



TO: Medical Care Advisory Committee
DATE: June 13, 2019
FROM: David Kostroun, Deputy Executive Commissioner, Regulatory Services

SUBJECT: Administrative Penalties, Amelioration, and Informal Dispute Resolution for Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Programs

Agenda Item No.: 4

Amendments to: Texas Administrative Code (TAC) Title 40, Part 1, Chapter 9, §§9.153, relating to Definitions; 9.171, relating to DADS Review of a Program Provider and Residential Visit; 9.186, relating to Program Provider's Right to Administrative Hearing; 9.188, relating to DADS Approval of Residences; 9.553, relating to Definitions; 9.575, relating to Program Provider's Right to Administrative Hearing; 9.576, relating to DADS Review of a Program Provider; and Chapter 49, §§49.209, relating to Standard Contract; 49.531, relating to Sanction by HHSC; 49.532, relating to Vendor Hold; and 49.534, relating to Termination of Contract by HHSC;

Propose New: §§9.181, relating to Administrative Penalties; 9.182, relating to Amelioration; 9.183, relating to Program Provider Compliance and Corrective Action; 9.581, relating to Administrative Penalties; 9.586, Amelioration; 9.587, relating to Program Provider Compliance and Corrective Action; and 49.535, relating to Administrative Penalties in the HCS and TxHmL Programs; and the

Repeal of: §§9.185, relating to Program Provider Compliance and Corrective Action, and 9.577, relating to Program Provider Compliance and Corrective Action.

BACKGROUND: Federal Requirement Legislative Requirement Other:

The Health and Human Services Commission proposes amendments, new sections, and repeals to Texas Administrative Code (TAC) Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, and Chapter 49, Contracting for Community Services.

The purpose of the proposed rules is to implement Texas Human Resources Code §§161.089, 161.0891, and 161.0892 added by House Bill 2590, 85th Legislature, Regular Session, 2017. Section 161.089 allows HHSC to assess and collect an administrative penalty against a Home and Community-based Services (HCS) program provider or a Texas Home Living (TxHmL) program provider for a violation of a law or rule relating to the program. Section 161.0891 allows HHSC to permit a program provider to use any portion of the amount of an administrative penalty to ameliorate the violation or improve services in the HCS or TxHmL Program. Section 161.0892 requires HHSC to establish an informal dispute resolution process for HCS and TxHmL program providers to adjudicate disputes related to a proposed enforcement action or related proceeding by HHSC.

Chapter 9

The proposed rules change the word “review” to “survey” to be consistent with the terminology used for other programs and services regulated by HHSC. The proposed rules change the term “hazard to health and safety” to “immediate jeopardy” because that term more accurately corresponds with the definition of “hazard to health and safety.”

The proposed rules remove the provision that HHSC does not certify an HCS or TxHmL program provider if, at the time of a certification review that occurs after the initial certification review, the program provider is not providing HCS, TxHmL, or CFC services; or did not provide one of those services for 60 consecutive days during the period specified in the rule. The proposed rules more closely align with HHSC’s current practices. Specifically, the proposed rules state that HHSC may choose not to conduct an annual certification survey of a program provider that has a standard contract if the program provider is not the program provider for one or more individuals for at least 60 consecutive calendar days during the period beginning the first day of the certification period to be surveyed through the 121st calendar day before the end of the certification period.

The proposed rules state that HHSC sends a final survey report to a program provider within 10 business days (instead of 21 calendar days) after a survey exit conference to allow the program provider earlier notice of violations that need to be corrected and timely notice of any corresponding administrative penalties that have been imposed.

The proposed rules remove the provisions allowing a program provider to request an informal review of a finding in a preliminary review report because of the requirement in Human Resources Code, §161.0892, to allow a program provider the opportunity to request an informal dispute resolution if the program provider disagrees with a violation in a final survey report.

The proposed rules require a program provider to submit a plan of correction for serious violations, in addition to non-serious violations. This change was made so that HHSC can review a provider’s plan of correction for serious violations and notify the provider if the plan is not acceptable, thereby allowing the provider to work with HHSC to correct the violations within the timeframes required by the rules and minimize the impact of an administrative penalty.

To make the surveying process more efficient, the proposed rules allow HHSC to request that a program provider submit evidence of correction to HHSC to determine if the provider has completed its corrective action; allow HHSC to conduct a survey earlier than 31 days after the survey exit conference for critical violations at the request of a program provider; and allow a program provider to request that HHSC determine, at a survey for critical violations conducted under proposed §9.183(i)(1)(B)(i) or (i)(2) or §9.587(i)(1)(B)(i) or (i)(2), if the provider has completed corrective action on non-critical violations.

The proposed rules state that HHSC conducts a survey no earlier than 30 calendar days after the effective date of a vendor hold, to reflect HHSC’s current practice.

Chapter 49

The proposed rules add an administrative penalty as a sanction that HHSC may take against a contractor that has a contract for the HCS Program or TxHmL Program. The proposed rules require HHSC to deduct the amount of an administrative penalty from payments due to the contractor if the contractor does not choose amelioration or the plan of amelioration is not submitted, denied, or not implemented and the contractor does not appeal the administrative penalty or the contractor appeals the administrative penalty and the final decision from the administrative hearing is favorable to HHSC. The proposed rules require HHSC, if it approves a plan of amelioration and the cost of the proposed changes is less than the amount of the administrative penalty, to deduct the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider.

ISSUES AND ALTERNATIVES:

HHSC anticipates stakeholders may express concern that the bottom and top amounts of the monetary ranges for administrative penalties established in the proposed rules are too high. The ranges give HHSC reasonable flexibility to impose an administrative penalty in an appropriate amount based on the scope and severity of a violation.

There are no alternatives to the imposition of administrative penalties because such imposition is statutorily required.

STAKEHOLDER INVOLVEMENT:

The proposed rules were published on the HHSC webpage for external stakeholder review from October 1, 2018, to October 14, 2018. A stakeholder meeting was held on October 8, 2018.

External stakeholders commenting included representatives of the Providers Alliance for Community Services of Texas, Private Providers Association of Texas, and individual HCS providers. Comments received were reviewed by HHSC staff and taken into consideration.

Stakeholders requested that HHSC clarify the survey process described in the proposed rules and some of the definitions included in §9.153 and §9.553. Stakeholders also requested that HHSC simplify the table in the proposed rules establishing the monetary ranges for administrative penalties based on the scope and severity of a violation. HHSC substantially revised the proposed rules to address the stakeholders' concerns.

FISCAL IMPACT:

Each year of the first five years that the rules will be in effect, there will be fiscal implications to state government as a result of enforcing and administering the sections as proposed.

The net effect on state government for each year of the first five years the proposed rules are in effect is an estimated additional cost as set forth in the table below.

Yes

	SFY 2020	SFY 2021	SFY 2022	SFY 2023	SFY 2024
State	\$276,082	\$177,850	\$177,850	\$166,033	\$166,033
Federal	\$177,663	\$79,431	\$79,431	\$67,614	\$67,614
Total	\$453,745	\$257,281	\$257,281	\$233,647	\$233,647

RULE DEVELOPMENT SCHEDULE:

June 13, 2019 Present to the Medical Care Advisory Committee
June 27, 2019 Present to HHSC Executive Council
July 2019 Publish proposed rules in Texas Register
December 2019 Publish adopted rules in Texas Register
December 2019 Effective date

REQUESTED ACTION:

The MCAC recommends approval of the proposed rules for publication.

Information Only

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9	INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER D	HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)
SUBCHAPTER N	TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

PROPOSED PREAMBLE

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments to §9.153, §9.171, §9.186, §9.188; new §9.181, §9.182, §9.183; and the repeal of §9.185; in Subchapter D, Home and Community-based Services (HCS) Program and Community First Choice (CFC); and amendments to §9.553, §9.575, and §9.576; new §9.581, §9.586, and §9.587; and the repeal of §9.577; in Subchapter N, Texas Home Living (TxHmL) Program and Community First Choice (CFC); in Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposed rules is to implement Texas Human Resources Code §§161.089, 161.0891, and 161.0892 added by House Bill 2590, 85th Legislature, Regular Session, 2017. Section 161.089 allows HHSC to assess and collect an administrative penalty against a Home and Community-based Services (HCS) program provider or a Texas Home Living (TxHmL) program provider for a violation of a law or rule relating to the program. Section 161.0891 allows HHSC to permit a program provider to use any portion of the amount of an administrative penalty to ameliorate the violation or improve services in the HCS or TxHmL Program. Section 161.0892 requires HHSC to establish an informal dispute resolution process for HCS and TxHmL program providers to adjudicate disputes related to a proposed enforcement action or related proceeding by HHSC.

The proposed rules use the terms "follow-up survey," "initial certification survey," "intermittent survey," "recertification survey," and "survey" instead of "review" to be more consistent with the terminology used for other programs and services regulated by HHSC. The proposed rules also use the terms "post 30-day follow-up

survey" and "post 45-day follow-up survey" to describe the surveys conducted by HHSC after a critical violation or non-critical violation is identified. The proposed rules add definitions for these new terms to explain the types of surveys that are conducted by HHSC. The proposed rules change the term "hazard to health and safety" to "immediate jeopardy" because that term more accurately corresponds with the definition of "hazard to health and safety."

The proposed rules align with current practice by allowing HHSC to evaluate the health and safety of an individual at any time and if a concern from the evaluation is identified, to conduct an intermittent survey or take action in accordance with §9.183(q) or §9.587(q). The proposed rules remove the provision that HHSC does not certify an HCS or TxHmL program provider if, at the time of a certification review that occurs after the initial certification review, the program provider is not providing HCS, TxHmL, or CFC services; or did not provide one of those services for 60 consecutive days during the period specified in the rule. The removal of this provision is made because it does not align with current practice. The proposed rules align with current practice by allowing HHSC to choose not to conduct an annual certification survey of a program provider that has a standard contract if the program provider is not the program provider for one or more individuals for at least 60 consecutive calendar days during the period beginning the first day of the certification period to be surveyed through the 121st calendar day before the end of the certification period.

The proposed rules state that HHSC sends a final survey report to a program provider within 10 business days (instead of 21 calendar days) after a survey exit conference to allow the program provider earlier notice of violations that need to be corrected and timely notice of any corresponding administrative penalties that have been imposed.

The proposed rules remove the provisions allowing a program provider to request an informal review of a finding in a preliminary review report because of the requirement in Human Resources Code §161.0892, which allows a program provider the opportunity to request an informal dispute resolution if the program provider disagrees with a violation in a final survey report.

The proposed rules require a program provider to submit a plan of correction for serious violations, in addition to non-serious violations. This change was made so that HHSC can review a provider's plan of correction for serious violations and notify the provider if the plan is not acceptable, thereby allowing the provider to work with HHSC to correct the violations within the timeframes required by the rules and minimize the impact of an administrative penalty.

To make the surveying process more efficient, the proposed rules allow HHSC to request that a program provider submit evidence of correction to HHSC to determine if the provider has completed its corrective action; allow HHSC to conduct a survey earlier than the times prescribed for a post 30-day follow-up survey or a post 45-day follow-up survey at the request of a program provider; and allow a program provider to request that HHSC determine, at a post 30-day follow-

up survey or an earlier survey for critical violations described in §9.183(i) or §9.587(i), if the provider has completed corrective action on non-critical violations.

The proposed rules state that HHSC conducts a survey no earlier than 30 calendar days after the effective date of a vendor hold, to reflect HHSC's current practice.

SECTION-BY-SECTION SUMMARY

The proposed amendments change "DADS" to "HHSC" throughout Chapter 9 to reflect that DADS was abolished effective September 1, 2017, and functions have transferred to HHSC.

The proposed amendment of §9.153, Definitions, adds definitions for "critical violation," "immediate jeopardy," "immediate threat," "isolated," "limits the ability to provide care," "minor emotional or mental harm," "minor financial loss," "minor harm," "minor physical harm," "non-critical violation," "pattern of violation," "plan of correction," "post 45-day follow-up survey," "post 30-day follow-up survey," "repeated non-compliance," "serious emotional or mental harm," "serious financial loss," "serious physical harm," "widespread in scope," and "willfully interfering," because those terms are related to the imposition of an administrative penalty. The proposed amendment adds definitions for "follow-up survey," "initial certification survey," "intermittent survey," "recertification survey," and "survey" to explain the types of surveys that are conducted by HHSC. The proposed amendment also adds definitions for "advanced practice nurse," "dentist," "physician," and "physician assistant" because those terms are used in the definition of "serious emotional or mental harm," and "serious physical harm." The proposed amendment changes the definition of "condition of a serious nature" to describe the condition that results in a critical violation. The proposed amendment updates website links in the definitions "critical incident," "PDP," and "transportation plan;" makes editorial changes to "HHSC;" and updates a reference in "good cause." The proposed amendment changes the definition of "DARS" to reflect the transfer of the functions of DARS relevant to this subchapter to the Texas Workforce Commission. The proposed amendment removes the term "hazard to health or safety." The proposed new definition for "immediate jeopardy" is the same as the current definition for "hazard to health or safety." The proposed amendment renumbers and alphabetizes the paragraphs to account for the changes.

The proposed amendment of §9.171, DADS Review of a Program Provider and Residential Visit, lists the types of surveys conducted by HHSC and uses the term "recertification survey" instead of "annual certification survey" because this type of survey may not always occur annually. The proposed amendment allows HHSC to conduct an intermittent survey at any time during a certification period and conduct a combination of two or more different types of surveys at the same time. The proposed amendment allows HHSC to choose whether to conduct a recertification survey of a program provider that has a standard contract if the program provider is not the program provider for one or more individuals for at least 60 consecutive calendar days during the period beginning the first day of the certification period to be surveyed through the 121st calendar day before the end of the certification

period. The proposed amendment allows HHSC to determine if a program provider has implemented an approved plan of amelioration as described in §9.182. The proposed amendment requires HHSC, at the exit conference of a survey, to inform a program provider in writing of any concerns, including a condition of a serious nature, and gives the program provider written instructions for submitting a plan of correction. Currently, HHSC gives the program provider a written preliminary review report at the exit conference. The proposed amendment also requires HHSC to hold a new exit conference with a program provider if HHSC identifies a condition of a serious nature not discussed during an exit conference, which is consistent with HHSC's current practice of holding a new exit conference to discuss survey findings not discussed during the previous exit conference. The proposed amendment deletes the process for a program provider to request an informal review of a finding from a preliminary survey report. Instead, proposed new §9.183 gives a program provider the opportunity to request an informal dispute resolution if the program provider disagrees with a violation in a final survey report. To clarify the intent of Texas Human Resources Code §161.076, the proposed amendment requires that HHSC conduct unannounced visits in residences in which residential support or supervised living is provided and allows HHSC to conduct an unannounced visit of each residence in which host home/companion care is provided. The proposed amendment, for accuracy, requires HHSC to verify that the residence provides a safe and comfortable environment that complies with the certification principles instead of verifying compliance with the Waiver Survey and Certification Checklist. The proposed amendment also allows HHSC to require the program provider to submit, before a residential visit ends, a written plan describing how the safety of the individuals will be protected until corrective action is completed. The proposed amendment also requires that, based on a survey, HHSC takes action as described in §9.183. The proposed amendment allows HHSC to evaluate the health and safety of an individual at any time and to conduct an intermittent survey or take action in accordance with §9.183(q) of this subchapter if a concern from the evaluation is identified. The proposed amendment uses the terms "survey," "initial certification survey," "recertification survey," or "intermittent survey," as appropriate, instead of the terms "review," "on-site reviews," and "on-site certification reviews." The proposed amendment also reorganizes some provisions, makes minor editorial changes, and retitles the section.

