TEXAS
Health and Human Services

Home and Community-Based Services (HCBS) Settings Statewide Transition Plan

July 2023

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1. Introduction and Purpose

On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS) issued the Home and Community Based Services (HCBS) Settings Rule at 42 Code of Federal Regulations (CFR) § 441.301(c), § 441.710(a) and § 441.530. To comply with the HCBS Settings Rule requirements, settings must be integrated in and support full access to the greater community for individuals receiving Medicaid HCBS.

CMS requires states to analyze all settings where Medicaid HCBS participants receive services. States must determine if the current settings comply with the HCBS Settings Rule and demonstrate how compliance will be achieved for settings that do not meet HCBS Settings Rule requirements. This analysis must be documented through a statewide transition plan (STP).

The purpose of this STP is to document the analysis and planned activities of the Texas Health and Human Services Commission (HHSC) to ensure all Texas Medicaid HCBS settings achieve full and ongoing compliance with the HCBS Settings Rule.

2. HCBS Setting Rule Requirements

The HCBS Settings Rule requires Medicaid HCBS settings to be integrated in and support full access for individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

The HCBS Settings Rule requires that all home and community-based settings have the following qualities:

- The setting is integrated in and supports full access to the greater community;
- The setting is selected by the individual from among setting options;
- The setting ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- The setting optimizes autonomy and independence in making life choices; and
- The setting facilitates choice regarding services and who provides them.

The rule includes specific provisions for provider-owned or controlled home and community-based residential settings:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in his/her unit including lockable doors, choice of roommate and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule;
- The individual can have visitors at any time; and
- The setting is physically accessible.

The HCBS Settings Rule requires states to increase person-centeredness in the planning for and delivery of Medicaid HCBS, and in individual choice regarding settings, including non-disability specific settings; daily activities; and social interactions.

The HCBS Settings Rule identifies settings that are not home and community-based. These include nursing facilities (NFs); hospitals; institutions for mental disease (IMDs); intermediate care facilities for individuals with intellectual disabilities and related conditions (ICFs/IID); and locations that have the qualities of an institutional setting.

CMS presumes that a setting has the qualities of an institution if it:

- Is located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment;
- Is located in a building on the grounds of, or immediately adjacent to, a public institution; or
- Has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

CMS initially gave states until March 2019 to comply with the HCBS Settings Rule, but in June 2017 issued an extension to March 2022. In July 2020, CMS provided an additional one-year extension due to the COVID-19 pandemic, giving states until March 2023 to comply.

The full regulations and additional related information are available on the CMS Home & Community Based Services Final Regulation website.

3. STP Status and Submission History

Final STP Approval

HHSC received final STP approval from CMS on July 20, 2023.

Initial STP Approval

HHSC received initial STP approval from CMS on December 21, 2022.

Submission Dates

December 2014: HHSC submitted its STP to CMS for approval and provided the appropriate tribal and public notice periods, inviting public comment on the STP from October 13, 2014 to November 11, 2014. HHSC considered and modified the STP, as HHSC deemed appropriate, in response to public comment prior to submission of the plan to CMS. HHSC provided the comments and responses with its submission.

March 2015: HHSC submitted its first STP amendment and provided the appropriate tribal and public notice periods, inviting public comment from January 30, 2015 to February 28, 2015. The purpose of the first STP amendment was to include the settings for HCBS provided through the Texas Healthcare Transformation Quality Improvement Program 1115 Demonstration Waiver (Demonstration waiver). HHSC modified the STP, as HHSC deemed appropriate, in response to public comment prior to submission of the amended STP to CMS.

- In September 2015, HHSC received feedback from CMS on the STP. CMS requested additional specificity in the STP to ensure the state's assessment and remediation activities are sufficient to meet HCBS Settings Rule requirements.

February 2016: HHSC submitted its second STP amendment to CMS. HHSC provided the appropriate tribal and public notices, inviting public comment from December 2015 through January 2016.

- In June 2016, HHSC received feedback from CMS on the STP. CMS clarified that an STP amendment submitted in response to CMS' feedback did not have to be posted for public comment.

November 2016: HHSC submitted its third STP amendment to CMS. At the request of stakeholders and to ensure transparency, the STP was posted on the HHSC website for a short public comment period from October 21, 2016 to October 27, 2016. No public comments were received.

- In April 2017, HHSC received feedback from CMS. In response to CMS feedback on this STP submission, Texas completed additional assessments and further developed its remediation plans.

November 2019: HHSC informally submitted its fourth STP amendment to CMS on November 6, 2019. The STP was posted for public comment from November 6, 2019 to December 6, 2019.

- In December 2019, HHSC received informal feedback from CMS. In response to CMS feedback, HHSC revised the STP to include additional detail about its systemic internal assessment, planned remediation activities, and the heightened scrutiny process.

April 2022: HHSC formally submitted its fifth STP amendment to CMS on April 22, 2022. The STP was posted for public comment from March 4, 2022 to April 4, 2022.

- In May 2022, HHSC received feedback from CMS. In response to CMS feedback, HHSC revised the STP to include additional detail in the systemic internal policy assessment. HHSC worked with CMS to revise the STP and resubmitted amendments on August 17, 2022, October 11, 2022, and November 16, 2022.

November 2022: HHSC submitted its eighth STP amendment to CMS on November 16, 2022. HHSC received initial STP approval from CMS on December 21, 2022.

March 2023: HHSC submitted its ninth STP amendment to CMS on March 2, 2023 for final approval. The STP was posted for public comment from January 13, 2023 to February 13, 2023 prior to submission.

- On March 16, 2023, HHSC received feedback from CMS. In response to CMS feedback, HHSC revised the STP to provide: clarification regarding external and site-specific assessments; updates on site-specific compliance counts and systemic remediation activities; and additional information regarding the

state's heightened scrutiny determination process. The revised STP was submitted to CMS on May 17, 2023 for final approval.

May 2023: HHSC submitted its 10th STP amendment to CMS on May 17, 2023, for final approval. The changes from the March 2023 submitted version were minimal and therefore the STP was not submitted for public comment prior to submission.

- On June 2, 2023, HHSC received feedback from CMS. In response to CMS feedback, HHSC revised its 11th STP amendment. The revisions to the STP include: updates on site-specific compliance counts and systemic remediation activities; updated information and compliance counts for employment and prevocational services; and additional information regarding the implementation of the new individualized skills and socialization service. The revised STP was submitted on June 30, 2023.

June 2023: HHSC submitted its 11th STP amendment to CMS on June 30, 2023, for final approval. The changes from the May 2023 submitted version were minimal and therefore the STP was not submitted for public comment prior to submission.

- On July 11, 2023, HHSC received feedback from CMS. In response to CMS feedback, HHSC revised its 12th STP amendment. The revisions to the STP include: updates on site-specific compliance counts; updated timeframes for provider notification and validation of remediation for employment and prevocational services; and corrections to Appendix E. The revised STP was submitted on July 13, 2023.

July 2023: HHSC submitted its 12th amendment to CMS on July 13, 2023, for final approval. HHSC received final STP approval from CMS on July 20, 2023.

4. Public Input

Federal Requirements

Prior to submitting the STP to CMS, states must seek input from the public on the proposed STP and any amendments. CMS encourages states to seek input from a wide range of stakeholders representing consumers, providers, advocates, families, and other related stakeholders. The STP must include a description of the public input process.

States must provide at least a 30-day public notice and comment period on the STP before submitting to CMS. The process for submitting public comment must be convenient and accessible. States must post the STP on their website and provide an email address for comment submission. In addition, states must offer at least one other option for public input, such as a public forum.

