL, or HH/CC, Transition Assistance Services (TAS) includes:
  - paying security deposits required to lease a home or apartment, or to establish utility services for a home;
  - purchasing essential furnishings, such as a table, a bed, chairs, window blinds, eating utensils or food preparation items;
  - paying for expenses required to move personal items, such as furniture and clothing, into a home;
  - paying for services to ensure the health and safety of the individual, such as pest eradication, allergen control or a one-time cleaning before occupancy; and
  - purchasing essential supplies such as toilet paper, towels and bed linens.
- For an individual who **does** receive RSS, SL, or HH/CC, TAS includes:
  - purchasing bedroom furniture;
  - purchasing personal linens for the bedroom and bathroom; and
  - paying for allergen control.
- Once the program provider receives a completed TAS Assessment and approved authorization form from HHS, the provider must purchase the TAS items for the individual within the monetary amount identified on the form.
- Delivery of the TAS must be completed at least two days before the date of individual's discharge from the facility, unless the delay is beyond the control of the program provider.
- If the TAS is not delivered within the required timeframe, the program provider must document the TAS that are pending, the reason for the delay, the anticipated date of delivery (or specific reasons why a delivery date can't

be estimated), and a description of the program provider's ongoing efforts to deliver the TAS. The provider must also provide this information to the individual or LAR and the SC at least 2 days before the individual is scheduled to be discharged.

- One business day after the TAS has been delivered, the program provider must notify the SC and the individual or LAR of the delivery.
- *Example: Non-Critical Violation*
  - Record review revealed that the individual was to receive a dresser, lamp, nightstand, and recliner (doctor recommended) for several hundred dollars. During a home visit, the host home provider stated they had not received a recliner. She indicated they had purchased a dresser and nightstand. This issue was discussed with program provider. The program provider staff indicated they had given the host home provider the money to make the purchases. However, there was no evidence that the remaining funds for the recliner had occurred.
- See the [HCS Handbook](#), Section 6420, for more information on TAS.

## Pre-enrollment Minor Home Modifications (HCS)

Citation: 40 TAC [§9.174\(h\)](#)

Presentation slide: Module 9, Slide 83-84

Guidance:

- If minor home modifications (MHM) are included in the transition plan, the program provider must:
  - complete a pre-enrollment MHM assessment in accordance with the [HCS Program Billing Guidelines](#); and
  - provide the minor home modifications identified on the HHS authorization form, staying within the monetary amount identified on the form.
- The program provider is responsible for providing all needed information to the SC for the completion of [HHSC Form 8611 Pre-Enrollment MHM Authorization Request](#) and applicable documentation. Once a program provider receives the authorized Form 8611 from the service coordinator, the program provider is responsible for providing the specific MHM identified on the Form. A program provider is also responsible for ensuring that the pre-enrollment MHM is completed in accordance with Appendix C of the HCS Program Waiver application.
- Pre-enrollment MHM must be completed at least two days before the date of the individual's discharge, unless the delay in completion is beyond the control of the program provider.
- If the program provider does not complete MHM in the required timeframe, the program provider must document a description of the pending MHM, the reason for the delay, the anticipated date of completion or specific reasons why a date can't be anticipated, and a description of the program providers' ongoing efforts to complete the MHM. This information must be provided to the individual or LAR and the SC at least 2 days before the individual's scheduled discharge.



- Within one business day after completion, the program provider must notify the individual/LAR and the SC that the MHM have been completed.
- *Example: Non-Critical Violation*
  - Review of an individual's record revealed no evidence that a pre-enrollment MHM assessment was completed prior to their moving into their residence. The program provider completed the assessment once notified of the missing assessment, and it revealed there was no need for minor home modifications at that time.
- *Example: Critical Violation*
  - Interview with an individual and their LAR revealed that there were several items that were needed in their host home to modify the residence for the individual. The individual had transferred to the program provider and enrolled in the HCS program a few months prior. Record review revealed no evidence that the program provider had completed a pre-enrollment MHM assessment or made any attempt to begin the process for completing MHM in the residence. Further review of 5 other new individuals in the contract revealed no evidence that pre-enrollment MHM assessments had been completed. The program provider confirmed that these actions had not occurred. One of the individual's sustained a fall with a broken leg as a result of not having any modifications in place.

## Suspension of Services (HCS)

Citation: 40 TAC [§9.174\(b\)](#)

Presentation slide: Module 9, Slide 85

Guidance:

- A program provider may suspend HCS Program services or CFC services if the individual is temporarily admitted to one of the following settings:
  - a hospital;
  - an ICF/IID;
  - a nursing facility;
  - a residential child-care operation licensed or subject to being licensed by DFPS;
  - a facility licensed or subject to being licensed by the DSHS;
  - a facility operated by DARS (now the Texas Workforce Commission);
  - a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or
  - an assisted living facility.
- If HCS or CFC services are suspended, the program provider must:
  - notify HHSC of the suspension by entering data in the CARE system; and
  - notify the SC of the suspension within 1 business day after services are suspended.
- Program providers may not suspend services for more than 270 calendar days without approval from HHSC.
- *Example: Non-Critical Violation*



- Record review revealed that an individual became incarcerated for several months, and, upon release, the program provider did not have a means to contact the individual. The individual was still active in the program provider's consumer roster and had not been placed on temporary discharge. The program provider stated they were not aware this action had not occurred.

## 11. Revision Log

Date	Version	Summary of Changes