Proposed new §9.181, Administrative Penalties, allows HHSC to impose and collect an administrative penalty against an HCS program provider for a violation of a certification principle and for any of the actions listed in subsection (a)(2) of the rule. The proposed rule contains a table that sets forth the ranges of an administrative penalty imposed for a violation of a certification principle based on the severity and scope of the violation and whether the violation is repeated non-compliance. The proposed rule also describes the factors HHSC considers in determining the amount of the administrative penalty to impose for the violation within the range. The proposed rule requires HHSC to give the program provider one opportunity to correct a non-critical violation to avoid the imposition of an administrative penalty. The proposed rule does not allow HHSC to give a program provider an opportunity to correct a critical violation before HHSC imposes an

administrative penalty. The proposed rule describes when an administrative penalty, if imposed, begins accruing and when it stops accruing. The proposed rule requires that, if a program provider completes corrective action the same day an administrative penalty begins accruing, the administrative penalty is for one day. The proposed rule establishes a \$5000 administrative penalty for each action described in subsection (a)(2)(A) of the rule and a \$1000 administrative penalty for each action described in subsection (a)(2)(B) or (C) of the rule. The proposed rule disallows HHSC from imposing the penalty no more than once per survey, and does not allow a program provider an opportunity to correct the action before imposing the administrative penalty. If HHSC imposes an administrative penalty for a violation or action described in subsection (a)(1) or (2), the proposed rule prohibits HHSC from imposing a vendor hold or otherwise withholding contract payments from the program provider at the same time for the same violation or action. The proposed rule allows HHSC to offer amelioration to a program provider as described in §9.182, in lieu of deducting payment for an administrative penalty imposed for a non-critical violation.

Proposed new §9.182, Amelioration, allows HHSC to give a program provider the opportunity for amelioration in lieu of deducting payment for an administrative penalty imposed against a program provider for a non-critical violation in accordance with §9.181. The proposed rule describes the circumstances under which a program provider is not allowed the opportunity for amelioration. The proposed rule requires HHSC to give a program provider the opportunity for amelioration of a non-critical violation in the notice required by §49.535(c). The proposed rule requires a program provider to notify HHSC, within the required period described in the notice, that the program provider chooses amelioration. The proposed rule requires that, if the program provider does not make the required notification, the program provider's opportunity to choose amelioration be forfeited and that HHSC deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(f). The proposed rule requires a program provider that chooses amelioration to submit a written plan for amelioration to HHSC within a specified period and describes the required contents of the plan of amelioration. The proposed rule requires, if a program provider does not submit a plan for amelioration within 45 calendar days after the date of the notice required by §49.535(c), that HHSC deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(1). The proposed rule requires the program provider to incur the cost of the proposed changes after HHSC approves the plan for amelioration. The proposed rule requires HHSC, if the plan is approved and the cost of the proposed changes is less than the amount of the administrative penalty, to deduct the amount of the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider. The proposed rule allows HHSC to require a plan for amelioration to propose changes that result in conditions exceeding the requirements of the subchapter. The proposed rule requires HHSC to notify a program provider of its decision to approve or deny a plan for amelioration within 45 calendar days after the date HHSC receives the plan. The proposed rule also allows HHSC to give the program provider an opportunity to revise the plan. The proposed rule requires HHSC, if a plan is approved, to deduct the amount of

the difference between the cost of the proposed changes and the administrative penalty, if any, from payments due the program provider and determine if the program provider has implemented the plan. The proposed rule requires HHSC, if a plan is denied, to deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(2) and allows the program provider to appeal the administrative penalty in accordance with §49.541. The proposed rule requires that HHSC deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(3) if HHSC determines that a program provider did not implement an approved plan for amelioration. The proposed rule allows the program provider to appeal the sole issue of whether the plan for amelioration was implemented.

Proposed new §9.183, Program Provider Compliance and Corrective Action, requires HHSC, if it determines from a survey that a program provider is in compliance with the certification principles (1) to send the program provider a final survey report stating that the program provider is in compliance with the certification principles; (2) to not require any action by the program provider; and (3) if the survey is an initial or recertification survey, to certify the program provider. If HHSC determines from a survey that a program provider is not in compliance with the certification principles, the proposed rule requires HHSC to send the program provider a final survey report with a list of violations, a letter notifying the program provider that the program provider may request an informal dispute resolution to dispute a violation in the final survey report and, if HHSC imposes an administrative penalty, a written notice of the administrative penalty. If HHSC determines from an initial certification survey, recertification survey, or intermittent survey that a program provider is not in compliance with the certification principles, the proposed rule requires a program provider to submit to HHSC, within 10 business days after the date of the exit conference, a plan of correction for each concern identified by HHSC, as described in §9.171(i)(1), even if the program provider disagrees with a concern or requests an informal dispute resolution. The proposed rule requires a program provider's plan of correction to specify a date by which corrective action will be completed for each concern and that such date (1) be no later than 30 calendar days after the date of the survey exit conference for a concern that is a condition of a serious nature and (2) be no later than 45 calendar days after the date of the survey exit conference for a concern that is not a condition of a serious nature. The proposed rule requires HHSC, within five business days after receiving the plan of correction, to notify the program provider of whether the plan is approved or not approved. If HHSC does not approve a plan of correction, the proposed rule requires the program provider to submit a revised plan of correction within five business days after the date of HHSC's notice that the plan of correction was not approved. The proposed rule requires HHSC to, within five business days after the date HHSC receives the revised plan of correction, to notify the program provider whether the revised plan is approved or not approved. The proposed rule requires HHSC, if the program provider does not submit a plan of correction, or HHSC does not approve the revised plan of correction to: (1) impose a vendor hold until the program provider submits a plan of correction approved by HHSC; or (2) deny or terminate certification of the program provider. The proposed rule requires HHSC, if a plan of correction is approved, to determine if a program provider has

completed its corrective action by (1) requesting that the program provider submit evidence of correction to HHSC; and (2) conducting a post 30-day follow-up survey for a critical violation or a post 45-day follow-up survey for a non-critical violation, unless HHSC conducts an earlier follow-up survey at the request of the program provider. The proposed rule allows HHSC, at the request of a program provider, to conduct a follow-up survey earlier than the periods described for a post 30-day follow-up survey or post 45-day follow-up survey. The proposed rule requires a program provider, if HHSC determines from an earlier follow-up survey that corrective action has been completed and the program provider has not yet submitted a plan of correction to HHSC, to include the corrective action taken on the plan of correction submitted by the program provider. If it is determined from the earlier follow-up survey that corrective action has not been completed, the proposed rule requires HHSC to conduct a post 30-day follow-up survey for a critical violation or a post 45-day follow-up survey for a non-critical violation. The proposed rule describes the action that HHSC takes if it determines from a post 30-day follow-up survey that the program provider has completed the corrective action for a critical violation and the action that HHSC takes if it determines that the program provider has not completed the corrective action for a critical violation. The proposed rule describes the action that HHSC takes if it determines from a post 45-day follow-up survey that the program provider has completed the corrective action for a non-critical violation and the action that HHSC takes if it determines that the program provider has not completed the corrective action for a non-critical violation. The proposed rule allows a program provider to request that HHSC, during a post 30-day follow-up survey or an earlier survey, determine if the program provider has completed some or all of the corrective action on non-critical violations and describes the action HHSC takes based on such determination. The proposed rule also describes when an administrative penalty for a critical violation and an administrative penalty for a non-critical violation stops accruing. The proposed rule describes the actions HHSC takes if HHSC determines from a survey or evaluation described in §9.171(n) that immediate jeopardy exists. The proposed rule describes the actions HHSC may take if HHSC determines that a program provider committed any of the actions described in §9.181(a)(2). The proposed rule requires HHSC, if a vendor hold is imposed on a program provider with a provisional contract, to initiate termination of the program provider's contract. The proposed rule requires HHSC, if a vendor hold is imposed on a program provider with a standard contract, to conduct 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 required to release the vendor hold and, that if the program provider has not completed the corrective action, to deny or terminate certification. The proposed rule describes the corrective action HHSC may require of the program provider if HHSC determines that a program provider is out of compliance with §9.177(o) or (p), relating to the minimum wage that must be paid to a service provider of supported home living or community first choice personal assistance services/habilitation. The proposed rule prohibits HHSC from citing 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 and allows HHSC to 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.

The proposed repeal of §9.185, Program Provider Compliance and Corrective Action, deletes the current requirements for compliance and corrective action by a program provider. New requirements addressing this issue are included in proposed new §9.183.

The proposed amendment of §9.186, Program Provider's Right to Administrative Hearing, allows a program provider to request an administrative hearing in accordance with 1 TAC §357.484. The proposed amendment deletes the list of sanctions for which a provider may request an administrative hearing and instead references §49.531(a), which lists the sanctions, including an administrative penalty. The proposed amendment makes minor editorial changes and renumbers the paragraphs to account for the deletion of provisions.

The proposed amendment of §9.188, DADS Approval of Residences, changes the rule title to "HHSC Approval of Residences." The proposed amendment also makes minor editorial changes and corrects a rule reference.

The proposed amendment of §9.553, Definitions, adds definitions for "critical violation," "immediate jeopardy," "immediate threat," "isolated," "limits the ability to provide care," "minor emotional or mental harm," "minor financial loss," "minor harm," "minor physical harm," "non-critical violation," "pattern of violation," "plan of correction," "post 45-day follow-up survey," "post 30-day follow-up survey," "repeated non-compliance," "serious emotional or mental harm," "serious financial loss," "serious physical harm," "widespread in scope," and "willfully interfering," because those terms are related to the imposition of an administrative penalty. The proposed amendment adds definitions for "follow-up survey," "initial certification survey," "intermittent survey," "recertification survey," and "survey" to explain the types of surveys that are conducted by HHSC. The proposed amendment also adds definitions for "advanced practice nurse," "dentist," "physician," and "physician assistant" because those terms are used in the definition of "serious emotional or mental harm," and "serious physical harm." The proposed new definition for "immediate jeopardy" is the same as the current definition for "hazard to health or safety." The proposed amendment changes the definition of "condition of a serious nature" to describe the condition that results in a critical violation. The proposed amendment removes the term "hazard to health or safety." The proposed amendment updates website links for the definitions "critical incident," "PDP," and "transportation plan;" updates a reference in the definition of "good cause;" and makes an editorial change to the definition of "HHSC." The proposed amendment renumbers the paragraphs and alphabetizes the definitions to account for the changes.

The proposed amendment of §9.575, Program Provider's Right to Administrative Hearing, allows a program provider to request an administrative hearing in accordance with 1 TAC §357.484. The proposed amendment deletes the specific sanctions for which a provider may request an administrative hearing and instead references §49.531(a), which lists the sanctions, including an administrative penalty. The proposed amendment requires a program provider to request a

reconsideration of a denial of level of need assignment in accordance with §9.568 to receive an administrative hearing on the denial. This requirement is included to be consistent with the requirement for HCS program providers in §9.186(b).

The proposed amendment of §9.576, DADS Review of a Program Provider, lists the types of surveys conducted by HHSC and uses the term "recertification survey" instead of "annual certification survey" because this type of survey may not always occur annually. The proposed amendment allows HHSC to conduct an intermittent survey at any time during a certification period and conduct a combination of two or more different types of surveys at the same time. The proposed amendment allows HHSC to choose whether to conduct a recertification survey of a program provider that has a standard contract if the program provider is not the program provider for one or more individuals for at least 60 consecutive calendar days during the period beginning the first day of the certification period to be surveyed through the 121st calendar day before the end of the certification period. The proposed amendment allows HHSC to determine if a program provider has implemented an approved plan of amelioration as described in §9.586. The proposed amendment requires HHSC, at the exit conference of a survey, to inform a program provider in writing of any concerns, including a condition of a serious nature, and gives the program provider written instructions for submitting a plan of correction. Currently, HHSC gives the program provider a written preliminary review report at the exit conference. The proposed amendment also requires HHSC to hold a new exit conference with a program provider if HHSC identifies a condition of a serious nature not discussed during an exit conference, which is consistent with HHSC's current practice of holding a new exit conference to discuss survey findings not discussed during the previous exit conference. The proposed amendment deletes the process for a program provider to request an informal review of a finding from a preliminary survey report. Instead, proposed new §9.587 gives a program provider the opportunity to request an informal dispute resolution if the program provider disagrees with a violation in a final survey report. The proposed amendment also requires that, based on a survey, HHSC takes action as described in §9.587. The proposed amendment allows HHSC to evaluate the health and safety of an individual at any time and to conduct an intermittent survey or take action in accordance with §9.587(q) of this subchapter if a concern from the evaluation is identified. The proposed amendment uses the terms "survey," "initial certification survey," "recertification survey," or "intermittent survey," as appropriate, instead of the terms "review," "on-site reviews," and "on-site certification reviews." The proposed amendment also reorganizes some provisions, makes minor editorial changes, and retitles the section.

The proposed repeal of §9.577, Program Provider Compliance and Corrective Action, deletes the current requirements for compliance and corrective action by a program provider. New requirements addressing this issue are included in proposed new §9.587.

Proposed new §9.581, Administrative Penalties, allows HHSC to impose and collect an administrative penalty against a TxHmL program provider for a violation of a certification principle and for any of the actions listed in subsection (a)(2) of the

rule. The proposed rule contains a table that sets forth the ranges of an administrative penalty imposed for a violation of a certification principle based on the severity and scope of the violation and whether the violation is repeated non-compliance. The proposed new rule also describes the factors HHSC considers in determining the amount of the administrative penalty to impose for the violation within the range. The proposed rule requires HHSC to give the program provider one opportunity to correct a non-critical violation to avoid the imposition of an administrative penalty. The proposed rule does not allow HHSC to give a program provider an opportunity to correct a critical violation before HHSC imposes an administrative penalty. The proposed rule describes when an administrative penalty, if imposed, begins accruing and when it stops accruing. The proposed rule requires that, if a program provider completes corrective action the same day an administrative penalty begins accruing, the administrative penalty is for one day. The proposed rule establishes a \$5000 administrative penalty for each action described in subsection (a)(2)(A) of the rule and a \$1000 administrative penalty for each action described in subsection (a)(2)(B) or (C) of the rule. The rule disallows HHSC from imposing the penalty no more than once per survey, and does not allow a program provider an opportunity to correct the action before imposing the administrative penalty. If HHSC imposes an administrative penalty for a violation or action described in subsection (a)(1) or (2), the proposed rule prohibits HHSC from imposing a vendor hold or otherwise withholding contract payments from the program provider at the same time for the same violation or action. The proposed rule allows HHSC to offer amelioration to a program provider as described in §9.586, in lieu of deducting payment for an administrative penalty imposed for a non-critical violation.

Proposed new §9.586, Amelioration, allows HHSC to give a program provider the opportunity for amelioration, in lieu of deducting payment for an administrative penalty imposed against a program provider for a non-critical violation in accordance with §9.581. The proposed rule describes the circumstances under which a program provider is not allowed the opportunity for amelioration. The proposed rule requires HHSC to give a program provider the opportunity for amelioration of a non-critical violation in the notice required by §49.535(c). The proposed rule requires a program provider to notify HHSC, within the required period described in the notice, that the program provider chooses amelioration. The proposed rule requires that, if the program provider does not make the required notification, the program provider's opportunity to choose amelioration be forfeited and that HHSC deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(f). The proposed rule requires a program provider that chooses amelioration to submit a written plan for amelioration to HHSC within a specified period and describes the required contents of the plan of amelioration. The proposed rule requires, if a program provider does not submit a plan for amelioration within 45 calendar days after the date of the notice required by §49.535(c), that HHSC deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(1). The proposed rule requires the program provider to incur the cost of the proposed changes after HHSC approves the plan for amelioration. The proposed rule requires HHSC, if the plan is approved and the cost of the proposed changes is

less than the amount of the administrative penalty, to deduct the amount of the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider. The proposed rule allows HHSC to require a plan for amelioration to propose changes that result in conditions exceeding the requirements of the subchapter. The proposed rule requires HHSC to notify a program provider of its decision to approve or deny a plan for amelioration within 45 calendar days after the date HHSC receives the plan. The proposed rule also allows HHSC to give the program provider an opportunity to revise the plan. The proposed rule requires HHSC, if a plan is approved, to deduct the amount of the difference between the cost of the proposed changes and the administrative penalty, if any, from payments due the program provider and determine if the program provider has implemented the plan. The proposed rule requires HHSC, if a plan is denied, to deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(2) and allows the program provider to appeal the administrative penalty in accordance with §49.541. The proposed rule requires that HHSC deduct the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(3) if HHSC determines that a program provider did not implement an approved plan for amelioration. The proposed rule allows the program provider to appeal the sole issue of whether the plan for amelioration was implemented.