States must consider and modify the STP, as appropriate, in response to public comment. Upon submission of the STP to CMS, states must provide evidence of compliance with the public notice requirements and a summary of the comments received during the public notice period. The summary must include a description of any modifications made to the STP in response to comments received, as well as rationale for declining to make modifications.

HHSC Process for Public Input and Notice

Stakeholder Engagement

HHSC has previously solicited, and will continue to solicit, input from individuals receiving services and their families, providers, Medicaid managed care organizations (MCOs), advocates, and other stakeholder groups. This includes engaging existing advisory committees, workgroups, and stakeholder meetings. HHSC is committed to using stakeholder feedback to inform assessment and remediation strategies until the transition is complete and will refine planned remediation activities in response to public input as appropriate.

During previous public comment periods, HHSC has received written comments from professional associations, advocacy groups, MCOs, and other involved

stakeholders. A summary of the comments received during the public notice period, reasons why comments were not adopted, and modifications to the STP based upon those comments are included in Appendix E. Comments outside the scope of the HCBS Settings Rule requirements were not addressed in the STP.

Public Notices

Tribal Notice

Prior to submission of the STP and any STP amendments, HHSC notifies tribal representatives in compliance with federal and state requirements. The notification provides contact information to request copies of the STP, submit comments, and request information from HHSC via email, mail, or telephone.

Publication in Texas Register

HHSC submits a Public Notice of Intent (PNI) for publication in the Texas Register to announce periods for public comment. The PNI provides contact information to request copies of the STP, submit comments, and request information from HHSC via email, mail, or telephone.

The Texas Register is published weekly and is the journal of state agency rulemaking for Texas. The publication is available online and in printed copy at the Texas State Library and Archives Commission, the State Law Library, the Legislative Reference Library located in the State Capitol building, and the University of North Texas libraries. All sites that offer printed copies are in Austin, except the University of North Texas, which is in Denton. Printed copies of the Texas Register are also available through paid subscription; subscribers include cities, counties, and public libraries throughout the state.

Website and Email Alerts

HHSC posts the STP and STP amendments for public comment on its website. The website includes an electronic mailbox for comments and questions.

HHSC sends an alert email via HHS GovDelivery to all stakeholders signed up to receive updates related to Texas Medicaid HCBS programs. The alert email includes links to HHSC's website where the STP is posted and instructions for submitting public comment.

Regional Offices

When soliciting public input, the HHSC Office of Community Care Services Eligibility distributes notices to 290 local eligibility offices, with instructions to post the notice in public areas.

Mail

Anyone may obtain a free copy of the STP, ask questions, request additional information, or submit comments regarding this initiative by contacting Rachel Neely by mail at Texas Health and Human Services Commission, PO Box 13247, Mail Code W521, Austin, Texas 78711-3247; by fax at (512) 206-3975; or by email at Medicaid_HCBS_Rule@hhsc.state.tx.us.

508 Compliance

All STP documents and related materials posted for public comment are formatted to meet accessibility requirements of Section 508 of the federal Rehabilitation Act of 1973.

Mechanisms for Public Input

Activity	Description	Dates
Stakeholder education webinars	Former Department of Aging and Disability Services (DADS) initially conducted webinars to provide all stakeholders an opportunity to learn about the new regulations.[1] Later webinars were also held to share updates about the state's activities related to the regulation and to provide information on the STP. HHSC continues to conduct webinars and trainings.	Ongoing
Stakeholder meetings	HHSC has hosted stakeholder meetings specifically focused on HCBS compliance and the STP.	Ongoing 11/28/2017 12/1/2017 12/11/2017 3/6/2018
Electronic notices	HHSC posts the STP on agency websites and in the Texas Register. The legacy DADS and Department of State Health Services (DSHS) systemic internal assessments were also posted on agency websites. The transition plans for several of the waivers were posted in the Texas Register and on the agency websites. Each STP amendment was posted on the HHSC, DADS, and DSHS websites and remains posted on the HHSC website.	Ongoing
Electronic feedback mechanisms	Dedicated electronic mailboxes and websites are available to provide information about the HCBS Settings Rule and respond to questions and comments. The websites and the opportunity to submit comments will remain active throughout the transition. HHSC will take any comments received into consideration until HHSC completes the transition.	Ongoing

[1] Effective September 1, 2017, the Texas Legislature abolished DADS and transferred DADS services to HHSC.

Activity	Description	Dates
Presentations to Advisory Committees	Intellectual and Developmental Disabilities System Redesign Advisory Committee (IDD SRAC) and subcommittees: Comprised of people receiving services, Medicaid managed care organizations (MCOs), providers, local intellectual and developmental disability authorities (LIDDAs) and advocates who advise HHSC on the implementation of the acute care services and long-term services and supports (LTSS) system redesign for people with IDD. The full committee meets on a quarterly basis.	*Quarterly/Ongoing* 7/27/2017 12/13/2017 1/25/2018 8/8/2018 10/25/2018 12/11/2018 4/24/2019 5/14/2019 6/11/2019 1/23/2020 8/24/2020 10/29/2020 11/16/2020 1/28/2021 4/29/2021 7/29/2021 11/2/2021 1/27/2022 4/28/22 7/28/22 10/22/22 1/26/23
	Medical Care Advisory Committee: Federally mandated committee that reviews and makes recommendations to the State Medicaid Director on proposed rules that involve Medicaid policy or affect Medicaid-funded programs. The committee meets on a quarterly basis.	5/12/2022 8/11/2022

Activity	Description	Dates
	IDD Coordination Meeting: Monthly meeting series comprised of providers, advocates and agency staff to discuss projects and activities affecting IDD service delivery	1/11/2022 3/8/22 4/12/22 5/10/22 6/15/22 8/9/22 9/13/22 10/11/22 11/8/22 12/13/22 1/10/23 2/14/23 3/14/23 5/9/23 6/13/23 **7/13/23**
	Promoting Independence Advisory Committee: Comprised of individuals receiving services, advocacy organizations, and providers across target populations.[2]	10/15/2015 1/21/2016 7/21/2016 10/20/2016
	Employment First Task Force (Expired): Comprised of advocates and providers interested in employment issues.	2/29/2016
	Texas Council on Autism and Pervasive Developmental Disorders[3]: Comprised of parents of individuals with autism and professionals.	3/11/2016
	IDD Directors Consortium: Comprised of IDD directors and attended by state agency staff.	9/11/2015 1/14/2016

[2] On September 1, 2017, statutory authority for the Promoting Independence Advisory Committee expired and the committee transitioned to a workgroup. The IDD SRAC is now the primary external stakeholder group for the HCBS compliance effort.

[3] The Texas Council on Autism and Pervasive Developmental Disorders is now known as the Texas Autism Council.

Activity	Description	Dates
	Consumer Directed Workgroup[4]: Comprised of state agency staff, providers, advocates, and individuals utilizing consumer directed services who advised HHSC on the delivery of services through self-direction	10/23/2015
Tribal stakeholder conference call meetings	Comprised of designees of federally recognized tribes. HHSC holds regularly scheduled conference calls with the tribes, which provides additional opportunities for stakeholder input.	1/27/2015 10/14/2015 11/17/2015 12/16/2015
Presentations at agency workgroups	HHSC and abolished HHS agencies have multiple agency-established workgroups comprised of advocates and providers whose purpose is to examine ongoing rule and policy issues. State agency staff will continue to provide updates on HCBS transition activities and provide workgroup members the opportunity to provide comments.	Ongoing
Presentations at conferences	Provider associations and other stakeholder groups regularly hold meetings and conferences, where state agency staff have made presentations. This provides access to many providers for purposes of education, coordination, and input regarding changes being made to rules and policy.	11/12/2015 11/16/2017 4/10/2019 5/1/2019
Provider self-assessment surveys and participant surveys	Fee-for-service provider self-assessment and participant surveys for stakeholders were posted on the appropriate agency websites. A 30-day public comment period allowed for stakeholder feedback on the survey tools.	11/2015
Remediation Workgroups	Two workgroups were formed to provide input on the IDD strategy, one focused on non-residential services and one on residential services. These groups included representation from advocacy organizations, provider associations, individuals receiving services, and state subject matter experts.	10/22/2017 11/06/2017 11/10/2017 11/14/2017 11/28/2017 12/01/2017 12/11/2017 12/14/2017

[4] The Consumer Directed Workgroup expired. The Texas Council on Consumer Direction was established in 2016 to advise HHSC on delivery of services through self-direction.