Proposed new §9.587, Program Provider Compliance and Corrective Action, requires HHSC, if it determines from a survey that a program provider is in compliance with the certification principles, (1) to send the program provider a final survey report stating that the program provider is in compliance with the certification principles; (2) to not require any action by the program provider; and (3) if the survey is an initial or recertification survey, to certify the program provider. If HHSC determines from a survey that a program provider is not in compliance with the certification principles, the proposed rule requires HHSC to send the program provider a final survey report with a list of violations, a letter notifying the program provider that the program provider may request an informal dispute resolution to dispute a violation in the final survey report and, if HHSC imposes an administrative penalty, a written notice of the administrative penalty. If HHSC determines from an initial certification survey, recertification survey, or intermittent survey that a program provider is not in compliance with the certification principles, the proposed rule requires a program provider to submit to HHSC, within 10 business days after the date of the exit conference, a plan of correction for each concern identified by HHSC, as described in §9.576(i)(1), even if the program provider disagrees with a concern or requests an informal dispute resolution. The proposed rule requires a program provider's plan of correction to specify a date by which corrective action will be completed for each concern and that such date (1) be no later than 30 calendar days after the date of the survey exit conference for a concern that is a condition of a serious nature; and (2) be no later than 45 calendar days after the date of the survey exit conference for a concern that is not a condition of a serious nature. The proposed rule requires HHSC, within five business days after receiving the plan of correction, to notify the program provider of whether the plan is approved or not approved. If HHSC does not approve a plan of correction, the proposed rule requires the program provider to submit a revised plan of correction

within five business days after the date of HHSC's notice that the plan of correction was not approved. The proposed rule requires HHSC, within five business days after the date HHSC receives the revised plan of correction, to notify the program provider whether the revised plan is approved or not approved. The proposed rule requires HHSC, if the program provider does not submit a plan of correction or HHSC does not approve the revised plan of correction to: (1) impose a vendor hold until the program provider submits a plan of correction approved by HHSC; or (2) deny or terminate certification of the program provider. The proposed rule requires HHSC, if a plan of correction is approved, to determine if a program provider has completed its corrective action by (1) requesting that the program provider submit evidence of correction to HHSC; and (2) conducting a post 30-day follow-up survey for a critical violation or a post 45-day follow-up survey for a non-critical violation, unless HHSC conducts an earlier follow-up survey at the request of the program provider. The proposed rule allows HHSC, at the request of a program provider, to conduct a follow-up survey earlier than the periods described for a post 30-day follow-up survey or post 45-day follow-up survey. The proposed rule requires a program provider, if HHSC determines from an earlier follow-up survey that corrective action has been completed and the program provider has not yet submitted a plan of correction to HHSC, to include the corrective action taken on the plan of correction submitted by the program provider. If it is determined from the earlier follow-up survey that corrective action has not been completed, the proposed rule requires HHSC to conduct a post 30-day follow-up survey for a critical violation or a post 45-day follow-up survey for a non-critical violation. The proposed rule describes the action that HHSC takes if it determines from a post 30-day follow-up survey that the program provider has completed the corrective action for a critical violation and the action that HHSC takes if it determines that the program provider has not completed the corrective action for a critical violation. The proposed rule describes the action that HHSC takes if it determines from a post 45-day follow-up survey that the program provider has completed the corrective action for a non-critical violation and the action that HHSC takes if it determines that the program provider has not completed the corrective action for a non-critical violation. The proposed rule allows a program provider to request that HHSC, during a post 30-day follow-up survey or an earlier survey, determine if the program provider has completed some or all of the corrective action on non-critical violations and describes the action HHSC takes based on such determination. The proposed rule also describes when an administrative penalty for a critical violation and an administrative penalty for a non-critical violation stops accruing. The proposed rule describes the actions HHSC takes if HHSC determines from a survey or evaluation described in §9.576(n) that immediate jeopardy exists. The proposed rule describes the actions HHSC may take if HHSC determines that a program provider committed any of the actions described in §9.581(a)(2). The proposed rule requires HHSC, if a vendor hold is imposed on a program provider with a provisional contract, to initiate termination of the program provider's contract. The proposed rule requires HHSC, if a vendor hold is imposed on a program provider with a standard contract, to conduct 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 required to release the vendor hold and, that if the program provider has not completed the corrective action, to deny or terminate certification.

The proposed rule describes the corrective action HHSC may require of the program provider if HHSC determines that a program provider is out of compliance with §9.579(s) or (t), relating to the minimum wage that must be paid to a service provider of supported home living or community first choice personal assistance services/habilitation. The proposed rule prohibits HHSC from citing 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 and allows HHSC to 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.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be fiscal implications to state government as a result of enforcing and administering the sections as proposed.

The net effect on state government for each year of the first five years the proposed rules are in effect is an estimated additional cost of \$276,082 General Revenue (GR) (\$453,745 All Funds (AF)) in State Fiscal Year (SFY) 2020, \$177,850 GR (\$257,281 AF) SFY 2021, \$177,850 GR (\$257,281 AF) in SFY 2022, \$166,033 GR (\$233,647 AF) in SFY 2023, and \$166,033 GR (\$233,647 AF) in SFY 2024.

There are also foreseeable implications relating to revenues of state government because any administrative penalties collected from program providers will increase revenue. However, HHSC lacks sufficient data to estimate any additional revenues because it is unknown how many administrative penalties will be imposed or the amount of those administrative penalties.

There are no foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will affect the number of employee positions;
- (3) implementation of the proposed rules will require an increase in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal has determined that there will be an adverse economic effect on HCS and TxHmL program providers that are small businesses or micro-businesses. There will not be an adverse economic effect on rural communities because no rural communities are HCS or TxHmL program providers.

The proposed rules allow HHSC to impose an administrative penalty on and provide amelioration to HCS and TxHmL program providers, some of which may be small businesses or micro-businesses. HHSC lacks sufficient data to estimate the number of program providers designated as a small business or micro-business that would be impacted by the proposed rules.

To minimize the adverse impact on small businesses or micro-businesses, HHSC considered a penalty schedule with graduated penalty amounts based on the size of a program provider. HHSC determined that the work involved in establishing such a system would have additional administrative costs associated with it that outweigh the benefits of such a system. In addition, Texas Human Resources Code §161.089 requires the rules to establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation, not the size of the program provider. HHSC also considered setting the highest penalty amount at less than the maximum allowed by statute, which is \$5000. However, HHSC determined that imposition of lower amounts may not be effective in encouraging compliance with the certification principles or helping to ensure the health, safety, and welfare of the individuals served.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services Division, has determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcing the amendments and new section is that individuals enrolled in the HCS and TxHmL Programs will benefit from an additional sanction that HHSC may take against a program provider that does not comply with a certification principle. This will help ensure the quality of services and the health and safety of individuals enrolled in the HCS and TxHmL Programs.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Tahoe Fintel, Senior Policy Specialist, at (512) 438-3161 in HHSC Regulatory Services Division.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSCRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 40R069" in the subject line.

STATUTORY AUTHORITY

The amendments, new sections, and repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Human Resources Code §§161.089, which allows HHSC to assess and collect an administrative penalty against an HCS or TxHmL program provider, Texas Human Resources Code §161.0891, which permits an HCS or TxHmL program provider to use any portion of the amount of an administrative penalty to ameliorate the violation or improve services in the HCS or TxHmL Program, Texas Human Resources Code §161.0892, which establishes an informal dispute resolution process for an HCS or TxHmL program provider to adjudicate disputes related to a proposed enforcement action or related proceeding by HHSC; and Texas Government Code, Chapter 531, Subchapter A-1, which transfers functions of DADS to HHSC.

The amendments, new sections, and repeals affect Texas Government Code §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code, §§32.021, 161.089, 161.0891, and 161.0892.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-3161.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
 OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER D HOME AND COMMUNITY-BASED SERVICES (HCS)
 PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

§9.153. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(2) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(3) Advanced practice nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(4) ~~[(3)]~~ Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(5) ~~[(4)]~~ Applicant--A Texas resident seeking services in the HCS Program.

(6) ~~[(5)]~~ Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(7) [~~(6)~~] Business day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

(8) [~~(7)~~] Calendar day--Any day, including weekends and holidays.

(9) [~~(8)~~] CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(10) [~~(9)~~] CFC--Community First Choice.

(11) [~~(10)~~] CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(12) [~~(11)~~] CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(13) [~~(12)~~] CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(14) [~~(13)~~] CFC PAS/HAB--CFC personal assistance services/habilitation. A service that:

(A) consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

- (V) money management;
- (VI) community integration, including how to get around in the community;
- (VII) use of adaptive equipment;
- (VIII) personal decision making;
- (IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and
- (X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(15) [~~(14)~~] CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(16) [~~(15)~~] CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS Handbook.

(17) [~~(16)~~] CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(18) [~~(17)~~] Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(19) [~~(18)~~] Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(20) [~~(19)~~] Condition of a serious nature--~~A [Except as provided in paragraph (35) of this section, a] condition in which a program provider's noncompliance with a certification principle; [caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.]~~

(A) is a pattern that results in minor harm;

(B) is widespread in scope and results in minor harm;

(C) is widespread in scope and constitutes a potential for minor harm;

(D) is an immediate threat; or

(E) is widespread in scope and limits the ability to provide care but does not result in an immediate threat, minor harm, or actual or potential for serious financial loss.

(21) [~~(20)~~] Contract--A provisional contract or a standard contract.

(22) [~~(21)~~] CRCG--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at www.hhsc.state.tx.us.

(23) [~~(22)~~] Critical incident--An event listed in the HCS Provider User Guide found at www.hhsc.state.tx.us. [~~www.dads.state.tx.us~~]

(24) Critical violation--A violation of a certification principle that results from a condition of serious nature.

(25) [~~(23)~~] DADS--HHSC [~~The Department of Aging and Disability Services~~].

(26) [~~(24)~~] DARS--The Texas Workforce Commission [~~Department of Assistive and Rehabilitative Services~~].

(27) Dentist--A person licensed to practice dentistry in accordance with Texas Occupations Code, Chapter 256.

(28) [~~(25)~~] DFPS--The Department of Family and Protective Services.

(29) [~~(26)~~] Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(30) [~~(27)~~] Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(31) [~~(28)~~] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(32) [~~(29)~~] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(33) [~~(30)~~] FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(34) Follow-up survey--A review by HHSC of a program provider to determine if the program provider has completed corrective action.

(35) [~~(31)~~] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(36) [~~(32)~~] Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

(37) [~~(33)~~] Good cause--As used in §9.174(j) of this subchapter (relating to Certification Principles: Service Delivery), a reason outside the control of the CFC ERS provider, as determined by HHSC [~~DADS~~].

(38) [~~(34)~~] GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

~~[(35) Hazard to health or safety--A condition in which serious injury or death-~~

~~of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.]~~

(39) [~~(36)~~] HCS Program--The Home and Community-based Services Program operated by HHSC [~~DADS~~] as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(40) [~~(37)~~] Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(41) [~~(38)~~] HHSC--The Texas Health and Human Services Commission.

(42) [~~(39)~~] IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(43) [~~(40)~~] ICAP--Inventory for Client and Agency Planning.

(44) [~~(41)~~] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by HHSC [~~DADS~~], including a state supported living center.

(45) [~~(42)~~] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(46) [~~(43)~~] ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC [~~DADS~~] for LOC determination and LON assignment.

(47) Immediate jeopardy--A condition in which death or serious physical harm to an individual is imminent because of a program provider's noncompliance with a certification principle.

(48) Immediate threat--Actual or potential for death, serious physical harm, serious emotional or mental harm, or serious financial loss to an individual.

(49) [~~(44)~~] Implementation Plan--A written document developed by the program provider that, for each HCS Program service, except for transportation provided as a supported home living activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(50) [~~(45)~~] Individual--A person enrolled in the HCS Program.

(51) Initial certification survey--A review by HHSC of a program provider with a provisional contract to determine if the program provider is in compliance with the certification principles.

(52) [~~(46)~~] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(53) [~~(47)~~] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(54) Intermittent survey--A review by HHSC of a program provider that is not an initial certification survey, a recertification survey, or a follow-up survey, to determine if the program provider is in compliance with the certification principles.

(55) [~~(48)~~] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC [~~DADS~~].

(56) [~~(49)~~] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(57) [~~(50)~~] IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(58) Isolated--One of the following:

(A) if there is harm or potential for harm resulting from a violation of a certification principle, isolated means that one or a very limited number of individuals are affected; or

(B) if there is no harm and no potential for harm resulting from a violation of a certification principle, isolated means a situation that has occurred only occasionally.

(59) [~~(51)~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(60) [~~(52)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC, §533A.035.

(61) Limits the ability to provide care--Limits a program provider's ability to provide an HCS Program service or a CFC service to an individual but does not:

(A) constitute an immediate threat; or

(B) result in actual or potential for minor harm or minor financial loss.

(62) [~~(53)~~] LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(63) [~~(54)~~] LON--Level of need. An assignment given by HHSC [~~DADS~~] to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(64) [~~(55)~~] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(65) [~~(56)~~] Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(66) [~~(57)~~] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive SSI benefits.

(67) [~~(58)~~] Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including

an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services or CFC services; and

(B) that has a service capacity designated in the HHSC [~~DADS~~] data system of no more than three individuals.

(68) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(69) [(59)] Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

~~[(60) Military family member--A person who is the spouse or child (regardless of age) of:]~~

~~[(A) a military member; or]~~

~~[(B) a former military member.]~~

(70) Minor emotional or mental harm--An unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury that did not warrant or was not reasonably expected to have warranted treatment by a physician or a licensed mental health professional.

(71) Minor financial loss--Loss of wages, money, property, or resources in a total amount of less than \$25 per individual for the period beginning the date of the survey exit conference of the previous survey to the date of the survey exit conference of the current survey.

(72) Minor harm--Minor physical harm or minor emotional or mental harm to an individual.

(73) Minor physical harm--Physical injury, illness, pain, or impairment of physical condition that does not rise to the level of serious physical harm.

(74) [(64)] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(75) Non-critical violation--A violation of a certification principle that:

(A) is isolated and results in minor harm;

(B) is isolated or a pattern and results in potential for minor harm;

(C) constitutes actual or potential for minor financial loss;

(D) is isolated or a pattern and limits the ability to provide care but does not constitute an immediate threat, minor harm, or actual or potential for minor financial loss; or

(E) does not constitute an immediate threat, minor harm, or actual or potential for minor financial loss and does not limit the ability to provide care.

(76) [(62)] Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(77) Pattern of violation--Repeated violations of a certification principle that are not widespread in scope and that are found throughout the services provided by the program provider or that affect or involve the same individuals, service providers, or volunteers.

(78) [(63)] PDP--[()person-directed plan.]--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC [DADS] Person-Directed Plan form and discovery tool found at www.hhsc.state.tx.us [www.dads.state.tx.us], that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(79) [(64)] Performance contract--A written agreement between HHSC [DADS] and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(80) [(65)] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(81) [(66)] Permanency Planning Review Screen--A screen in the HHSC [DADS] data system, completed by a LIDDA, that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(82) [(67)] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and

preferences.

(83) Physician--A person who is licensed to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155.

(84) Physician assistant--A person who is licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204.

(85) Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action for each violation of a certification principle.

(86) Post 45-day follow-up survey--A follow-up survey conducted in accordance with §9.183(h)(2)(B) of this subchapter (relating to Program Provider Compliance and Corrective Action).

(87) Post 30-day follow-up survey--A follow-up survey conducted in accordance with §9.183(h)(2)(A) of this subchapter.

(88) [~~(68)~~] Post-move monitoring visit--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(89) [~~(69)~~] Pre-enrollment minor home modifications--Minor home modifications, as described in the *HCS Program Billing Guidelines*, completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(90) [~~(70)~~] Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the *HCS Program Billing Guidelines* to determine the need for pre-enrollment minor home modifications.