5. Texas Medicaid HCBS Programs and Services

HHSC offers Medicaid HCBS under the authority of 1915(c) HCBS waivers, Texas Healthcare Transformation Quality Improvement Program 1115 Demonstration Waiver (Demonstration Waiver), 1915(i) HCBS State Plan Option, and 1915(k) Community First Choice.

1915(c) Waiver Programs

Community Living Assistance and Support Services (CLASS)

The CLASS program provides HCBS to individuals with related conditions as a cost-effective alternative to living in an ICF/IID. CLASS is intended to enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent admission to an institution. The CLASS program serves individuals living in their own home or their family's home, including a foster home. As of December 2021, there are no individuals currently receiving CLASS services in a foster home setting. CLASS operates in a fee-for-service (FFS) model.

The CLASS program offers the following services: support family services (SFS); continued family services (CFS); adaptive aids; behavioral support; cognitive rehabilitation therapy (CRT); dental treatment; dietary services; employment assistance (EA); financial management services (FMS); habilitation (transportation); minor home modifications; nursing; prevocational services; respite; specialized therapies; supported employment (SE); therapies (occupational therapy, speech therapy, physical therapy); and transition assistance services (TAS).

CLASS services are provided in the settings listed below.

- Settings for residential services:
  - Residence of a SFS provider or CFS provider, which is a foster home verified by a licensed child-placing agency (no individuals are currently receiving either service)

- Settings for non-residential services other than respite:
  - Recipient's own home or family home
  - Community settings open to the public including shopping areas, places of employment, parks, and public recreation facilities
  - For prevocational services, community settings that are not open to the public where day habilitation services may be provided[5]
- Settings for respite:
  - Residence of an individual, another person receiving waiver services, or the respite provider
  - Day or overnight camp open to the public and accredited by the American Camping Association
  - Adult foster care (AFC) home
  - Licensed nursing facility (NF)
  - Licensed assisted living facility (ALF)
  - Licensed or certified ICF/IID

Deaf Blind with Multiple Disabilities (DBMD)

The DBMD program provides HCBS to individuals with deaf blindness and another disability as a cost-effective alternative to living in an ICF/IID. The DBMD program focuses on increasing opportunities for individuals to communicate and interact with their environment. Recipients may live in their own home, their family's home, a one- to three-person home where licensed home health assisted living is provided, or in a four- to six-person ALF. DBMD operates in a FFS model.

The DBMD program offers the following services: assisted living; adaptive aids; audiology; behavioral support; day habilitation[5]; dental treatment; dietary services; EA; FMS; intervener services; minor home modifications; orientation and mobility; nursing; residential habilitation (transportation); respite; SE; therapies; and TAS.

DBMD services are provided in the settings listed below.

- Settings for residential services:

[5] HHSC plans to replace day habilitation with a new, more integrated service called individualized skills and socialization. See additional information on p. 72 of this transition plan.

    - One- to three-person home in which licensed home health assisted living is provided. Licensed home health assisted living is provided by a program provider that is licensed as a home and community support services agency (HCSSA) in a residence for no more than three individuals, at least one of whom owns or leases the residence
    - Four- to six-person licensed ALF in which licensed assisted living is provided
- Settings for non-residential services other than respite:
    - Recipient's own home or family home
    - Community settings open to the public including shopping areas, places of employment, parks, and public recreation facilities
    - Community settings that are not open to the public where day habilitation is provided[5]
- Settings for respite:
    - Residence of an individual, another person receiving waiver services, or the respite provider
    - Day or overnight camp open to the public and accredited by the American Camping Association
    - Four to six-person licensed ALF
    - Licensed or certified ICF/IID

Home and Community-based Services (HCS)

The HCS program provides HCBS to individuals with an intellectual disability (ID) or related condition in certain circumstances[6] as an alternative to living in an ICF/IID. Recipients may live in their own home, their family's home, in a host home/companion care setting, or in residences with no more than three other individuals who receive similar services. HCS operates in a FFS model.

The HCS program offers the following services: residential assistance (home home/companion care, supervised living, residential support services); adaptive

[6] An individual may qualify for program services if they meet level of care (LOC) I criteria or if transitioning or diverting from a NF, (LOC VIII criteria). To meet LOC I criteria the individual must have an IQ of 69 or below or an IQ of 75 or below with a primary diagnosis of a related condition; and mild to extreme deficits in adaptive behavior. To meet the LOC VIII criteria, an individual must have a primary diagnosis of a related condition and moderate to extreme deficits in adaptive behavior.

aids; audiology; behavioral support; CRT; day habilitation[5]; dental treatment; dietary services; EA; FMS; minor home modifications; nursing; respite; social work; SE; supported home living (transportation); therapies; and TAS.

HCS services are provided in the settings listed below.

- Settings for residential services:
    - Residence of a host home/companion care (HH/CC) provider (Note: The only HH/CC setting the state considers provider owned or controlled is one in which the HH/CC service provider is not a family member of the individual and the individual does not own or lease the home.)
    - 3-person or 4-person residence in which residential support services or supervised living are provided
- Settings for non-residential services other than respite:
    - Recipient's own home or family home
    - Community settings open to the public including shopping areas, places of employment, parks, and public recreation facilities
    - Community settings that are not open to the public where day habilitation is provided[5]
- Settings for respite:
    - Residence of an individual or the respite provider
    - Day or overnight camp open to the public and accredited by the American Camping Association
    - Residence in which host home/companion care, supervised living, or residential support is provided group respite facility operated by an HCS provider
    - Group respite facility operated by an HCS provider
    - Community settings that are not open to the public where day habilitation is provided[5]

Texas Home Living (TxHmL)

The TxHmL program provides essential services and supports for people with ID as an alternative to living in an ICF/IID. Recipients must live in their own home or their family's home. TxHmL operates in a FFS model.

The TxHmL program offers the following services: adaptive aids; audiology; behavioral support; community support services; day habilitation[5]; dental treatment; dietary services; EA; FMS; minor home modifications; nursing; respite; SE; occupational therapy, physical therapy, speech and language pathology; and support consultation.

TxHmL services are provided in the settings listed below.

- Settings for residential services:
  - N/A
- Settings for non-residential other than respite:
  - Recipient's own home or family home
  - Community settings open to the public including shopping areas, places of employment, parks, and public recreation facilities
  - Community settings that are not open to the public where day habilitation[5] is provided
- Settings for respite:
  - Residence of an individual or the respite provider
  - Day or overnight camp open to the public and accredited by the American Camp Association
  - Residence in which host home/companion care, supervised living, or residential support is provided
  - Group respite facility
  - Community settings that are not open to the public where day habilitation[5] is provided

Youth Empowerment Services (YES) Waiver Program

The YES Waiver program provides HCBS to children and youth ages three through age 18 with serious emotional disturbance. Recipients must reside in a non-institutional setting with the individual's legally authorized representative (LAR) or in the youth's own home, if legally emancipated. The YES Waiver program operates in a FFS model.

The YES Waiver program offers the following services: adaptive aids; community living supports; EA; family supports; minor home modifications; nonmedical

transportation; respite; SE; paraprofessional services; supportive family-based alternatives; specialized therapies; pre-engagement services, and TAS.

YES services are provided in the settings listed below.

- Settings for residential services:
  - N/A
- Settings for non-residential services other than respite:
  - Recipient's own home or family home, including a foster care home
  - Community settings open to the public including shopping areas, places of employment, parks, and public recreation facilities
- Settings for respite:
  - Residence of an individual or the respite provider
  - Day or overnight camps open to the public and accredited by the American Camping Association or licensed by DSHS
  - Licensed General Residential Operation
  - Licensed childcare center

Medically Dependent Children Program (MDCP)

MDCP provides HCBS to support families caring for children who are medically dependent as an alternative to living in a NF. Recipients must live in their own home, their family's home, or a foster care home. On November 1, 2016, Texas implemented the State of Texas Access Reform Kids (STAR Kids) program. MDCP is now part of STAR Kids and STAR Health managed care programs. It operates under the authority of an 1115/1915(c) combination waiver in STAR Kids and under the authority of a 1915(a)/1915(c) combination in STAR Health.

MDCP offers the following services: adaptive aids; EA; FMS; flexible family support services (FFSS); minor home modifications; respite; SE; and TAS.

MDCP services are provided in the settings listed below.

- Settings for residential services
  - N/A
- Settings for non-residential services other than respite
  - Recipient's own home or family home, including a foster home

    - Community settings open to the public including shopping areas, childcare facilities, places of employment, parks, and public recreation facilities
- Settings for respite
    - Agency foster home setting
    - Licensed hospital or specialty care facility
    - Day or overnight camps open to the public and accredited by the American Camping Association
    - Licensed NF
    - Licensed childcare center

1115 Demonstration Waiver

STAR+PLUS HCBS

The STAR+PLUS HCBS program provides services under the authority of the Texas Healthcare Transformation Quality Improvement Program 1115 Demonstration waiver (1115 Demonstration waiver). STAR+PLUS HCBS provides HCBS to older adults and adults with disabilities as an alternative to living in a NF. STAR+PLUS operates though a managed care model.[7]

The STAR+PLUS HCBS program offers the following services: adult foster care; assisted living; adaptive aids; CRT; dental treatment; EA; FMS; home-delivered meals; medical supplies; minor home modifications; nursing; respite; SE; therapies; and TAS.

STAR+PLUS HCBS services are provided in the settings listed below.

- Settings for residential services:
    - Licensed ALF
    - AFC home serving up to three residents
- Settings for non-residential other than respite:
    - Recipient's own home or family home

[7] The Community Based Alternatives (CBA) program previously provided HCBS to individuals who met medical necessity level of care for nursing facilities. Effective September 1, 2014, all individuals in the CBA program began receiving services through the STAR+PLUS HCBS program.

    - Community settings open to the public including shopping areas, places of employment, parks, and public recreation facilities
- Settings for respite:
    - Residence of an individual
    - Licensed NF
    - Licensed ALF
    - AFC home

1915(i) State Plan Option

Home and Community-Based Services—Adult Mental Health Program (HCBS-AMH)

The HCBS-AMH program offers specialized supports to adults with a diagnosis of serious mental illness and extended stays in psychiatric hospitals, as well as those persons with frequent arrests or Emergency Department visits. The HCBS-AMH program provides an array of services, appropriate to each individual's needs, to enable individuals to live and be successful in their community.

HHSC submitted the 1915(i) State Plan Amendment (SPA) serving participants in the long-term psychiatric population on July 22, 2014, after the March 17, 2014 effective date of the new HCBS Settings Rule. Because the program implemented after the effective date of the HCBS Settings Rule, compliance was required for initial approval and remediation is not necessary. CMS approved this SPA on October 13, 2015 and noted in its approval letter that the state's description of the settings and process for assuring that HCBS requirements would be met "were satisfactory." As such, HCBS-AMH is not part of this transition plan.

1915(k) Community First Choice

On June 1, 2015, Texas began offering Community First Choice (CFC) services to eligible individuals statewide. Because CFC implemented after the effective date of the HCBS Settings Rule, compliance was required for initial approval and remediation is not necessary. As such, CFC is not part of this transition plan. CMS approved this SPA on April 2, 2015.

6. Systemic Internal Policy Assessment

HHSC examined the settings associated with services available in each HCBS program to guide its approach to assessment and remediation activities. HHSC's assessment process began with a systemic internal assessment of the state's rules, standards, policies, licensing requirements, and other provider requirements. Internal assessments were conducted for all HCBS programs.[8]

The systemic internal assessment of 1915(c) waiver programs was completed in September 2014. The systemic internal review of the 1115 Demonstration waiver was completed in September 2015. The delay was a result of updated guidance from CMS that 1115 Demonstration waivers through which HCBS are delivered are subject to the HCBS Settings Rule.

The Systemic Internal Policy Assessment is located in Appendix A of this transition plan. The crosswalk includes policy assessments and remediation plans for the programs and services subject to the HCBS Settings Rule.

Internal Assessment Presumptions

HHSC presumes the provision of HCBS in an individual's own home, family home, and non-disability specific locations open to the public (such as libraries, shopping malls, and non-disability specific camps) comply with HCBS Settings Rule requirements.

CMS has indicated its intent to allow states to use institutional settings for the provision of respite services on a short-term basis. Therefore, states are not required to assess settings that are exclusively used for respite services for compliance with HCBS settings requirements. HHSC did not assess NFs, ICF/IIDs, licensed General Residential Operations or licensed child-care centers in which out-of-home respite is provided on a short-term basis.

Programs Determined to Meet Compliance

Through its systemic internal assessments, HHSC has determined that the YES Waiver program and MDCP currently meet requirements of the HCBS Settings Rule

[8] HCBS-AMH and CFC services were not included in the internal assessments because they were implemented after the effective date of the HCBS Settings Rule and have been determined to comply.

and do not require remediation. In addition, because YES Waiver and MDCP services are provided in the in the individual's own home family home, or in the community, an external assessment was not necessary.

YES Waiver Program

HHSC conducted a systemic internal assessment of YES Waiver settings, which included a review of the 1915(c) waiver application, state rules, program rules, internal policies, provider policies, forms, documents, and publications. HHSC determined that existing state standards for the YES Waiver meet requirements in the settings regulations and current oversight processes are adequate to ensure compliance. Therefore, settings currently approved under the state's standards for the YES Waiver meet HCBS Settings Rule requirements.

Based on the systemic internal assessment and because the YES waiver is an HCBS program in which the settings for services are either the participant's own home, a Department of Family and Protective Services (DFPS) foster care home, or a public place, HHSC determined that an external assessment is not needed.

For additional details on the YES Waiver internal assessment, see Appendix A of this transition plan.

MDCP

HHSC conducted a systemic internal assessment of MDCP settings, which included a review of the waiver application, state rules, program rules, internal policies, provider policies, forms, documents, and publications. HHSC determined that existing state standards for MDCP meet requirements in the settings regulations and current oversight processes are adequate to ensure compliance. Therefore, settings currently approved under the state's standards for MDCP meet HCBS Settings Rule requirements.

Based on the systemic internal assessment and because MDCP is an HCBS program in which the settings for services are either the participant's own home, family home, a DFPS foster care home, or a public place, HHSC determined that an external assessment is not needed.

For additional details on the MDCP internal assessment MDCP, see Appendix A of this transition plan.

7. Initial External Assessments

The results of the systemic internal assessment indicated a need for an external assessment of both non-residential and residential HCBS settings to guide the state's systemic remediation plan. These assessments were not setting-specific. They were general in nature and used to guide HHSC's systemic remediation plans. These assessments were not part of the validated, site-specific assessments described in Section 8.