(91) [~~(71)~~] Pre-move site review--As described in §17.503 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(92) [~~(72)~~] Program provider--A person, [as defined in §49.102 of this title (relating to Definitions)], that has a contract with HHSC [~~DADS~~] to provide HCS

Program services, excluding an FMSA.

(93) [~~(73)~~] Provisional contract--An initial contract that HHSC [~~DADS~~] enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(94) [~~(74)~~] Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(95) Recertification survey--A review by HHSC of a program provider with a standard contract to determine if the program provider is in compliance with the certification principles and will be certified for a new certification period.

(96) [~~(75)~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(97) [~~(76)~~] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *HCS Program Billing Guidelines*.

(98) [~~(77)~~] Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(99) Repeated non-compliance--A violation of a certification principle that is identified by HHSC in a final survey report and is similar to a violation identified by HHSC during the previous 24 months in a final survey report. Violations are similar if the violations:

(A) are based on the same certification principle;

(B) are based on similar circumstances; or

(C) involve the same HCS Program service or CFC service.

~~(100) [(78)]~~ Responder--A person designated to respond to an alarm call activated by an individual.

~~(101) [(79)]~~ Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

~~[(80) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.]~~

~~(102) [(81)]~~ Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter to add a new HCS Program service or CFC service or change the amount of an existing service.

(103) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

~~(104) [(82)]~~ Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(105) Serious emotional or mental harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury that warranted or would reasonably be expected to have warranted treatment by a physician or a licensed mental health professional.

(106) Serious financial loss--Loss of wages, money, property, or resources in a total amount of \$25 or more per individual for the period beginning the date of the survey exit conference of the previous survey to the date of the survey exit conference of the current survey.

(107) Serious physical harm--Severe physical injury, illness, pain, or impairment of physical condition, including:

(A) a fracture, dislocation of any joint, an internal injury, a contusion larger than two and one half inches, a concussion, a second- or third-degree burn, or a laceration requiring sutures;

(B) a severe adverse health effect that results from failure to receive medications in the amounts or at the times prescribed; or

(C) any other harm that warranted, or would reasonably be expected to

have warranted, hospitalization or medical treatment by a physician, dentist, physician assistant, or advanced practice nurse.

(108) [~~83~~] Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(109) [~~84~~] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(110) [~~85~~] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(111) [~~86~~] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 365 calendar days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) with the approval of the individual or LAR, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(112) [~~(87)~~] Service provider--A person, who may be a staff member, who directly provides an HCS Program service or CFC service to an individual.

(113) [~~(88)~~] Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(114) [~~(89)~~] SSI--Supplemental Security Income.

(115) [~~(90)~~] Staff member--An employee or contractor of an HCS Program provider.

(116) [~~(91)~~] Standard contract--A contract that HHSC [~~DADS~~] enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(117) [~~(92)~~] State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(118) [~~(93)~~] State supported living center--A state-supported and structured residential facility operated by HHSC [~~DADS~~] to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC [~~DADS~~].

(119) [~~(94)~~] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(120) Survey--An initial certification survey, a recertification survey, a follow-up survey, and an intermittent survey.

(121) [~~(95)~~] System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(122) [~~(96)~~] TANF--Temporary Assistance for Needy Families.

(123) [~~(97)~~] TAS--Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

(i) paying security deposits required to lease a home, including an

apartment, or to establish utility services for a home;

(ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

(i) purchasing bedroom furniture;

(ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(124) [~~(98)~~] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(125) [~~(99)~~] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(126) [~~(100)~~] Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(127) [~~(101)~~] Transportation plan--A written plan, based on person-directed

planning and developed with an applicant or individual using HHSC [DADS] Individual Transportation Plan form found at www.hhsc.state.tx.us [www.dads.state.tx.us]. A transportation plan is used to document how transportation as a supported home living activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(128) [(102)] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(129) Widespread in scope--A violation of a certification principle that:

(A) is pervasive throughout the services provided by the program provider; or

(B) represents a systemic failure by the program provider that affects or has the potential to affect a large portion of or all individuals.

(130) Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede.

§9.171. HHSC Surveys [DADS Review of a Program Provider] and Residential Visits of a Program Provider [Visit].

(a) A [The] program provider must be in continuous compliance with the [HCS-Program] certification principles contained in §§9.172 - 9.174 and §§9.177 - 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions).

(b) HHSC conducts the following surveys:

(1) an initial certification survey;

(2) a recertification survey;

(3) a follow-up survey; and

(4) an intermittent survey.

~~[(b) DADS conducts on-site certification reviews of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on a review, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).]~~

(c) HHSC conducts an initial certification survey [After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review] within 120 calendar days after the date HHSC [DADS] approves the enrollment or transfer of the first individual to receive HCS Program services from the program provider [under the provisional contract].

(d) HHSC may conduct an intermittent survey at any time during a certification period.

(e) HHSC may conduct a combination of two or more different types of surveys at the same time.

(f) ~~(d)~~ If HHSC ~~[DADS]~~ certifies a program provider after completion of an initial or a recertification survey ~~[annual certification review]~~, the certification period is for no more than 365 calendar days.

~~[(e) DADS may conduct reviews of the program provider at any time.]~~

(g) HHSC may choose not to conduct a recertification survey of a program provider that has a standard contract if the program provider is not the program provider for one or more individuals for at least 60 consecutive calendar days during the period beginning the first day of the certification period to be surveyed through the 121st calendar day before the end of the certification period.

(h) ~~(f)~~ During a survey, HHSC ~~[any review, DADS]~~ may:

(1) review the HCS Program services or CFC services provided to any individual to determine if a ~~[the]~~ program provider is in compliance with the certification principles; and ~~[-]~~

(2) determine if a program provider has implemented an approved plan for amelioration as described in §9.182 of this subchapter (relating to Amelioration).

(i) ~~(g)~~ HHSC ~~[DADS]~~ conducts an exit conference at the end of a survey ~~[all-on-site reviews]~~, at a time and location determined by HHSC. At the exit conference, HHSC:

(1) informs a program provider in writing of any concerns, including a condition of a serious nature; and

(2) unless the exit conference is at the end of a follow-up survey, gives the program provider written instructions for submitting a plan of correction as described in §9.183(c) of this subchapter (relating to Program Provider Compliance and Corrective Action) for any concerns identified ~~[DADS, and at the exit conference gives the program provider a written preliminary review report]~~.

(j) ~~(h)~~ If HHSC identifies a condition of a serious nature not discussed during an exit conference, HHSC holds a new exit conference with a program provider to discuss the condition ~~[a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings]~~.

~~[(1) To request an informal review of any of the findings in the preliminary review report, the program provider must:]~~

~~[(A) complete DADS Form 3610 "Informal Review Request" as instructed on the form; and]~~

~~[(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.]~~

~~[(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.]~~

~~[(3) If DADS receives a timely request for an informal review, DADS:]~~

~~[(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and]~~

~~[(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.]~~

~~[(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.]~~

~~(k) [(j)] In addition to the surveys [on-site certification reviews] described in [subsection (b) of] this section, HHSC [DADS] conducts, at least annually, a visit [unannounced visits] of each residence in which host home/companion care, residential support, or supervised living is provided to determine if [verify that] the residence provides a safe and comfortable [an] environment that complies with the certification principles [*DADS Waiver Survey and Certification Residential Checklist*, which is found at www.dads.state.tx.us].~~

(1) HHSC conducts an unannounced visit of each residence in which residential support or supervised living is provided.

(2) HHSC may conduct an unannounced visit of each residence in which host home/companion care is provided.

(l) [(k)] Based on the information obtained from a visit described in subsection (k) [(j)] of this section, HHSC [DADS] may:

(1) require the program provider to complete corrective action before the residential visit ends;

(2) require the program provider to submit, before the residential visit ends, a written plan describing how the safety of the individuals will be protected until corrective action is completed;

(3) [(2)] require the program provider [to] submit evidence of corrective action within a time period determined by HHSC [DADS]; or

(4) [(3)] conduct an intermittent survey [a review] of the program provider [in accordance with this section].

(m) Based on a survey, HHSC takes action as described in §9.183 of this subchapter.

(n) HHSC may evaluate the health and safety of an individual at any time. If HHSC identifies a concern from the evaluation, HHSC may conduct an intermittent survey or take action in accordance with §9.183(q) of this subchapter.

§9.181. Administrative Penalties.

(a) HHSC may impose and collect an administrative penalty against a program

provider for:

(1) a violation of a certification principle contained in §§9.172, 9.173, 9.174, 9.177, 9.178, 9.179, or 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions); and

(2) any of the following:

(A) immediate jeopardy;

(B) willfully interfering with the work of a representative of HHSC or the enforcement of this subchapter, which may include:

(i) making a false statement of a material fact that the program provider knows or should know is false with respect to a matter under investigation by HHSC; or

(ii) falsifying documentation, including documenting the provision of a service before the service has been provided; or

(C) failing to pay an administrative penalty on or before the 10th calendar day after the date of notice described in §49.535(c) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs).

(b) The range of the administrative penalty imposed against a program provider for a violation described in subsection (a)(1) of this section is set forth in the following table:

SEVERITY OF VIOLATION		SCOPE OF VIOLATION		
		ISOLATED	PATTERN	WIDESPREAD
IMMEDIATE THREAT	Not repeated non-compliance	\$500-\$3000	\$1000-\$4000	\$1500-\$5000
	Repeated non-compliance	\$1000-\$5000	\$2000-\$5000	\$3000-\$5000
	Critical or non-critical	CRITICAL	CRITICAL	CRITICAL
	Not repeated non-compliance	\$100-\$1000	\$200-\$2500	\$300-\$3500

MINOR HARM	Repeated non-compliance	\$200-\$2000	\$300-\$5000	\$400-\$5000
	Critical or non-critical	NON-CRITICAL	CRITICAL	CRITICAL
POTENTIAL FOR MINOR HARM OR LIMITS THE ABILITY TO PROVIDE CARE	Not repeated non-compliance	\$100-\$200	\$150-\$350	\$200-\$500
	Repeated non-compliance	\$200-\$400	\$300-\$700	\$400-\$1000
	Critical or non-critical	NON-CRITICAL	NON-CRITICAL	CRITICAL
ACTUAL OR POTENTIAL FOR MINOR FINANCIAL LOSS	Not repeated non-compliance	\$100-\$200	\$150-\$350	\$200-\$500
	Repeated non-compliance	\$200-\$400	\$300-\$700	\$400-\$1000
	Critical or non-critical	NON-CRITICAL	NON-CRITICAL	NON-CRITICAL
NO IMMEDIATE THREAT; NO MINOR HARM; NO POTENTIAL FOR MINOR HARM; NO MINOR FINANCIAL LOSS; NO POTENTIAL FOR MINOR FINANCIAL LOSS; AND DOES NOT LIMIT THE ABILITY TO PROVIDE CARE	Not repeated non-compliance	\$0-\$200	\$0-\$350	\$0-\$500
	Repeated non-compliance	\$100-\$400	\$150-\$700	\$200-\$1000
	Critical or non-critical	NON-CRITICAL	NON-CRITICAL	NON-CRITICAL

(c) In the table in subsection (b) of this section, there is a range established for a violation that is not repeated non-compliance and a range established for a violation that is repeated non-compliance. HHSC considers the following factors in determining the amount of an administrative penalty within a range:

(1) the nature, circumstances, extent, and gravity of the violation, including

the threat or degree of harm to the health or safety of individuals resulting from the violation;

(2) the program provider's history of violations within the previous 24 months;

(3) whether the program provider:

(A) had prior knowledge of the violation, including whether the program provider identified the violation through the program provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter that justice may require.

(d) If HHSC determines that a violation described in subsection (a)(1) of this section is a non-critical violation, HHSC allows a program provider one opportunity to correct the violation to avoid the imposition of an administrative penalty. If HHSC determines that a violation described in subsection (a)(1) of this section is a critical violation, HHSC does not allow a program provider an opportunity to correct the violation before HHSC imposes an administrative penalty.

(e) If HHSC imposes an administrative penalty for a violation described in subsection (a)(1) of this section, the administrative penalty begins accruing:

(1) for a critical violation, on the date of the exit conference of the survey in which the violation was identified; or

(2) for a non-critical violation, on the date of the exit conference of the post 45-day follow-up survey.

(f) An administrative penalty accrues each day until the earliest of the following:

(1) corrective action for that violation is completed, as determined by HHSC;

(2) a vendor hold is imposed for that violation; or

(3) payments are withheld as the result of a proposed contract termination.

(g) If corrective action is completed the same day an administrative penalty begins accruing, the administrative penalty is for one day.

(h) For an administrative penalty imposed for an action described in subsection (a)(2) of this section:

(1) HHSC imposes the penalty no more than once per survey;

(2) HHSC does not allow a program provider an opportunity to correct the action before imposing the penalty;

(3) the amount of the penalty for an action described in subsection (a)(2)(A) of this section is \$5000; and

(4) the amount of the penalty for an action described in subsection (a)(2)(B) or (C) of this section is \$1000.

(i) If HHSC imposes an administrative penalty against a program provider for a violation or action described in subsection (a)(1) or (2) of this section, HHSC does not, at the same time, impose a vendor hold or otherwise withhold contract payments from the program provider for the same violation or action.

(j) In lieu of deducting payment for an administrative penalty imposed for a non-critical violation in accordance with subsection (a) of this section, HHSC may offer amelioration to a program provider as described in §9.182 of this subchapter (relating to Amelioration).

§9.182. Amelioration.

(a) In lieu of deducting payment for an administrative penalty imposed against a program provider for a non-critical violation in accordance with §9.181 of this subchapter (relating to Administrative Penalties), HHSC may give a program provider the opportunity for amelioration. HHSC does not give a program provider the opportunity for amelioration:

- (1) more than three times in a two-year period;
- (2) more than one time in a two-year period for the same or similar violation;
- (3) for a critical violation; or
- (4) for the actions described in §9.181(a)(2) of this subchapter.

(b) HHSC gives a program provider the opportunity for amelioration of a non-critical violation in the notice required by §49.535(c) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs). If the program provider does not notify HHSC that the program provider chooses amelioration within the required period described in the notice, the program provider forfeits the opportunity to choose amelioration and HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(f).

(c) If a program provider chooses amelioration in accordance with the notice required by §49.535(c) of this title, the program provider must submit a written plan for amelioration to HHSC within 45 calendar days after the date of the notice required by §49.535(c) of this title. If a program provider does not submit a plan for amelioration within 45 calendar days, HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(1).

(d) A plan for amelioration must include:

- (1) proposed changes to the management or operation of the program provider that will improve services or the quality of care for the individuals;
- (2) 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;

(3) clear goals to be achieved through the proposed changes;

(4) a timeline for implementing the proposed changes;

(5) specific actions necessary to implement the proposed changes;

(6) the cost of the proposed changes; and

(7) an agreement to waive the program provider's right to appeal the imposition of the administrative penalty if HHSC approves the plan for amelioration.

(e) The cost of the proposed changes must be incurred by the program provider after HHSC approves the plan for amelioration. If HHSC approves the plan and the cost of the proposed changes is less than the amount of the administrative penalty, HHSC deducts the amount of the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider.

(f) HHSC may require a plan for amelioration to propose changes that result in conditions exceeding the requirements of this subchapter.

(g) HHSC notifies a program provider of its 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.

(1) If HHSC approves the plan:

(A) the program provider implements the plan; and

(B) HHSC:

(i) deducts the amount of the difference between the cost of the proposed changes and the administrative penalty, if any, from payments due the program provider; and

(ii) determines if the program provider has implemented the plan in one or more surveys conducted in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits).

(2) If HHSC denies the plan:

(A) HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(2); and

(B) the program provider may appeal the administrative penalty in accordance with §49.541 of this title (relating to Contractor's Right to Appeal).

(h) If HHSC determines that a program provider did not implement an approved plan for amelioration, HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(3) of this title. The program provider may appeal the sole issue of whether the plan for amelioration was implemented.

§9.183 Program Provider Compliance and Corrective Action.

(a) If HHSC determines from a survey that a program provider is in compliance with the certification principles, HHSC:

(1) sends the program provider a final survey report stating that the program provider is in compliance with the certification principles;

(2) does not require any action by the program provider; and

(3) if the survey is an initial or a recertification survey, certifies the program provider as described in §9.171(f) of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider).

(b) If HHSC determines from a survey that a program provider is not in compliance with the certification principles, HHSC sends to the program provider, within 10 business days after the date of the exit conference:

(1) a final survey report with a list of violations;

(2) a letter notifying the program provider that the program provider may request an informal dispute resolution to dispute a violation in the final survey report; and

(3) if HHSC imposes an administrative penalty in accordance with §9.181 of this subchapter (relating to Administrative Penalties), a written notice of the administrative penalty as described in §49.535(b) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs).

(c) If HHSC determines from an initial certification survey, recertification survey, or intermittent survey that a program provider is not in compliance with the certification principles, the program provider must submit to HHSC, within 10 business days after the date of the exit conference, a plan of correction for each concern identified by HHSC, as described in §9.171(i)(1) of this subchapter. The program provider must submit a plan of correction in accordance with this subsection even if the program provider disagrees with a concern or requests an informal dispute resolution.

(d) In a plan of correction submitted in accordance with subsection (c) of this section, a program provider must specify a date by which the program provider will complete corrective action for each concern and such date must:

(1) for a concern that is a condition of a serious nature, be no later than 30 calendar days after the date of the survey exit conference; and

(2) for a concern that is not a condition of a serious nature, be no later than 45 calendar days after the date of the survey exit conference.

(e) Within five business days after the date HHSC receives the plan of correction required by subsection (c) of this section, HHSC notifies the program provider whether the plan is approved or not approved.

(f) If HHSC does not approve a plan of correction required by subsection (c) of this section, the program provider must submit a revised plan of correction within five business days after the date of HHSC's notice that the plan of correction was not approved. Within five business days after the date HHSC receives the revised plan of correction, HHSC notifies the program provider

whether the revised plan is approved or not approved.

(g) If the program provider does not submit a plan of correction required by subsection (c) of this section or a revised plan of correction required by subsection (f) of this section, or HHSC notifies the program provider that a revised plan of correction is not approved, HHSC:

(1) imposes a vendor hold against the program provider until HHSC approves a plan of correction submitted by the program provider; or

(2) denies or terminates certification of the program provider.

(h) If HHSC approves a plan of correction, HHSC takes the following actions to determine if a program provider has completed its corrective action:

(1) requests that the program provider submit evidence of correction to HHSC; and

(2) conducts:

(A) for a critical violation, a post 30-day follow-up survey at least 31 calendar days after the survey exit conference, except as described in subsection (i) of this section; or

(B) for a non-critical violation, a post 45-day follow-up survey at least 46 calendar days after the survey exit conference, except as described in subsection (i) of this section.

(i) At the request of a program provider, HHSC may conduct a follow-up survey earlier than the times described in subsection (h)(2)(A) and (B) of this section.

(1) If HHSC determines from the earlier follow-up survey that corrective action has been completed and the program provider has not yet submitted a plan of correction to HHSC in accordance with subsection (c) of this section, the program provider must include the corrective action taken on the plan of correction that is submitted.

(2) If HHSC determines from the earlier follow-up survey that corrective action has not been completed, HHSC conducts:

(A) for a critical violation, a post 30-day follow-up survey; or

(B) for a non-critical violation, a post 45-day follow-up survey.

(j) If HHSC determines from a post 30-day follow-up survey that the program provider has completed the corrective action for a critical violation, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in §49.535(c) of this title.

(k) If HHSC determines from a post 30-day follow-up survey that the program provider has not completed the corrective action for a critical violation, HHSC:

(1) continues the administrative penalty and conducts another follow-up survey to determine if the program provider completed the corrective action;

(2) imposes a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(l) HHSC takes the actions described in this subsection regarding a follow-up survey described in subsection (k)(1) of this section.

(1) If HHSC determines from the survey that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in §49.535(c) of this title.

(2) If HHSC determines from the survey that the program provider has not completed the corrective action, the administrative penalty stops accruing and HHSC:

(A) imposes a vendor hold against the program provider; or

(B) denies or terminates certification of the program provider.

(m) A program provider may request that, during a post 30-day follow-up survey or an earlier survey described in subsection (i) of this section, HHSC determines if the program provider has completed some or all of the corrective action on non-critical violations.

(1) If HHSC determines that the program provider has completed some or all of the corrective action on non-critical violations, HHSC incorporates the findings into the final survey report.

(2) If HHSC determines that the program provider has not completed all of the corrective action on non-critical violations, the program provider must complete any remaining corrective action.

(n) If HHSC determines from a post 45-day follow-up survey or earlier survey as described in subsection (i) of this section that a program provider has completed corrective action for a non-critical violation, HHSC does not impose an administrative penalty for the non-critical violation.

(o) If HHSC determines from a post 45-day follow-up survey that a program provider has not completed corrective action for a non-critical violation, HHSC:

(1) imposes an administrative penalty for the non-critical violation in accordance with §9.181 of this subchapter;

(2) notifies the program provider of the administrative penalty, as described in §49.535(b) of this title; and

(3) conducts a survey:

(A) at least 31 calendar days after the date of the exit conference of the post 45-day follow-up survey; or

(B) earlier than 31 calendar days after the date of the exit conference of the post 45-day follow-up survey if the program provider has submitted evidence of corrective action to HHSC during the 30-day period.

(p) HHSC takes the actions described in this subsection regarding a survey described in subsection (o)(3) of this section.

(1) If HHSC determines from the survey that the program provider has completed corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in §49.535(c) of this title.

(2) If HHSC determines from the survey that the program provider has not completed the corrective action, HHSC takes one of the following actions:

(A) imposes a vendor hold against the program provider; or

(B) denies or terminates certification of the program provider.

(q) If HHSC determines from a survey or from an evaluation described in §9.171(n) of this subchapter that immediate jeopardy exists, HHSC requires the program provider to remove the immediate jeopardy by the end of the survey or during the evaluation.

(1) If the program provider does not remove the immediate jeopardy by the end of the survey or during the evaluation, HHSC:

(A) denies or terminates certification of the program provider; and

(B) coordinates with the LIDDAs the immediate provision of alternative services for the individuals.

(2) If the program provider removes the immediate jeopardy by the end of the survey or during the evaluation, HHSC may deny or terminate certification of a program provider if the circumstances resulting in immediate jeopardy were egregious.

(r) If HHSC determines that a program provider committed any of the actions described in §9.181(a)(2) of this subchapter, HHSC takes one of the following actions:

(1) imposes an administrative penalty against the program provider as described in §9.181 of this subchapter;

(2) imposes a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(s) If HHSC imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, HHSC initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by HHSC); or

(2) for a program provider with 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 required to release the vendor hold and:

(A) if the program provider completed the corrective action, HHSC

releases the vendor hold; or

(B) if the program provider has not completed the corrective action, HHSC denies or terminates certification.

(t) If HHSC determines that a program provider is out of compliance with §9.177(o) or (p) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements), corrective action required by HHSC may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §9.177(o) of this subchapter, the difference between the amount required and the amount paid to the service provider.

(u) 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.

§9.186. Program Provider's Right to Administrative Hearing.

(a) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC [if DADS takes or proposes to take the following action]:

(1) proposes or imposes a sanction described in §49.531(a) of this title (relating to Sanction by HHSC); or [vendor hold;]

[~~(2) contract termination;~~]

[~~(3) recoupment of payments made to the program provider; or]~~

(2) [~~(4)~~] denies [denial of] a program provider's claim for payment, including denial of a retroactive LOC and denial of a recommended LON.

(b) If the basis of an administrative hearing requested in accordance with subsection (a)(2) of [under] this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with §9.165 of this subchapter (relating to Reconsideration of LON Assignment).

§9.188. HHSC [~~DADS~~] Approval of Residences.

(a) A program provider must obtain [~~DADS~~] written approval from HHSC in accordance with subsection (b) of this section before providing residential support in a four-person residence.

(b) To obtain approval of a four-person residence, the program provider must submit the following written documentation to HHSC [~~DADS~~]:

(1) the address and county of the residence;

(2) certification from the program provider that the program provider intends to provide residential support to one or more individuals who will live in the residence;

(3) one of the certifications required by §9.178(e)(1)(A) of this subchapter (relating to Certification Principles: Quality Assurance); and

(4) written certification from the program provider that the residence to be approved is not the residence of any person other than ~~[except]~~ a person permitted to live in a "four-person residence," ~~[the residence]~~ as defined ~~[described]~~ in §9.153 ~~[§9.153(32)(D)]~~ of this subchapter (relating to Definitions).

(c) HHSC ~~[DADS]~~ notifies the program provider in writing of its approval or disapproval of the four-person residence within 14 calendar days after HHSC ~~[DADS]~~ receives the documentation specified in subsection (b) of this section.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER D HOME AND COMMUNITY-BASED SERVICES (HCS)
PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

~~§9.185. Program Provider Compliance and Corrective Action.~~

~~(a) DADS takes action against a program provider as a result of a review as described in this section.~~

~~(b) If DADS determines after a certification review described in §9.171(b) of this subchapter (relating to DADS Review of a Program Provider and Residential Visit), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.171(d) of this subchapter and no action by the program provider is required.~~

~~(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.171(c) of this subchapter, that:~~

~~—(1) at the time of the certification review, the program provider is not providing HCS Program services or CFC services to any individuals; and~~

~~—(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide HCS Program services or CFC services to an individual for at least 60 consecutive calendar days.~~

~~(d) Except as provided in subsections (j) – (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.~~

~~(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.~~

~~(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:~~

~~—(1) DADS certifies the program provider; and~~

~~—(2) the program provider must complete corrective action in accordance with the corrective action plan.~~

~~(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved, DADS may:~~

~~—(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;~~

~~—(2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or~~

~~—(3) deny or terminate certification of the program provider.~~

~~(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.~~

~~(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:~~

~~—(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and~~

~~—(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.~~

~~(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:~~

~~—(1) denies or terminates certification of the program provider; and~~

~~—(2) coordinates with the local authorities the immediate provision of alternative services for the individuals.~~

~~(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:~~

~~—(1) impose a vendor hold against the program provider; or~~

~~—(2) deny or terminate certification of the program provider.~~

~~(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:~~

~~—(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;~~

~~—(2) imposes or continues a vendor hold against the program provider; or~~

~~—(3) denies or terminates certification of the program provider.~~

~~(m) If DADS imposes a vendor hold in accordance with this section:~~

~~—(1) for a program provider with a provisional contract, DADS initiates~~

~~termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or~~

~~—(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and~~

~~——(A) if the program provider completed the corrective action, DADS releases the vendor hold; or~~

~~——(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.~~

~~(n) If DADS determines that a program provider is out of compliance with §9.177(o) or (p) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §9.177(o) of this subchapter, the difference between the amount required and the amount paid to the service provider.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER N TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY
FIRST CHOICE (CFC)

§9.553. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) ADLs--Activities of daily living. Basic personal everyday activities including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(2) Advanced practice nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(3) [~~(2)~~] Alarm call--A signal transmitted from an individual's CFC ERS equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(4) [~~(3)~~] Applicant--A Texas resident seeking services in the TxHmL Program.

(5) [~~(4)~~] Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(6) [~~(5)~~] Calendar day--Any day, including weekends and holidays.

(7) [~~(6)~~] CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(8) [~~(7)~~] CFC--Community First Choice.

(9) [~~(8)~~] CFC ERS--CFC emergency response services. Backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(10) [~~(9)~~] CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the program provider or a contractor of the program provider.

(11) [~~(10)~~] CFC FMS--The term used for FMS on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(12) [~~(11)~~] CFC PAS/HAB--CFC personal assistance services/habilitation. A service:

(A) that consists of:

(i) personal assistance services that provide assistance to an individual in performing ADLs and IADLs based on the individual's person-centered service

plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation that provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, such as:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(13) [~~(12)~~] CFC support consultation--The term used for support consultation on the IPC of an applicant or individual if the applicant or individual receives only CFC PAS/HAB through the CDS option.

(14) [~~(13)~~] CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB as described in the HCS Handbook.

(15) [~~(14)~~] CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(16) [~~(15)~~] Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(17) [(16)] Condition of a serious nature--A condition in which a program provider's noncompliance with a certification principle: [Except as provided in paragraph (24) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.]

(A) is a pattern that results in minor harm;

(B) is widespread in scope and results in minor harm;

(C) is widespread in scope and constitutes a potential for minor harm;

(D) is an immediate threat; or

(E) is widespread in scope and limits the ability to provide care, but does not result in immediate threat, minor harm, or actual or potential for serious financial loss.

(18) [(17)] Contract--A provisional contract or a standard contract.

(19) [(18)] Critical incident--An event listed in the TxHmL Provider User Guide found at www2.mhmr.state.tx.us/655/cis/training/txhtmlGuide.html.

(20) Critical violation--A violation of a certification principle that results from a condition of a serious nature.

(21) [(19)] DADS--HHSC [The Department of Aging and Disability Services].

(22) Dentist--A person licensed to practice dentistry in accordance with Texas Occupations Code, Chapter 256.

(23) [(20)] DFPS--The Department of Family and Protective Services.

(24) [(21)] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(25) [(22)] FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(26) Follow-up survey--A review by HHSC of a program provider to determine if the program provider has completed corrective action.

(27) [(23)] Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(28) [(24)] Good cause--As used in §9.578 of this subchapter, (relating to Program Provider Certification Principles: Service Delivery), a reason outside the control of the CFC ERS provider, as determined by HHSC [DADS].

~~[(25) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.]~~

(29) [(26)] HCS Program--The Home and Community-based Services Program operated by HHSC [DADS] as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(30) [(27)] Health-related tasks--Specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health care professionals under state law to be performed by a service provider of CFC PAS/HAB. These include tasks delegated by an RN; health maintenance activities as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

(31) [(28)] HHSC--The Texas Health and Human Services Commission.

~~[(29) ICAP--Inventory for Client and Agency Planning.]~~

(32) [(30)] IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(33) ICAP--Inventory for Client and Agency Planning.

(34) [(31)] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC, Chapter 252; or

(B) certified by HHSC [DADS], including a state supported living center.

(35) [(32)] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(36) [(33)] ID/RC Assessment--A form used by HHSC [DADS] for LOC determination and LON assignment.

(37) Immediate jeopardy--A condition in which death or serious physical harm to an individual is imminent because of a program provider's noncompliance with a certification principle.

(38) Immediate threat--Actual or potential for death, serious physical harm, serious emotional or mental harm, or serious financial loss to an individual.

(39) [~~(34)~~] Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service, except for transportation provided as a community support activity, and CFC service, except for CFC support management, on the individual's IPC to be provided by the program provider, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(40) [~~(35)~~] Individual--A person enrolled in the TxHmL Program.

(41) Initial certification survey--A review by HHSC of a program provider with a provisional contract to determine if the program provider is in compliance with the certification principles.

(42) [~~(36)~~] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(43) Intermittent survey--A review by HHSC of a program provider that is not an initial certification survey, a recertification survey, or a follow-up survey, to determine if the program provider is in compliance with the certification principles.

(44) [~~(37)~~] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC [~~DADS~~].

(45) [~~38~~] IPC cost--Estimated annual cost of program services included on an IPC.

(46) [~~39~~] IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(47) Isolated--One of the following:

(A) if there is harm or potential for harm resulting from a violation of a certification principle, isolated means that one or a very limited number of individuals are affected: or

(B) if there is no harm and no potential for harm resulting from a violation of a certification principle, isolated means a situation that has occurred only occasionally.

(48) [~~40~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(49) [~~41~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(50) Limits the ability to provide care--Limits a program provider's ability to provide an HCS Program service or a CFC service to an individual but does not:

(A) constitute an immediate threat; or

(B) result in actual or potential for minor harm or minor financial loss.

(51) [~~42~~] LOC--Level of care. A determination made by HHSC [~~DADS~~] about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(52) [~~43~~] LON--Level of need. An assignment given by HHSC [~~DADS~~] for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(53) [~~44~~] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(54) [~~45~~] Managed care organization--This term has the meaning set forth in Texas Government Code, §536.001.