The external assessments involved provider self-assessments completed by a representative sample of providers; and surveys of individuals receiving services; and self-assessments and surveys completed by case managers and service coordinators.

Assessments were conducted for the following programs: DBMD, HCS and STAR+PLUS HCBS.[9] For purposes of this transition plan, references to "residential settings" for these programs include:

- For the DBMD program:
  - ALFs; and
  - One- to three-person homes in which individuals in the DBMD program reside; and
- For the HCS program:
  - Three-person and four-person homes; and
  - Residences in which HCS host home/companion care is provided;
- For the STAR+PLUS HCBS program:
  - ALFs and AFC homes in which individuals receiving STAR+PLUS HCBS reside.

[9] The CLASS program offers services to individuals living in the residence of a SFS or CFS provider. However, there are no CLASS program recipients receiving services in an SFS or CFS, so an external assessment was not conducted for these settings.

Settings that Did Not Require External Assessments

Foster Care

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

Delivery of Medicaid HCBS occurs in these settings in the same way it would for recipients who live in their own home or family home settings, and DFPS foster care homes are typical residences in the community.

HHSC will conduct ongoing monitoring of Medicaid HCBS providers who deliver Medicaid HCBS to children and youth in foster care settings, in accordance with program-specific monitoring processes described in Section 10 of the STP.

Host Family Home Settings in MDCP

MDCP respite is the only Medicaid home and community-based service that may be delivered in a host family home setting.[10] A host family home is a licensed/certified DFPS foster care provider and the host family home setting must be a typical residence in the community. Respite is a time-limited service.

Host family homes are used exclusively for the provision of respite services and CMS has clarified states are not required to assess settings exclusively used for respite services for compliance with the HCBS Settings Rule.[11] In addition, there are currently no individuals receiving respite in a host family home setting; therefore, there are no settings for which the state could conduct an external assessment.

[10] Host family home settings are not a setting option in any other Texas Medicaid HCBS program.
[11] Frequently Asked Questions Regarding the Heightened Scrutiny Process and Other Home and Community-Based Settings Information (June 26, 2015)

Provider Self-Assessments

DBMD, HCS and TxHmL

To validate the results of the systemic internal policy assessment, HHSC released a provider self-assessment to a representative sample of residential and non-residential providers in the DBMD, HCS and TxHmL programs. Participation in the assessment was mandatory and not anonymous. The sampling methodology for this assessment is in Appendix C of this transition plan.

HHSC used exploratory questions provided by CMS as the basis for the provider self-assessment and developed the assessment in collaboration with providers, provider associations, and advocacy organizations to ensure a comprehensive approach. The provider assessment was conducted in June-July 2016. Approximately 2,000 residential providers were asked to participate and HHSC received 1,005 responses. Two hundred thirty-seven non-residential providers responded.

To ensure the assessment results accurately represented the DBMD program, given its smaller population size, HHSC conducted an additional self-assessment for DBMD in November 2017.

STAR+PLUS HCBS

To validate the results of the systemic internal policy assessment of STAR+PLUS HCBS services delivered under the 1115 Demonstration waiver, HHSC released a provider self-assessment survey and resident survey for ALF and AFC providers based on CMS exploratory questions. HHSC evaluated 164 settings. The provider self-assessment was designed for direct support professionals who work directly with individuals. Participation in the survey was mandatory and not anonymous. Non-responsive providers were considered noncompliant and are subject to remediation.

The Texas External Quality Review Organization (EQRO) developed an evaluation framework based on the HCBS Settings Rule requirements in 42 CFR § 441.301(c)(4). The EQRO used a threshold of 86 percent to determine compliance on individual survey items, overall component results, and overall requirement results.

Participant Surveys

DBMD and HCS

The former Department of Aging and Disability Services (DADS), before it merged with HHSC, conducted a survey of individuals receiving services in the HCS and DBMD programs. The survey was based on questions asked in the provider self-assessment. Participation in the survey was optional for individuals receiving services.

DBMD

DBMD is a small program that serves approximately 327 individuals, less than one percent[12] of the Texas Medicaid HCBS waiver population. An even smaller number of individuals live or receive services in a provider-owned or provider-controlled setting. This population also has very specific communication challenges. To obtain individual feedback, an HHSC employee with experience with this population conducted the individual interviews. Fifty individuals receiving DBMD services in residential settings participated in the assessments between December 2017 and March 2018.

HCS

Former DADS contracted with Texas A&M University to survey individuals in the HCS waiver program. 1,685 surveys were completed. Residential surveys focused on three-person and four-person homes and host home/companion home settings. Non-residential surveys focused on day habilitation and employment services, as applicable.

STAR+PLUS HCBS

To validate the provider self-assessment for the STAR+PLUS HCBS services, HHSC contracted with the Texas EQRO to survey a representative sample of individuals receiving licensed assisted living or AFC services. Between July 2016 and September 2016, face-to-face interviews were conducted with individuals enrolled in STAR+PLUS HCBS and receiving licensed assisted living or AFC services. The survey was based on questions asked in the provider self-assessment and was

[12] Texas Medicaid and CHIP Reference Guide, 13th Edition, Health and Humans Services Commission, 2020. https://www.hhs.texas.gov/reports/2020/12/texas-medicaid-chip-reference-guide-thirteenth-edition-pink-book

administered in face-to-face interviews similar to the process used to conduct the National Core Indicators (NCI) and Participant Experience Surveys (PES).

The Texas EQRO developed an evaluation framework based on the HCBS Settings Rule requirements in 42 CFR § 441.301(c)(4). Across all requirements, all settings were classified as *Could fully comply*, meaning that no setting was compliant on all ten requirements considered in the evaluation framework. The findings from this evaluation suggest that STAR+PLUS ALF and AFC settings should continue to implement structural and process improvements.

Survey of Service Coordinators and Case Managers

Service coordinators and case managers are responsible for ensuring an individual has choice among providers. The following entities are responsible for service coordination and case management in HCBS programs:

- **For CLASS:** Case management agency (CMA)
- **For DBMD:** DBMD provider agency
- **For HCS and TxHmL:** Local intellectual and developmental disability authorities (LIDDAs)
- **For STAR+PLUS HCBS:** Medicaid MCO

Because the service coordinator or case manager is responsible for convening the service planning team to develop the person-centered service plan and make changes to the plan as needed, it was important to consider their perspective on individual choice and the person-centered planning process.

CLASS, DBMD, HCS and TxHmL

Former DADS developed a survey for service coordinators and case managers based on the exploratory questions provided by CMS. The survey was distributed to all service coordinators and case managers currently working with individuals. Former DADS received 444 completed surveys from service coordinators and case managers across programs.

STAR+PLUS HCBS

HHSC released a self-assessment tool based on the exploratory questions provided by CMS for MCO service coordinators. The self-assessment was required for all STAR+PLUS MCO service coordinators.

External Assessment Results

HHSC used a threshold of 86% to demonstrate compliance with components of the HCBS Settings Rule. This threshold was chosen because it is the CMS threshold for HCBS performance measurement. HHSC also noted results with greater than ten percent difference between individual and provider responses to same or similar questions. Because the DBMD survey of individuals was completed by one person and used a more qualitative approach, results of this survey were assessed separately. External assessment results were generally consistent across all programs.

Detailed assessment results are in Appendix B of the STP.

General Findings

Community Access

- Lack of transportation is a barrier to accessing the community regularly.