(55) [~~46~~] MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(56) [~~47~~] Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services or CFC services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services or CFC services; and

(B) that has a service capacity designated in the HHSC [~~DADS~~] data system of no more than three individuals.

~~[(48) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.]~~

(57) [~~(49)~~] Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(58) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(59) Minor emotional or mental harm--An unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury that did not warrant or was not reasonably expected to have warranted treatment by a physician or a licensed mental health professional.

(60) Minor financial loss--Loss of wages, money, property, or resources in a total amount of less than \$25 per individual for the period beginning the date of the survey exit conference of the previous survey to the date of the survey exit conference of the current survey.

(61) Minor harm--Minor physical harm or minor emotional or mental harm to an individual.

(62) Minor physical harm--Physical injury, illness, pain, or impairment of physical condition that does not rise to the level of serious physical harm.

(63) [~~(50)~~] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(64) Non-critical violation--A violation of a certification principle that:

(A) is isolated and results in minor harm;

(B) is isolated or a pattern and results in potential for minor harm;

(C) constitutes actual or potential for minor financial loss;

(D) is isolated or a pattern and limits the ability to provide care but does not constitute an immediate threat, minor harm, or actual or potential for minor financial loss; or

(E) does not constitute an immediate threat, minor harm, or actual or potential for minor financial loss and does not limit the ability to provide care.

(65) [(51)] Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(66) [(52)] Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Texas Workforce Commission [~~Department of Assistive and Rehabilitative Services~~];

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(67) Pattern of Violation--Repeated violations of a certification principle that are not widespread in scope and that are found throughout the services provided by the program provider or that affect or involve the same individuals, service providers, or volunteers.

(68) [(53)] PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC [DADS] Person-Directed Plan form and discovery tool found at www.hhsc.state.tx.us [www.dads.state.tx.us], that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety.

(69) [(54)] Performance contract--A written agreement between HHSC [DADS] and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(70) Physician--A person who is licensed to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155.

(71) Physician assistant--A person who is licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204.

(72) Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action for each violation of a certification principle.

(73) Post 45-day follow-up survey--A follow-up survey conducted in accordance with §9.587(h)(2)(B) of this subchapter (relating to Program Provider Compliance and Corrective Action).

(74) Post 30-day follow-up survey--A follow-up survey conducted in accordance with §9.587(h)(2)(A) of this subchapter.

(75) [(55)] Post-move monitoring visit--As described in §17.503 of this title, a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(76) [(56)] Pre-move site review--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(77) [(57)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with HHSC [DADS] to provide TxHmL Program services, excluding an FMSA.

(78) [~~58~~] Provisional contract--An initial contract that HHSC [~~DADS~~] enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(79) [~~59~~] Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(80) Recertification survey--A review by HHSC of a program provider with a standard contract to determine if the program provider is in compliance with the certification principles and will be certified for a new certification period.

(81) [~~60~~] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(82) Repeated non-compliance--A violation of a certification principle that is identified by HHSC in a final survey report and is similar to a violation identified by HHSC during the previous 24 months in a final survey report. Violations are similar if the violations:

(A) are based on the same certification principle;

(B) are based on similar circumstances;

(C) involve the same TxHmL Program service.

(83) [~~64~~] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(84) [(62)] Responder--A person designated to respond to an alarm call activated by an individual.

(85) [(63)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(86) [(64)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(87) Serious emotional or mental harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury that warranted or would reasonably be expected to have warranted treatment by a physician or a licensed mental health professional.

(88) Serious financial loss--Loss of wages, money, property, or resources in a total amount of \$25 or more per individual for the period beginning the date of the survey exit conference of the previous survey to the date of the survey exit conference of the current survey.

(89) Serious physical harm--Severe physical injury, illness, pain, or impairment of physical condition, including:

(A) a fracture, dislocation of any joint, an internal injury, a contusion larger than two and one half inches, a concussion, a second-or third-degree burn, or a laceration requiring sutures;

(B) a severe adverse health effect that results from failure to receive medications in the amounts or at the times prescribed; or

(C) any other harm that warranted, or would reasonably be expected to have warranted, hospitalization or medical treatment by a physician, dentist, physician assistant, or advanced practice nurse.

(90) [(65)] Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(91) [(66)] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(92) [(67)] Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

(93) [(68)] Service planning team--One of the following:

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or

a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(94) [~~(69)~~] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service or CFC service to an individual.

(95) [~~(70)~~] Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(96) [~~(71)~~] Staff member--An employee or contractor of a TxHmL Program provider.

(97) [~~(72)~~] Standard contract--A contract that HHSC [~~DADS~~] enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(98) [~~(73)~~] State supported living center--A state-supported and structured residential facility operated by HHSC [~~DADS~~] to provide to persons with an

intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC [~~DADS~~].

(99) [~~74~~] System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

(100) [~~75~~] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(101) Survey--An initial certification survey, a recertification survey, a follow-up survey, and an intermittent survey.

(102) [~~76~~] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(103) [~~77~~] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(104) [~~78~~] Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(105) [~~79~~] Transportation plan--A written plan, based on person-directed planning and developed with an applicant or individual using HHSC [~~DADS~~] Individual Transportation Plan form found at www.hhsc.state.tx.us [www.dads.state.tx.us]. A transportation plan is used to document how transportation as a community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

(106) [~~80~~] TxHmL Program--The Texas Home Living Program, operated by HHSC [~~DADS~~] and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(107) [~~81~~] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

(108) Widespread in scope--A violation of a certification principle that:

(A) is pervasive throughout the services provided by the program provider; or

(B) represents a systemic failure by the program provider that affects or has the potential to affect a large portion of or all individuals.

(109) Willfully interfering--Acting or not acting to intentionally prevent, interfere with, or impede, or to attempt to intentionally prevent, interfere with, or impede.

§9.575. Program Provider's Right to Administrative Hearing.

(a) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC [Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) if DADS takes or proposes to take the following action]:

(1) proposes or imposes a sanction described in §49.531(a) of this title (relating to Sanction by HHSC); or [vender hold;]

(2) denies a program provider's request for payment. [contract termination;]

[~~(3) recoupment of payments made to the program provider; or]~~

[~~(4) denial of a program provider's request for payment.]~~

(b) If the basis of an administrative hearing requested in accordance with subsection (a)(2) of this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

§9.576. HHSC [DADS] Surveys [Review] of a Program Provider.

(a) A [The] program provider must be in continuous compliance with the certification principles contained in §§9.578 - 9.580 and §9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions).

(b) HHSC conducts the following surveys:

(1) an initial certification survey;

(2) a recertification survey;

(3) a follow-up survey; and

(4) an intermittent survey.

[~~(b) DADS conducts an on-site certification review of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on its review, DADS takes action as described in §9.577 of this subchapter (relating to Program Provider Compliance and Corrective Action).~~]

(c) HHSC conducts an initial certification survey [After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review] within 120 calendar days after the date HHSC [DADS] approves the

enrollment or transfer of the first individual to receive TxHmL Program services from the program provider [~~under the provisional contract~~].

(d) HHSC may conduct an intermittent survey at any time during a certification period.

(e) HHSC may conduct a combination of two or more different types of surveys at the same time.

(f) [~~(d)~~] If HHSC [~~DADS~~] certifies a program provider after completion of an initial or a recertification survey [~~annual certification review~~], the certification period is for no more than 365 calendar days.

~~[(e) DADS may conduct reviews of the program provider at any time.]~~

(g) HHSC may choose not to conduct a recertification survey of a program provider that has a standard contract if the program provider is not the program provider for one or more individuals for at least 60 consecutive calendar days during the period beginning the first day of the certification period to be surveyed through the 121st calendar day before the end of the certification period.

(h) [~~(f)~~] During a survey, HHSC [~~any review, DADS~~] may:

(1) review the TxHmL Program services or CFC services provided to any individual to determine if a [~~the~~] program provider is in compliance with the certification principles; and [-]

(2) determine if a program provider has implemented an approved plan for amelioration as described in §9.586 of this subchapter (relating to Amelioration).

(i) [~~(g)~~] HHSC [~~DADS~~] conducts an exit conference at the end of a survey [~~all-on-site reviews~~], at a time and location determined by HHSC. At the exit conference, HHSC: [~~DADS, and at the conference gives the program provider a written preliminary review report.~~]

(1) informs a program provider in writing of any concerns, including a condition of a serious nature; and

(2) unless the exit conference is at the end of a follow-up survey, gives the program provider written instructions for submitting a plan of correction as described in §9.587(c) of this subchapter (relating to Program Provider Compliance and Corrective Action) for any concerns identified.

(j) [~~(h)~~] If HHSC identifies a condition of a serious nature not discussed during an exit conference, HHSC holds a new exit conference with a program provider to discuss the condition [~~a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings~~].

~~[(1) To request an informal review of any of the findings in the preliminary review report, the program provider must:]~~

~~[(A) complete DADS Form 3610 "Informal Review Request" as instructed on the form; and]~~

~~[(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.]~~

~~[(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.]~~

~~[(3) If DADS receives a timely request for an informal review, DADS:]~~

~~[(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and]~~

~~[(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.]~~

~~[(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.]~~

(k) Based on a survey, HHSC takes action as described in §9.587 of this subchapter.

(l) HHSC may evaluate the health and safety of an individual at any time. If HHSC identifies a concern from the evaluation, HHSC may conduct an intermittent survey or take action in accordance with §9.587(q) of this subchapter.

§9.581. Administrative Penalties.

(a) HHSC may impose and collect an administrative penalty against a program provider for:

(1) a violation of a certification principle contained in §§9.578, 9.579, 9.580, or 9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions); and

(2) any of the following:

(A) immediate jeopardy;

(B) willfully interfering with the work of a representative of HHSC or the enforcement of this subchapter which may include:

(i) 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; or

(ii) falsifying documentation including documenting the provision of a service before the service has been provided; or

(iii) failing to pay an administrative penalty on or before the 10th calendar day after the date of notice described in §49.535(c) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs).

(b) The range of the administrative penalty imposed against a program provider for a violation described in subsection (a)(1) of this section is set forth in the

following table:

<u>Severity of Violation</u>		<u>Scope of Violation</u>		
		<u>Isolated</u>	<u>Pattern</u>	<u>Widespread</u>
<u>Immediate threat</u>	<u>Not repeated non-compliance</u>	\$500-\$3000	\$1000-\$4000	\$1500-\$5000
	<u>Repeated non-compliance</u>	\$1000-\$5000	\$2000-\$5000	\$3000-\$5000
	<u>Critical or non-critical</u>	CRITICAL	CRITICAL	CRITICAL
<u>Minor harm</u>	<u>Not repeated non-compliance</u>	\$100-\$1000	\$200-\$2500	\$300-\$3500
	<u>Repeated non-compliance</u>	\$200-\$2000	\$300-\$5000	\$400-\$5000
	<u>Critical or non-critical</u>	NON-CRITICAL	CRITICAL	CRITICAL
<u>Potential for minor harm or limits the ability to</u>	<u>Not repeated non-compliance</u>	\$100-\$200	\$150-\$350	\$200-\$500
	<u>Repeated non-compliance</u>	\$200-\$400	\$300-\$700	\$400-\$1000

<u>provide care</u>				
	<u>Critical or non-critical</u>	<u>NON-CRITICAL</u>	<u>NON-CRITICAL</u>	<u>CRITICAL</u>
<u>Actual or potential FOR minor financial loss</u>	<u>Not repeated non-compliance</u>	<u>\$100-\$200</u>	<u>\$150-\$350</u>	<u>\$200-\$500</u>
	<u>Repeated non-compliance</u>	<u>\$200-\$400</u>	<u>\$300-\$700</u>	<u>\$400-\$1000</u>
	<u>Critical or non-critical</u>	<u>NON-CRITICAL</u>	<u>NON-CRITICAL</u>	<u>NON-CRITICAL</u>
<u>No immediate threat; no minor harm; No potential for minor harm; no minor financial LOSS; No potential for minor financial loss; and does not limit the ability to provide care</u>	<u>Not repeated non-compliance</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Repeated non-compliance</u>	<u>\$100-\$400</u>	<u>\$150-\$700</u>	<u>\$200-\$1000</u>
	<u>Critical or non-critical</u>	<u>NON-CRITICAL</u>	<u>NON-CRITICAL</u>	<u>NON-CRITICAL</u>

(c) In the table in subsection (b) of this section, there is a range established for a violation that is not repeated non-compliance and a range established for a violation that is repeated non-compliance. HHSC considers the following factors in determining the amount of an administrative penalty within a range:

(1) the nature, circumstances, extent, and gravity of the violation, including the threat or degree of harm to the health or safety of individuals resulting from the violation;

(2) the program provider's history of violations within the previous 24

months;

(3) whether the program provider:

(A) had prior knowledge of the violation, including whether the program provider identified the violation through the program provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter that justice may require.

(d) If HHSC determines that a violation described in subsection (a)(1) of this section is a non-critical violation, HHSC allows a program provider one opportunity to correct the violation to avoid the imposition of an administrative penalty. If HHSC determines that a violation described in subsection (a)(1) of this section is a critical violation, HHSC does not allow a program provider an opportunity to correct the violation before HHSC imposes an administrative penalty.

(e) If HHSC imposes an administrative penalty for a violation described in subsection (a)(1) of this section, the administrative penalty begins accruing:

(1) for a critical violation, on the date of the exit conference of the survey in which the violation was identified; or

(2) for a non-critical violation, on the date of the exit conference of the post 45-day follow-up survey.

(f) An administrative penalty accrues each day until the earliest of the following:

(1) corrective action for that violation is completed, as determined by HHSC;

(2) a vendor hold is imposed for that violation; or

(3) payments are withheld as the result of a proposed contract termination.

(g) If corrective action is completed the same day an administrative penalty begins accruing, the administrative penalty is for one day.

(h) For an administrative penalty imposed for an action described in subsection (a)(2) of this section:

(1) HHSC imposes the penalty no more than once per survey;

(2) HHSC does not allow a program provider an opportunity to correct the action before imposing the penalty;

(3) the amount of the penalty for an action described in subsection (a)(2)(A) of this section is \$5000; and

(4) the amount of the penalty for an action described in subsection (a)(2)(B) or (C) of this section is \$1000.

(i) If HHSC imposes an administrative penalty against a program provider for a

violation or action described in subsection (a)(1) or (2) of this section, HHSC does not, at the same time, impose a vendor hold or otherwise withhold contract payments from the program provider for the same violation or action.

(j) In lieu of deducting payment for an administrative penalty imposed for a non-critical violation in accordance with subsection (a) of this section, HHSC may offer amelioration to a program provider as described in §9.586 of this subchapter (relating to Amelioration).

§9.586. Amelioration.

(a) In lieu of deducting payment for an administrative penalty imposed against a program provider for a non-critical violation in accordance with §9.581 of this subchapter (relating to Administrative Penalties), HHSC may give the program provider the opportunity for amelioration. HHSC does not give a program provider the opportunity for amelioration:

- (1) more than three times in a two-year period;
- (2) more than one time in a two-year period for the same or similar violation;
- (3) for a critical violation; or
- (4) for the actions described in §9.581(a)(2) of this subchapter.

(b) HHSC gives a program provider the opportunity for amelioration of a non-critical violation in the notice required by §49.535(c) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs). If the program provider does not notify HHSC that the program provider chooses amelioration within the required period described in the notice, the program provider forfeits the opportunity to choose amelioration and HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(f).

(c) If a program provider chooses amelioration in accordance with the notice required by §49.535(c) of this title, the program provider must submit a written plan for amelioration to HHSC within 45 calendar days after the date of the notice required by §49.535(c) of this title. If a program provider does not submit a plan for amelioration within 45 calendar days, HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(1).

(d) A plan for amelioration must include:

- (1) proposed changes to the management or operation of the program provider that will improve services or the quality of care for the individuals;
- (2) 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;
- (3) clear goals to be achieved through the proposed changes;
- (4) a timeline for implementing the proposed changes;

(5) specific actions necessary to implement the proposed changes;

(6) the cost of the proposed changes; and

(7) an agreement to waive the program provider's right to appeal the imposition of the administrative penalty if HHSC approves the plan for amelioration.

(e) The cost of the proposed changes must be incurred by the program provider after HHSC approves the plan for amelioration. If HHSC approves the plan and the cost of the proposed changes is less than the amount of the administrative penalty, HHSC deducts the amount of the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider.

(f) HHSC may require a plan for amelioration to propose changes that result in conditions exceeding the requirements of this subchapter.

(g) HHSC notifies a program provider of its 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.

(1) If HHSC approves the plan:

(A) the program provider implements the plan; and

(B) HHSC:

(i) deducts the amount of the difference between the cost of the proposed changes and the administrative penalty, if any, from payments due the program provider; and

(ii) determines if the program provider has implemented the plan in one or more surveys conducted in accordance with §9.576 of this subchapter (relating to HHSC Surveys of a Program Provider).

(2) If HHSC denies the plan:

(A) HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(2); and

(B) the program provider may appeal the administrative penalty in accordance with §49.541 of this title (relating to Contractor's Right to Appeal).

(h) If HHSC determines that a program provider did not implement an approved plan for amelioration, HHSC deducts the amount of the administrative penalty from payments due to the program provider in accordance with §49.535(d)(3) of this title. The program provider may appeal the sole issue of whether the plan for amelioration was implemented.

§9.587. Program Provider Compliance and Corrective Action.

(a) If HHSC determines from a survey, that a program provider is in compliance with the certification principles, HHSC:

(1) sends the program provider a final survey report stating that the program provider is in compliance with the certification principles;

(2) does not require any action by the program provider; and

(3) if the survey is an initial or a recertification survey, certifies the program provider as described in §9.576(f) of this subchapter (relating to HHSC Surveys of a Program Provider).

(b) If HHSC determines from a survey that a program provider is not in compliance with the certification principles, HHSC sends to the program provider, within 10 business days after the date of the exit conference:

(1) a final survey report with a list of violations;

(2) a letter notifying the program provider that the program provider may request an informal dispute resolution to dispute a violation in the final survey report; and

(3) if HHSC imposes an administrative penalty in accordance with §9.581 of this subchapter (relating to Administrative Penalties), a written notice of the administrative penalty as described in §49.535(b) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs).

(c) If HHSC determines from an initial certification survey, recertification survey, or intermittent survey that a program provider is not in compliance with the certification principles, the program provider must submit to HHSC, within 10 business days after the date of the exit conference, a plan of correction for each concern identified by HHSC, as described in §9.576(i)(1) of this subchapter. The program provider must submit a plan of correction in accordance with this subsection even if the program provider disagrees with a concern or requests an informal dispute resolution.

(d) In a plan of correction submitted in accordance with subsection (c) of this section, a program provider must specify a date by which the program provider will complete corrective action for each concern and such date must:

(1) for a concern that is a condition of a serious nature, be no later than 30 calendar days after the date of the survey exit conference; and

(2) for a concern that is not a condition of a serious nature, be no later than 45 calendar days after the date of the survey exit conference.

(e) Within five business days after the date HHSC receives the plan of correction required by subsection (d) of this section, HHSC notifies the program provider of whether the plan is approved or not approved.

(f) If HHSC does not approve a plan of correction required by subsection (c) of this section, the program provider must submit a revised plan of correction within five business days after the date of HHSC's notice that the plan of correction was not approved. Within five business days after the date HHSC receives the revised plan of correction, HHSC notifies the program provider whether the revised plan is approved or not approved.

(g) If the program provider does not submit a plan of correction required by

subsection (c) of this section or a revised plan of correction required by subsection (f) of this section, or HHSC notifies the program provider that a revised plan of correction is not approved, HHSC:

(1) imposes a vendor hold against the program provider until HHSC approves a plan of correction submitted by the program provider; or

(2) denies or terminates certification of the program provider.

(h) If HHSC approves a plan of correction, HHSC takes the following actions to determine if a program provider has completed its corrective action:

(1) requests that the program provider submit evidence of correction to HHSC; and

(2) conducts:

(A) for a critical violation, a post 30-day follow-up survey at least 31 calendar days after the survey exit conference, except as described in subsection (i) of this section; or

(B) for a non-critical violation, a post 45-day follow-up survey at least 46 calendar days after the survey exit conference, except as described in subsection (i) of this section.

(i) At the request of a program provider, HHSC may conduct a follow-up survey earlier than the times described in subsection (h)(2)(A) and (B) of this section.

(1) If HHSC determines from the earlier follow-up survey that corrective action has been completed and the program provider has not yet submitted a plan of correction to HHSC in accordance with subsection (c) of this section, the program provider must include the corrective action taken on the plan of correction that is submitted.

(2) If HHSC determines from the earlier follow-up survey that corrective action has not been completed, HHSC conducts:

(A) for a critical violation, a post 30-day follow-up survey; or

(B) for a non-critical violation, a post 45-day follow-up survey.

(j) If HHSC determines from a post 30-day follow-up survey that the program provider has completed the corrective action for a critical violation, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in §49.535(c) of this title.

(k) If HHSC determines from a post 30-day follow-up survey that the program provider has not completed the corrective action for a critical violation, HHSC:

(1) continues the administrative penalty and conducts another follow-up survey to determine if the program provider completed the corrective action;

(2) imposes a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(l) HHSC takes the actions described in this subsection regarding a follow-up survey described in subsection (k)(1) of this section.

(1) If HHSC determines from the survey that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in §49.535(c) of this title.

(2) If HHSC determines from the survey that the program provider has not completed the corrective action, the administrative penalty stops accruing and HHSC:

(A) imposes a vendor hold against the program provider; or

(B) denies or terminates certification of the program provider.

(m) A program provider may request that, during a post 30-day follow-up survey or an earlier survey described in subsection (i) of this section, HHSC determine if the program provider has completed some or all of the corrective action on non-critical violations.

(1) If HHSC determines that the program provider has completed some or all of the corrective action on non-critical violations, HHSC incorporates the findings into the final survey report.

(2) If HHSC determines that the program provider has not completed all of the corrective action on non-critical violations, the program provider must complete any remaining corrective action.

(n) If HHSC determines from a post 45-day follow-up survey or earlier survey as described in subsection (i) of this section that a program provider has completed corrective action for a non-critical violation, HHSC does not impose an administrative penalty for the non-critical violation.

(o) If HHSC determines from a post 45-day follow-up survey that a program provider has not completed corrective action for a non-critical violation, HHSC:

(1) imposes an administrative penalty for the non-critical violation in accordance with §9.581 of this subchapter;

(2) notifies the program provider of the administrative penalty, as described in §49.535(b) of this title; and

(3) conducts a survey:

(A) at least 31 calendar days after the date of the exit conference of the post 45-day follow-up survey; or

(B) earlier than 31 calendar days after the date of the exit conference of the post 45-day follow-up survey if the program provider has submitted evidence of corrective action to HHSC during the 30-day period.

(p) HHSC takes the actions described in this subsection regarding a survey described in subsection (o)(3) of this section.

(1) If HHSC determines from the survey that the program provider has completed corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in §49.535(c) of this title.

(2) If HHSC determines from the survey that the program provider has not completed the corrective action, HHSC takes one of the following actions:

(A) imposes a vendor hold against the program provider; or

(B) denies or terminates certification of the program provider.

(q) If HHSC determines from a survey or from an evaluation described in §9.576(l) of this subchapter that immediate jeopardy exists, HHSC requires the program provider to remove the immediate jeopardy by the end of the survey or during the evaluation.

(1) If the program provider does not remove the immediate jeopardy by the end of the survey or during the evaluation, HHSC:

(A) denies or terminates certification of the program provider; and

(B) coordinates with the LIDDAs the immediate provision of alternative services for the individuals.

(2) If the program provider removes the immediate jeopardy by the end of the survey or during the evaluation, HHSC may deny or terminate certification of a program provider if the circumstances resulting in immediate jeopardy were egregious.

(r) If HHSC determines that a program provider committed any of the actions described in §9.581(a)(2) of this subchapter, HHSC takes one of the following actions:

(1) imposes an administrative penalty against the program provider as described in §9.581 of this subchapter;

(2) imposes a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(s) If HHSC imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, HHSC initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by HHSC); or

(2) for a program provider with 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 required to release the vendor hold and:

(A) if the program provider completed the corrective action, HHSC releases the vendor hold; or

(B) if the program provider has not completed the corrective action, HHSC

denies or terminates certification.

(t) If HHSC determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by HHSC may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.

(u) 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.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9 INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE
 OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER N TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY
 FIRST CHOICE (CFC)

~~§9.577. Program Provider Compliance and Corrective Action.~~

~~(a) DADS takes action against a program provider as a result of a review as described in this section.~~

~~(b) If DADS determines after a certification review described in §9.576(b) of this subchapter (relating to DADS Review of a Program Provider), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.576(d) of this subchapter and no action by the program provider is required.~~

~~(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:~~

~~—(1) at the time of the certification review, the program provider is not providing TxHmL Program services or CFC services to any individuals; and~~

~~—(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide TxHmL Program services or CFC services to an individual for at least 60 consecutive calendar days.~~

~~(d) Except as provided in subsections (j) – (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.~~

~~(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.~~

~~(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:~~

~~—(1) DADS certifies the program provider; and~~

~~—(2) the program provider must complete corrective action in accordance with the corrective action plan.~~

~~(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved, DADS may:~~

~~—(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;~~

~~—(2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or~~

~~—(3) deny or terminate certification of the program provider.~~

~~(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.~~

~~(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:~~

~~—(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and~~

~~—(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.~~

~~(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:~~

~~—(1) denies or terminates certification of the program provider; and~~

~~—(2) coordinates with the LIDDAs the immediate provision of alternative services for the individuals.~~

~~(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:~~

~~—(1) impose a vendor hold against the program provider; or~~

~~—(2) deny or terminate certification of the program provider.~~

~~(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:~~

~~—(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;~~

~~—(2) imposes or continues a vendor hold against the program provider; or~~

~~—(3) denies or terminates certification of the program provider.~~

~~(m) If DADS imposes a vendor hold in accordance with this section:~~

~~—(1) for a program provider with a provisional contract, DADS initiates~~

~~termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or~~

~~—(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and~~

~~——(A) if the program provider completed the corrective action, DADS releases the vendor hold; or~~

~~——(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.~~

~~(n) If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support or CFC PAS/HAB who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.]~~

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49	CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER B	CONTRACTOR ENROLLMENT
SUBCHAPTER E	ENFORCEMENT BY HHSC AND TERMINATION BY CONTRACTOR
DIVISION 4	SANCTIONS

PROPOSED PREAMBLE

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC.

Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes amendments to §49.209, §49.531, §49.532, and §49.534; and new §49.535; in Title 40, Part 1, Chapter 49, Contracting for Community Services.

BACKGROUND AND PURPOSE

The purpose of the proposed rules is to implement Texas Human Resources Code §161.089 and §161.0891 added by House Bill 2590, 85th Legislature, Regular Session, 2017. These new sections allow HHSC to assess and collect an administrative penalty against a Home and Community-based Services (HCS) program provider or a Texas Home Living (TxHmL) program provider for a violation of a law or rule relating to the program and to permit a program provider to use any portion of the amount of an administrative penalty to ameliorate the violation or improve services in the HCS or TxHmL Program. New and amended rules in Title 40, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, are proposed elsewhere in this issue of the *Texas Register*, to implement administrative penalties and an amelioration process in the HCS and TxHmL Programs. The proposed rules in Chapter 49 add an administrative penalty as a sanction that HHSC may take against a contractor that has a contract for the HCS Program or TxHmL Program. The proposed rules require HHSC to deduct the amount of an administrative penalty from payments due to the contractor if the contractor does not choose amelioration or the plan of amelioration is not submitted, denied, or not implemented and the contractor does not appeal the administrative penalty or the contractor appeals the administrative penalty and the final decision from the administrative hearing is favorable to HHSC. The proposed rules require HHSC, if it approves a plan of amelioration and the cost of the

proposed changes is less than the amount of the administrative penalty, to deduct the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §49.209, Standard Contract, corrects rule references.

The proposed amendment to §49.531, Sanction by HHSC, adds an administrative penalty as a sanction HHSC may take against a contractor that has a contract for the HCS Program or TxHmL Program. The proposed amendment clarifies that the factors set forth in §49.531 are the factors HHSC may consider in determining whether to apply to a vendor hold and contract termination. This change is needed because the factors HHSC considers to determine the amount of an administrative penalty in the HCS Program or TxHmL Program are described in the program rules.

The proposed amendment to §49.532, Vendor Hold, corrects rule references.

The proposed amendment to §49.534, Termination of Contract by HHSC, deletes subsection (a)(2)(T). This subsection allows HHSC to terminate a contract if HHSC does not certify a contractor that has a contract for the HCS or TxHmL Program for a new certification period, as described in §9.185(c) and §9.577(c), Program Provider Compliance and Corrective Action. This deletion is made because §9.185(c) and §9.577(c) are proposed for deletion elsewhere in this issue of the *Texas Register*. The proposed amendment also corrects a rule reference.

Proposed new §49.535, Administrative Penalties in the HCS and TxHmL Programs, allows HHSC to impose an administrative penalty for a contractor that has a contract for the HCS Program or the TxHmL Program, in accordance with proposed new §9.181 or §9.581, Administrative Penalties. The proposed rule requires HHSC, for a violation described in §9.181(a)(1) or in §9.581(a)(1), to send a written notice to the contractor that includes the date the administrative penalty begins to accrue and the amount of the administrative penalty that will accrue each day. For an action described in §9.181(a)(2) or in §9.581(a)(2), the proposed rule requires HHSC to send a written notice to the contractor that includes the amount of the administrative penalty and the date HHSC will deduct the amount of the penalty from payments due to the contractor. The proposed rule requires that HHSC also send a written notice for such a violation when the administrative penalty stops accruing and any informal dispute resolution related to the violation is complete. This notice includes (1) the date the administrative penalty stopped accruing; (2) the total amount of the administrative penalty; (3) the date HHSC will deduct the total amount of the administrative penalty from payments due to the contractor; and (4) if the violation is non-critical, an opportunity to choose amelioration within 10 business days after the date of HHSC's notice and a statement that the opportunity will be forfeited if such choice is not made within the 10-day period. The proposed rule also describes the circumstances under which HHSC will deduct an administrative penalty if the contractor chooses amelioration and the contractor does not submit a plan for amelioration, if HHSC denies the plan for amelioration,

or if the contractor does not implement an approved plan for amelioration. The proposed rule requires HHSC, if it approves the plan of amelioration and the cost of the proposed changes is less than the amount of the administrative penalty, to deduct the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider. The proposed rule describes the circumstances under which HHSC will deduct an administrative penalty if the contractor does not notify HHSC that the contractor chooses amelioration within the required 10-day period.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be fiscal implications to state government as a result of enforcing and administering the sections as proposed.

Fiscal implications to state government relating to the imposition of administrative penalties for the HCS and TxHmL Programs are addressed concurrently in the fiscal note to the rules in Title 40, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, as proposed elsewhere in this issue of the *Texas Register*.

There are no foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will require an increase in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal has determined that there will be an adverse economic effect on HCS and TxHmL program providers that are small businesses or micro-businesses. There will not be an adverse economic effect on rural communities because no rural communities are HCS or TxHmL program providers. The adverse economic effect on small business or micro-businesses relating to the imposition of administrative penalties for the HCS and TxHmL Programs is addressed in the fiscal note to the

rules in Title 40, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, as proposed in this issue of the *Texas Register*.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit expected is that individuals enrolled in the HCS and TxHmL Programs will benefit from an additional sanction that HHSC may take against a program provider that does not comply with a certification principle. This will help ensure the quality of services and the health and safety of individuals enrolled in the HCS and TxHmL Programs.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Tahoe Fintel, Senior Policy Specialist, at (512) 438-3161 in HHSC Regulatory Services Division.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSCRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 40R069" in the subject line.

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code §531.0055, which provides that the HHSC Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Human Resources Code §§161.089, which allows HHSC to assess and collect an administrative penalty against an HCS or TxHmL program provider, Texas Human Resources Code §161.0891, which permits an HCS or TxHmL program provider to use any portion of the amount of an administrative penalty to ameliorate the violation or improve services in the HCS or TxHmL Program,; and Texas Government Code, Chapter 531, Subchapter A-1, which transfers functions of DADS to HHSC.