Individual Choice

- There is a need to ensure individuals understand they may visit and are supported to visit different residential settings and different homes within setting types prior to deciding where to live.
- Resources available to help individuals make more informed choices about where they would like to live need to be increased.
- HHSC must ensure rules, policies, and training resources support individuals in the person-centered service planning process.
- Individuals with IDD are interested in obtaining employment.

Rights and Dignity

- HHSC must ensure individuals and legal guardians understand individuals have a right to privacy and must educate providers on what this looks like in practice.
- Most staff working directly with individuals in DBMD are not able to communicate in the individual's preferred mode.
- Individuals may have visitors when they want to and, generally, their visitors have access to the entire home. However, most providers require visitors to sign in or otherwise notify staff when they arrive.

Individual Autonomy

- Regimented daily activities should be avoided. Providers should increase opportunities for autonomy for individuals to schedule their days.
- Individual control of resources should improve.
- As part of the person-centered service planning process, MCO service coordinators should ensure that they ask all STAR+PLUS HCBS members about their interest in achieving competitive, integrated employment and assess whether employment assistance or supported employment services are appropriate.

8. Site-Specific Assessment and Validation

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

Settings that Did Not Require Site-Specific Assessment

Private Homes

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

DFPS Foster Care

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

Delivery of Medicaid HCBS occurs in these settings in the same way it would for individuals who live in their own home or family home settings, and DFPS foster care homes are typical residences in the community.

Waiver Settings

Host Family Homes in MDCP

MDCP respite is the only Medicaid home and community-based service that may be delivered in a host family home setting.[13] A host family home is a licensed/certified

[13] Host family home settings are not a setting option in any other Texas Medicaid HCBS program.

DFPS foster care provider and the host family home setting must be a typical residence in the community. Respite is a time-limited service.

Host family homes are used exclusively for the provision of respite services and CMS has clarified states are not required to assess settings exclusively used for respite services for compliance with the HCBS Settings Rule.[14] In addition, there are currently no individuals receiving respite in a host family home setting; therefore, there are no settings for which the state can conduct a site-specific assessment.

Day Habilitation in HCS, TxHmL and DBMD

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

SFS and CFS in CLASS

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

Supportive Family-Based Alternatives in YES Waiver

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

EA and SE in DBMD, MDCP, STAR+PLUS HCBS, and YES Waiver

There are no individuals receiving EA or SE in the DBMD, MDCP, STAR+PLUS HCBS and YES Waiver programs. Therefore, there are no EA or SE settings for which the state can conduct a site-specific assessment for these programs. If and when the

[14] Frequently Asked Questions Regarding the Heightened Scrutiny Process and Other Home and Community-Based Settings Information (June 26, 2015)

service is requested, HHSC will conduct setting assessment(s) to ensure compliance with the HCBS Settings Rule.

CLASS Program

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

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

Site-Specific Assessment, Validation and Remediation Process

Assessments

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

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

Validation and Remediation

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

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

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

Compliance Counts

HHSC is conducting initial site-specific assessments of prevocational and SE settings where more than one individual may be grouped together for the purpose of receiving services. Preliminary compliance counts are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

	Non-Residential Settings[15]			
Results	**Prevocational Settings**	**Supported Employment**	**Employment Assistance**	**Total**
Fully compliant	0	0	0	0

[15] Settings counts represent the maximum number possible based on the number of individuals receiving prevocational services, EA and SE. This approach assumes every individual receives services in a different, unique setting. HHSC will adjust the actual number of settings downward (to account for providers that service more than one individual in the same setting, and prevocational services or employment assistance being provided at an individualized skills and socialization setting) in the addendum to the STP.

Results	Prevocational Settings	Supported Employment	Employment Assistance	Total
Can come into compliance with modifications	416	19	0	435
Cannot/will not comply	0	0	0	0
Presumed institutional but can overcome through the application of heightened scrutiny	0	0	0	0
Total	416	19	0	435

Texas Home Living Program

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

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

Site-Specific Assessment, Validation and Remediation Process

Assessments

HHSC is conducting initial on-site assessments of any EA and SE setting that has more than one individual grouped together for the purpose of receiving services.

HHSC will use a combination of observations, interviews, and data collection to assess settings for compliance.

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

Validation and Remediation

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

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

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

Compliance Counts

HHSC is conducting initial site-specific assessments of EA and SE settings where more than one individual may be grouped together for the purpose of receiving services. Preliminary compliance counts are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

	Non-Residential Settings[16]		
Results	**Employment Assistance**	**Supported Employment**	**Total**
Fully compliant	0	0	0
Can come into compliance with modifications	23	31	54
Cannot/will not comply	0	0	0
Presumed institutional but can overcome through the application of heightened scrutiny	0	0	0
Total	23	31	54

HCS Program

HHSC is conducting site-specific assessments of three-person residences, four-person residences, and certain host home/companion care (HH/CC) settings. The only HH/CC setting the state considers provider owned or controlled is one in which the HH/CC service provider is not a family member of the individual and the individual does not own or lease the home.

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

HHSC contracts with comprehensive program providers to deliver these HCBS waiver services. The comprehensive program provider may choose to provide the waiver service directly or they may choose to subcontract with a service provider. The comprehensive program provider is responsible for ensuring any subcontractors

[16] Settings count represents the maximum number possible based on the number of individuals receiving EA and SE. This maximum assumes every individual receives services in a different, unique setting. HHSC will adjust the actual number of settings downward (to account for providers that service more than one individual in the same setting, and EA being provided at an individualized skills and socialization setting) in the addendum to the STP.

are in compliance with program requirements. HHSC is coordinating with comprehensive program providers to identify settings where EA and SE services are provided. Preliminary compliance counts are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

General Assessment Criteria – Residential Settings

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

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

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

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

Existing Provider Monitoring Processes – Residential Settings

HHSC Long-Term Care Regulation (LTCR) conducts annual on-site visits, including unannounced visits, to three-person residences, four-person residences, and HH/CC settings. There are two types of reviews: residential visits focused on the physical

characteristics of the setting and certification surveys that assess the setting's compliance with provider certification principles.[17]

Through these reviews, LTCR assesses compliance with all HCBS settings criteria except the four bulleted criteria listed above (see Section 3 of Appendix A for full systemic internal policy assessment of the HCS program).

Residential visit requirements and processes are described in HCS Handbook Section 14400, Residential Visits. Residential visits assess providers for compliance with requirements related to physical accessibility, community access, and transportation.[18]

Certification survey requirements and processes are described in 40 TAC § 9.171 and HCS Handbook Section 14200, Home and Community-based Services Surveys. Certification surveys assess for compliance with certification principles that include HCBS settings requirements related to: community access[19]; control of personal resources[20]; choice of services and supports and who provides them[21]; choice of setting[22]; rights of dignity, respect, and freedom from coercion and restraint[23]; optimizing individual initiative, autonomy, and independence[24]; and access to visitors[25].

Site-Specific Assessment, Validation and Remediation Process – Residential Settings

Assessments

HHSC is conducting scheduled on-site visits of three-person residences, four-person residences, and provider-owned or controlled HH/CC settings[26] to assess compliance with the HCBS Settings Rule requirements related to lease agreements, bedroom door locks, and access to food. HHSC developed an assessment form with

[17] TAC Title 40, Part 1, Chapter 9, Subchapter D, Rules § 9.172-§ 9.180
[18] LTCR staff use Form 3609, Waiver Survey and Certification Residential Checklist, to conduct each residential visit.
[19] TAC § 9.173(a)(1), (b)(1), (b)(22), (b)(31), (b)(32)
[20] TAC § 9.173(b)(1), (b)(31), (b)(32)
[21] TAC § 9.173(b)(22) and TAC § 9.177(b)(1)
[22] TAC § 9.174(a)(4)
[23] TAC § 9.173(b)(15), (b)(26) and TAC § 9.172(2), (3)
[24] TAC § 9.173(a)(1), TAC 9.172(4)
[25] TAC § 9.173(b)(9) and (b)(10)
[26] There are approximately 1,600 HH/CC settings that are provider owned or controlled and are undergoing site-specific assessments. The only HH/CC setting the state considers provider owned or controlled is one in which the HH/CC service provider is not a family member of the individual and the individual does not own or lease the home. HHSC is assessing these settings and will not conduct site-specific assessments for HH/CC settings that are not provider owned or controlled.