The amendments and new section affect Texas Government Code §531.0055, §531.021, and Chapter 531, Subchapter A-1, and Texas Human Resources Code §32.021, §161.089, and §161.0891.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-3161.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER B CONTRACTOR ENROLLMENT

§49.209. Standard Contract.

(a) Except as provided in subsection (e) of this section, a contractor that has a provisional contract, other than a provisional contract for the HCS Program, TxHmL Program, or hospice, qualifies for a standard contract if, based on contract monitoring described in §49.411 of this chapter (relating to Contract and Fiscal Monitoring), HHSC determines that the overall compliance score for the provisional contract is 90 percent or greater.

(b) Except as provided in subsection (e) of this section, a contractor that has a provisional contract for the HCS or TxHmL Program qualifies for a standard contract if:

(1) the contractor is certified by HHSC in accordance with §9.183 [~~§9.185~~] of this title (relating to Program Provider Compliance and Corrective Action) or §9.587 [~~§9.577~~] of this title (relating to Program Provider Compliance and Corrective Action); and

(2) during the term of the provisional contract, HHSC has not imposed a vendor hold on the contractor in accordance with §9.183 [~~§9.185~~] or §9.587 [~~§9.577~~] of this title.

(c) Except as provided in subsection (e) of this section, a contractor that has a provisional contract for hospice qualifies for a standard contract if the contractor has the license and written notification required by §49.205(a)(5) of this subchapter (relating to License, Certification, Accreditation, and Other Requirements).

(d) A standard contract issued by HHSC in accordance with subsections (a) - (c) of this section is for the same program, service, or facility in the same service, catchment, or waiver contract area as the provisional contract.

(e) A contractor may not qualify for a standard contract for any reason for which HHSC may deny a provisional contract application, as described in §49.207 of this subchapter (relating to Provisional Contract Application Denial).

(f) HHSC may subject a standard contract to conditions in accordance with 1 TAC Chapter 352 (relating to Medicaid and the Children's Health Insurance Program

Provider Enrollment) and 1 TAC Chapter 371, Subchapter E (relating to Provider Disclosure and Screening).

(g) A standard contract is effective the day after the provisional contract ends.

(h) If HHSC determines a contractor does not qualify for a standard contract, HHSC notifies:

(1) the contractor of the determination, in writing, and includes in the notification the application denial period set in accordance with §49.702(a) of this chapter (relating to Application Denial Period); and

(2) any controlling person of the contractor, in writing, of the application denial period.

(i) If a contractor refuses a standard contract, HHSC notifies the contractor and any controlling person of the contractor, in writing, of the application denial period set in accordance with §49.702(b) of this chapter.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 49 CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER E ENFORCEMENT BY HHSC AND TERMINATION BY CONTRACTOR
DIVISION 4 SANCTIONS

§49.531. Sanction by HHSC.

(a) HHSC may take one or more of the following sanctions [~~against a contractor~~]:

(1) for any contractor, impose a vendor hold in accordance with §49.532 of this division (relating to Vendor Hold);

(2) for any contractor, recoup funds in accordance with §49.533 of this division (relating to Recoupment); [~~and~~]

(3) for any contractor, terminate the contract in accordance with §49.534 of this division (relating to Termination of Contract by HHSC); and [-]

(4) for a contractor that has a contract for the HCS Program or TxHmL Program, impose an administrative penalty in accordance with §49.535 of this division (relating to Administrative Penalties in HCS and TxHmL Programs).

(b) For a sanction described in subsection (a)(1) or (3) of this section, HHSC may consider factors in determining the sanction to be taken, including [~~For a vendor hold or contract termination, the factors HHSC may consider in determining whether to take the sanction include~~]:

(1) the extent and seriousness of the contractor's non-compliance with the contract that is the subject of the sanction;

(2) the contractor's history of previous non-compliance with:

(A) the contract that is the subject of the sanction;

(B) a contract other than the one that is the subject of the sanction;

(C) a contractual agreement with HHSC; and

(D) a contractual agreement with a governmental entity other than HHSC;

(3) previous action taken or sanctions imposed against the contractor by DADS or HHSC; and

(4) the contractor's written response to HHSC's finding that the contractor is not in compliance with the contract.

§49.532. Vendor Hold.

(a) HHSC imposes a vendor hold on a contractor if:

(1) HHSC has proposed to terminate the contract and the contractor participates in attendant compensation rate enhancement as described in 1 TAC §355.112 (relating to Attendant Compensation Rate Enhancement); or

(2) The HHSC Office of Inspector General determines that a vendor hold must be imposed in accordance with 42 CFR §455.23(a) due to a credible allegation of fraud for which an investigation is pending under the Medicaid Program.

(b) HHSC may impose a vendor hold on a contractor:

(1) if HHSC has proposed to terminate the contract and the contractor does not participate in attendant compensation rate enhancement as described in 1 TAC §355.112;

(2) if the contractor does not qualify for a standard contract at the expiration of a provisional contract;

(3) if the contractor qualifies for a standard contract at the expiration of a provisional contract but refuses a standard contract;

(4) if the contractor terminates the contract;

(5) if HHSC determines the contractor has not complied with the contract, including a determination of non-compliance described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring) or §49.413(e) of this chapter (relating to Investigation);

(6) if the contractor has not submitted or has not complied with an immediate protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan);

(7) if the contractor has not submitted or has not complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan); or

(8) if the contractor's application packet described in §49.203(a)(3) of this chapter (relating to Provisional Contract Application Process):

(A) contained incorrect information; or

(B) contains information that has become incorrect and the contractor has not notified HHSC in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(9) for a contractor that has a contract for the HCS Program, in accordance with §9.183 [~~§9.185~~] of this title (relating to Program Provider Compliance and Corrective Action); or

(10) for a contractor that has a contract for the TxHmL Program, in accordance with §9.587 [~~§9.577~~] of this title (relating to Program Provider Compliance and Corrective Action).

(c) If HHSC imposes a vendor hold on a contractor in accordance with subsection (a) or (b) of this section, HHSC notifies the contractor of the vendor hold in writing. HHSC may impose a vendor hold pending an administrative hearing appealing the vendor hold.

(d) HHSC releases a vendor hold less any amounts being recouped by HHSC:

(1) imposed in accordance with subsections (a)(1) and (b)(1) - (4) of this section if:

(A) the contract has been terminated or expires and any amounts owed to individuals and LARs have been paid by the contractor;

(B) HHSC withdraws the proposed contract termination; or

(C) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to the contractor;

(2) imposed in accordance with subsection (a)(2) of this section, if the HHSC Office of Inspector General determines that HHSC must resume payment under the contract;

(3) imposed in accordance with subsection (b)(5) - (8) of this section, if HHSC determines the contractor has resolved the reason for the vendor hold; or

(4) imposed in accordance with subsection (b)(9) - (10) of this section if HHSC determines it may be released as described in §9.183 [~~§9.185~~] or §9.587 [~~§9.577~~] of this title.

§49.534. Termination of Contract by HHSC.

(a) HHSC may propose to terminate a contract:

(1) without cause by giving at least 60 days written notice to the contractor as provided by the contract; or

(2) for good cause as determined by HHSC, including if:

(A) the contractor has not provided any services under the contract during a period of 12 consecutive months;

(B) the contractor has not complied with the terms of the contract, including:

(i) the contractor's overall compliance score from a contract monitoring is less than 90 percent, as described in §49.411(e) of this chapter (relating to Contract and Fiscal Monitoring);

(ii) the contractor has not submitted or complied with a corrective action plan as described in §49.522(d) of this subchapter (relating to Corrective Action Plan);

(iii) the contractor has not submitted or complied with an immediate

protection plan as described in §49.511(d) of this subchapter (relating to Immediate Protection and Immediate Protection Plan); or

(iv) DADS or HHSC has imposed repeated actions or sanctions against the contractor that, when considered cumulatively, constitute significant non-compliance with the contract;

(C) the contractor undergoes a change of ownership or change of legal entity and the requirements in §49.210 (a)(1) - (4) of this chapter (relating to Contractor Change of Ownership or Legal Entity) are not met, as described in §49.210(c)(1) of this chapter;

(D) the contractor's application packet described in §49.203(a)(3) of this chapter (relating to Provisional Contract Application Process):

(i) contained incorrect information; or

(ii) contains information that has become incorrect and the contractor has not notified HHSC in accordance with §49.302(i) - (q) of this chapter (relating to General Requirements);

(E) the contractor or a controlling person of the contractor is under a period of exclusion in accordance with §§1128, 1128A, 1136, 1156, or 1842(j)(2) of the Social Security Act;

(F) the contractor or a controlling person of the contractor is ineligible to contract with HHSC in accordance with §49.206 of this chapter (relating to Ineligibility Due to Criminal History);

(G) the contractor or a controlling person of the contractor is prohibited from contracting with HHSC in accordance with Chapter 79, Subchapter S of this title (relating to Contracting Ethics);

(H) the contractor is required to register with the Texas Secretary of State and contractor's status with the Texas Secretary of State is not "in existence";

(I) the contractor is required to pay Texas franchise tax and the contractor's right to transact business status with the Texas Comptroller of Public Accounts is not "active";

(J) HHSC or another governmental entity proposed or imposed a penalty, revocation, denial, termination, or suspension against a license, certification, or registration held by the contractor;

(K) the contractor no longer has a license, certification, accreditation or other document required by §49.302(a) of this chapter;

(L) the contractor or a controlling person of the contractor is listed on:

(i) the HHSC employee misconduct registry as unemployable;

(ii) the HHSC nurse aide registry as revoked or suspended;

(iii) the United States System for Award Management maintained by the General Services Administration;

(iv) the LEIE maintained by the United States Department of Health and Human Services, Office of Inspector General;

(v) the LEIE maintained by the HHSC Office of Inspector General;

(vi) the Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the period of debarment has not expired; or

(vii) the HHS list of exclusions;

(M) the contractor or a controlling person of the contractor has been confirmed by DFPS or HHSC as having committed abuse, neglect, or exploitation;

(N) HHSC proposed or imposed an action or sanction against:

(i) another contract of the contractor or a controlling person of the contractor; or

(ii) a contract of a person for whom the contractor or a controlling person of the contractor was a controlling person;

(O) a governmental entity other than HHSC or a managed care organization contracting with a governmental entity proposed or imposed an action or sanction against:

(i) a contractual agreement of the contractor or a controlling person of the contractor; or

(ii) a contractual agreement of a person for whom the contractor or a controlling person of the contractor was a controlling person;

(P) the contractor or a controlling person of the contractor terminated a contractual agreement with a governmental entity in a federal health care program, as defined in §1128B(f) of the Social Security Act, while an adverse action or sanction was proposed or in effect;

(Q) the contractor or a controlling person of the contractor terminated another contract while an action or sanction was proposed or in effect;

(R) the contractor or a controlling person of the contractor has an unresolved financial liability with HHSC or another governmental entity;

(S) HHSC denies or terminates certification of a contractor that has a contract for the HCS or TxHmL Program, in accordance with §9.183 [~~§9.185~~] of this title (relating to Program Provider Compliance and Corrective Action) or §9.587 [~~§9.577~~] of this title (relating to Program Provider Compliance and Corrective Action); or

~~[(T) HHSC does not certify a contractor that has a contract for the HCS or~~

~~TxHmL Program for a new certification period as described in §9.185(c) and §9.577(c) of this title; or]~~

(T) [(U)] for a contractor that has a contract for Title XIX DAHS, Title XX AFC, RC, or DAHS, the contractor does not have a legal right to occupy the facility under the contract.

(b) If HHSC proposes to terminate a contract:

(1) in accordance with subsection (a)(1) of this section, HHSC notifies the contractor of the proposed termination in writing at least 60 days before the effective date of termination; or

(2) in accordance with subsection (a)(2) of this section, HHSC notifies the contractor of the proposed termination in writing, which may be less than 60 days before the effective date of termination.

(c) If HHSC proposes to terminate a contract, HHSC notifies individuals receiving services from the contractor and the individual's LARs that:

(1) HHSC has proposed to terminate the contract and has placed the contractor's payments on a vendor hold; and

(2) an individual or LAR may choose to receive services under a contract listed on the choice list, subject to program-specific requirements.

(d) HHSC terminates a contract on the date given in HHSC's notice of proposed termination if:

(1) the contractor does not appeal the proposed contract termination; or

(2) the contractor appeals the proposed contract termination and the final decision from the administrative hearing is favorable to HHSC.

(e) HHSC does not pay a contractor for services provided after the effective date of contract termination.

(f) If HHSC terminates a contract, HHSC notifies the contractor and any controlling person of the contractor, in writing, of the application denial period set in accordance with §49.702(c) or (d) of this chapter (relating to Application Denial Period).

§49.535. Administrative Penalties in the HCS and TxHmL Programs.

(a) HHSC may impose an administrative penalty:

(1) for a contractor that has a contract for the HCS Program, in accordance with §9.181 of this title (relating to Administrative Penalties); or

(2) for a contractor that has a contract for the TxHmL Program, in accordance with §9.581 of this title (relating to Administrative Penalties).

(b) HHSC sends a contractor written notice if HHSC is imposing an administrative penalty. The notice includes:

(1) for a violation described in §9.181(a)(1) or §9.581(a)(1) of this title:

(A) the date the administrative penalty begins to accrue, as described in §9.181(e) or §9.581(e) of this title; and

(B) the amount of the administrative penalty that will accrue each day; or

(2) for an action described in §9.181(a)(2) or §9.581(a)(2) of this title:

(A) the amount of the administrative penalty, as described in §9.181(b) or §9.581(b) of this title: and

(B) the date HHSC will deduct the amount of the administrative penalty from payments due to the contractor.

(c) For a violation described in §9.181(a)(1) or §9.581(a)(1) of this title, HHSC gives a contractor written notice after the administrative penalty stops accruing and any informal dispute resolution related to the violation is completed. The notice includes:

(1) the date the administrative penalty stopped accruing, as described in §9.181(f) or §9.581(f) of this title;

(2) the total amount of the administrative penalty;

(3) the date HHSC will deduct the total amount of the administrative penalty from payments due to the contractor; and

(4) if the violation is non-critical, a statement that:

(A) the contractor may choose amelioration as described in §9.182 or §9.586 of this title (relating to Amelioration);

(B) to choose amelioration, the contractor 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; and

(C) if the contractor does not notify HHSC that the contractor is choosing amelioration within the required 10-day period the contractor forfeits the opportunity to choose amelioration.

(d) If HHSC imposes an administrative penalty and the contractor chooses amelioration, HHSC deducts the amount of the administrative penalty from payments due to a contractor only if:

(1) the contractor does not submit a plan for amelioration as described in §9.182(c) or §9.586(c) of this title, and the contractor:

(A) does not appeal the administrative penalty; or

(B) appeals the administrative penalty and the final decision from the administrative hearing is favorable to HHSC;

(2) HHSC denies the plan for amelioration as described in §9.182(g)(2) or §9.586(g)(2) of this title, and the contractor:

(A) does not appeal the administrative penalty; or

(B) appeals the administrative penalty and the final decision from the administrative hearing is favorable to HHSC; or

(3) the contractor does not implement an approved plan for amelioration as described in §9.182(h) or §9.586(h) of this title and the contractor:

(A) does not appeal the issue of whether the plan was implemented; or

(B) appeals the issue of whether the plan was implemented and the final decision from the administrative hearing is favorable to HHSC.

(e) If HHSC approves the plan of amelioration and the cost of the proposed changes is less than the amount of the administrative penalty, HHSC deducts the difference between the cost of the proposed changes and the administrative penalty from payments due the program provider.

(f) If HHSC imposes an administrative penalty and the contractor does not notify HHSC that the contractor chooses amelioration within the required 10-day period, HHSC deducts the amount of the administrative penalty from payments due to a contractor:

(1) if the contractor does not appeal the administrative penalty; or

(2) if the contractor appeals the administrative penalty and the final decision from the administrative hearing is favorable to HHSC.