19 items related to the assessment criteria that capture assessor observations of the setting, provider interview responses, and photos and documentation. Observation criteria and provider interview questions are based on the CMS Exploratory Questions. If a modifiable restriction is observed during the visit, HHSC will review the person-centered plan to confirm the provider is implementing the restriction in accordance with the plan.

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

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

Validation and Remediation

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

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

provide an action plan for the program provider to complete. The action plan will outline required remediation activities and the timeframe in which the activities must be completed. The program provider is responsible for ensuring all required remediation activities are completed and must provide verification to HHSC and TMHP staff within 21 calendar days of remediation notification.

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

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

Compliance Counts – Residential Settings

As of July 13, 2023, 100 percent of on-site assessments have been completed for 3- and 4-person residences, and 99 percent of on-site assessments have been completed for provider-owned or controlled HH/CC settings. HHSC expects all on-site assessments will be completed by August 31, 2023. If the onsite visit identified any areas of noncompliance, providers are required to complete remediation and send documentation of completed remediation to HHSC. Validation is occurring through desk reviews conducted by HHSC or TMHP. HHSC expects desk review validations and remediation activities to be completed by March 17, 2024. HHSC will add this ongoing validation and remediation to the state's CAP request.

		Residential Settings			
Results	**3-person residence**	**4-person residence**	**Provider Owned or Controlled HH/CC**	**Intentional Communities**	**Total**
Fully compliant	828	652	1,362	1	2,843
Can come into compliance with modifications	182	221	77	0	480

Results	3-person residence	4-person residence	Provider Owned or Controlled HH/CC	Intentional Communities	Total
Cannot/will not comply	0	0	0	0	0
Presumed institutional but can overcome through the application of heightened scrutiny **(not included in the total calculation for each setting type)**	0	0	0	1	0
Total	1,010	873	1,439	1	3,323

Site-Specific Assessment, Validation and Remediation Process – Non-Residential Settings

Assessments

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

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

Validation and Remediation

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

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

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

Compliance Counts – Non-Residential Settings

HHSC is conducting initial site-specific assessments of EA and SE settings where more than one individual may be grouped together for the purpose of receiving services. Preliminary compliance counts are based on the maximum number of individuals eligible to receive each service. HHSC will publish an addendum providing final compliance counts based on completed assessments.

	Non-Residential Settings[27]		
Results	**Employment Assistance**	**Supported Employment**	**Total**
Fully compliant	0	0	0

[27] Settings count represents the maximum number possible based on the number of individuals receiving prevocational services, employment assistance and supported employment. This maximum assumes every individual receives services in a different, unique setting. HHSC will adjust the actual number of settings downward (to account for providers that service more than one individual in the same setting, and prevocational services or employment assistance being provided at an individualized skills and socialization setting) in the addendum to the STP.

Results	Employment Assistance	Supported Employment	Total
Can come into compliance with modifications	275	355	630
Cannot/will not comply	0	0	0
Presumed institutional but can overcome through the application of heightened scrutiny	0	0	0
Total	275	355	630

DBMD Program

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

Site-Specific Assessment, Validation and Remediation Process

Assessment

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

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

Validation

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

HHSC considered all the information available when making a compliance determination for the setting for each HCBS setting criteria. Staff identified any area(s) of noncompliance or areas where additional information or clarification was needed. Staff reached out to the provider to request additional information and/or inform the provider of area(s) of noncompliance that required remediation.[28]

Remediation

If HHSC identifies area(s) of noncompliance for a setting, the DBMD provider will be required to complete remediation to address the noncompliance. HHSC will develop an action plan that lists the specific remediation activities the provider must complete. The provider is responsible for ensuring all required remediation activities are completed and must provide verification of completion to HHSC within 21 calendar days of remediation notification.

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

Compliance Counts

All on-site visits of ALF and LHHAL settings have been completed. The results of these assessments have been validated and the ALF and LHHAL settings were required to complete site-specific remediation. As of March 24, 2023, all site-specific remediation for these settings has been completed and HHSC has validated the settings are fully compliant. HHSC validated completion of remediation activities through review of revised policies and desk review of photos of the settings.

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

	Residential Settings		
Results	**Assisted living (Residences for up to 6 individuals)**	**Licensed home health assisted living (1-3 person residence)**	**Total**
Fully compliant	7	3	10
Can come into compliance with modifications	0	0	0
Cannot/will not comply	0	0	0
Presumed institutional but can overcome through the application of heightened scrutiny **(Not included in total calculation for each setting type)**	7	3	10
Total	7	3	10

STAR+PLUS HCBS Program

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

Site-Specific Assessment, Validation and Remediation for ALF Settings

Assessment

There are 212 ALF settings in the STAR+PLUS HCBS program. HHSC relied on the four MCOs[29] that administer the STAR+PLUS HCBS program to conduct site-specific assessments of the ALF settings.

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

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

Before beginning an interview with an individual member, the MCO informed the member of the purpose of the interview, the interview process, and the member's option not to participate. A member's legally authorized representative (LAR) could participate in the interview on behalf of a member or could attend the interview with the member to provide support. A member who chose to participate in the interview could decline to answer any specific questions during the interview. Interview responses were recorded by the MCO. Responses were only recorded as "no response" or "refusal" if the member declined to answer the interview question.

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

Assessments were conducted between November 2021 and March 2022. MCOs made on-site visits or conducted virtual visits to the ALF settings.[30] While on site or in a virtual visit, the MCO interviewed ALF direct care staff and administrative staff, interviewed individuals, and made observations of the setting. The MCO also collected and reviewed related documentation submitted by the setting, such as a residential agreement form or other policies and procedures documents.

Validation

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

[30] Due to a rise in cases of COVID-19 in late 2021, MCOs conducted many of the assessments virtually.

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

Remediation

ALF providers are in the process of completing remediation activities listed in their remediation plan and MCOs are required to verify and report to HHSC that remediation has been completed. HHSC will continue to work with the ALFs and MCOs to ensure they complete all remediation. HHSC expects remediation activities to be completed by March 17, 2024. HHSC will add this ongoing remediation to the state's CAP request.

During the assessment and evidence packet completion process, STAR+PLUS MCOs and HHSC determined most ALFs require remediation in the following areas[31]:

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

Site-Specific Assessment, Validation and Remediation for AFC Settings

Assessment

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

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

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

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

Validation

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

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

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

Remediation

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

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

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

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

Compliance Counts

AFCs remain in the "can comply with modifications" designation because HHSC has identified systemic remediation for this setting type related to the lease/residential agreement form used by these providers. To assist in remediating this issue, HHSC has developed a checklist for AFC providers to assist them in creating a residential agreement that complies with the lease provisions of the HCBS Settings Rule. HHSC will review the agreements created by the AFC providers to ensure they comply with the required lease provisions.

	Residential Settings		
Results	**Assisted Living**	**Adult Foster Care**	**Total**
Fully compliant	199	0	199
Can come into compliance with modifications	12	41	53
Cannot/will not comply	1[32]	0	1
Presumed institutional but can overcome through the application of heightened scrutiny **(Not included in the total calculation for each setting type)**	212	41	253
Total	212	41	253

[32] One provider is terminating participation in the STAR+PLUS HCBS program.

9. Remediation Activities

Federal Requirements

Remedial actions to achieve compliance with the HCBS Settings Rule may include new requirements promulgated in statute, rules, or licensing standards; revised provider qualifications; revised service definitions and standards; revised training requirements; or plans to relocate individuals to settings that are compliant with the regulations.

The remediation strategy below outlines HHSC's planned actions to achieve initial and ongoing compliance with the HCBS Settings Rule. The strategy includes a description of remedial actions and anticipated timeframes for completion. As a part of HHSC remediation activities, HHSC will also develop or revise compliance monitoring processes and tools, as necessary.

Systemic Remediation Activities

Rules

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

Amended rules include:

- TAC Title 26, Part 1, Chapter 259
- TAC Title 26, Part 1, Chapter 260
- TAC Title 26, Part 1, Chapter 262
- TAC Title 26, Part 1, Chapter 263

Licensure and Certification Standards

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

Amended and new rules include:

- TAC Title 26, Part 1, Chapter 565
- TAC Title 26, Part 1, Chapter 566
- TAC Title 26, Part 1, Chapter 559

Program Handbooks and Manuals

HHSC is updating provider manuals and handbooks as well as the provider monitoring processes, to align with the amended TAC rules. HHSC will increase and enhance training on the HCBS settings requirements outlined in handbooks, manuals, and rules, including the person-centered planning process and employment services, for service coordinators and case managers to ensure all regulatory and program criteria are followed. HHSC anticipates all handbook updates will be completed by March 17, 2024.

Managed Care Contract Amendments

Managed care contracts currently include requirements for managed care organizations (MCOs) to ensure their contracted providers comply with requirements at 42 CFR § 441.301(c)(4). HHSC amended these contracts, effective September 1, 2022, to provide additional specificity regarding the services subject to the HCBS Settings Rule. This included adding credentialing requirements for ALFs

and adult foster care settings (AFCs) participating in STAR+PLUS HCBS. The managed care organization contract amendment process includes CMS review. Managed care contracts are posted to HHSC's website.

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

MCO Education

HHSC is educating impacted MCOs on contract and policy changes. HHSC has provided training to STAR+PLUS MCOs on the HCBS Settings Rule and heightened scrutiny process for STAR+PLUS ALFs. HHSC will continue to utilize current communication processes, including monthly policy calls and the contract amendment comment period, to communicate with MCOs about HCBS Settings Rule requirements and remediation activities. MCO education activities will be ongoing and may include training, technical assistance or issuance of policy guidance, as needed.

Person-Centered Planning

All of Texas Medicaid's HCBS programs include service coordination or case management. HHSC requires the service coordinator/case manager to assist the individual in creating a person-centered service plan. Person-centered planning requirements are outlined in contracts, handbooks, manuals, and rules. Depending on the program, the service coordinator/case manager is employed by a managed care organization, a private case management agency, a local intellectual and developmental disability authority (LIDDA), or the HCBS waiver program provider. The service coordinator/case manager is responsible for ensuring the beneficiary understands their rights in an HCBS program, and they are also responsible for ensuring any limitations on those rights are recorded in the person-centered service plan in accordance with the HCBS Rule. Through monitoring of service plans and service delivery, HHSC will ensure beneficiaries are receiving the most person-centered and integrated services possible.

Individual Rights

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

Provider and Individual Education

Providers and individuals receiving Medicaid HCBS will have opportunities to learn about the HCBS Settings Rule and HHSC's upcoming rule and policy changes through HHSC's advisory committees, including the Medical Care Advisory Committee and IDD SRAC. Proposed rules and policies were posted on HHSC's website for public comment, and other provider guidance and resources are also available on the website.

HHSC has published information letters and hosted webinars and trainings to ensure providers understand service delivery requirements in the new rules. Updates on proposed rules and other provider guidance have also been shared through HHSC's GovDelivery system.

For individuals receiving services and their families, HHSC is sharing informational materials about the HCBS Settings Rule, including information about individualized skills and socialization.

Education Regarding Reverse Integration

Reverse integration is a form of social integration in which individuals without disabilities enter and interact with Medicaid HCBS recipients in a Medicaid HCBS setting. The practice of reverse integration is not sufficient to meet the HCBS Settings Rule requirement related to community integration. HHSC will provide this clarification to MCOs and providers in regular policy meetings, webinars, and trainings.

Service-Specific Remediation

Remediation strategies described in this section of the STP are based on a review of internal and external assessment results.

Compliance Status by Program and Service

Assessment Key

Status	Description of Status
No modifications needed	Settings where these services are provided fully comply with the HCBS Settings Rule because the services are individualized; are provided in the community, the individual's own home or family home, or non-disability specific setting; and allow full access to the broader community according to a person's needs and preferences. Providers of these services will not undergo a site-specific assessment process. However, HHSC will continue to monitor these services through existing provider monitoring processes.
Modifications in progress[33]	Settings where these services are provided require changes to comply fully with the HCBS Settings Rule. These services are typically provided to groups of people who receive Medicaid HCBS. Provider-owned and controlled settings where these services are delivered are undergoing assessment and remediation processes and, if necessary, will undergo heightened scrutiny.
Modifications complete	Policy changes were required to achieve compliance for settings where these services are provided. These policy changes have been implemented.
Not applicable (N/A)	The service is not offered through that program.

[33] Modifications are in progress for: provider-owned and controlled settings currently undergoing site-specific assessment and remediation; settings undergoing heightened scrutiny; and day habilitation settings, which are in the process of transitioning to individualized skills and socialization. HHSC will request a CAP to complete assessments and remediation for compliance with access to the broader community, and if needed will proceed with provider disenrollment and participant relocation to a compliant setting.

Residential Services

	§ 1915(c) Waiver Programs						**1115 Demonstration Waiver**
HCBS Service	CLASS [*FFS*]	DBMD [*FFS*]	HCS [*FFS*]	TxHmL [*FFS*]	YES [*FFS*]	MDCP *[MLTSS]*	STAR+PLUS HCBS *[MLTSS]*
Residential assistance (host home/companion care, supervised living, residential support services)	N/A	N/A	Modifications in progress	N/A	N/A	N/A	N/A
AFC	N/A	N/A	N/A	N/A	N/A	N/A	Modifications in progress
Assisted living (licensed up to six beds)	N/A	Modifications complete	N/A	N/A	N/A	N/A	Modifications in progress
Assisted living	N/A	N/A	N/A	N/A	N/A	N/A	Modifications in progress
CFS	Modifications complete	N/A	N/A	N/A	N/A	N/A	N/A
SFS	Modifications complete	N/A	N/A	N/A	N/A	N/A	N/A

Non-residential services

	§ 1915(c) Waiver Programs						**1115 Demonstration Waiver**
HCBS Service	CLASS [*FFS*]	DBMD [*FFS*]	HCS [*FFS*]	TxHmL [*FFS*]	YES [*FFS*]	MDCP *[MLTSS]*	STAR+PLUS HCBS *[MLTSS]*
Adaptive aids	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed
Audiology	N/A	No modifications needed	No modifications needed	No modifications needed	N/A	N/A	N/A

	§ 1915(c) Waiver Programs						1115 Demonstration Waiver
HCBS Service	CLASS [*FFS*]	DBMD [*FFS*]	HCS [*FFS*]	TxHmL [*FFS*]	YES [*FFS*]	MDCP *[MLTSS]*	STAR+PLUS HCBS *[MLTSS]*
Behavioral support	No modifications needed	No modifications needed	No modifications needed	No modifications needed	N/A	N/A	N/A
CRT	No modifications needed	N/A	No modifications needed	N/A	N/A	N/A	No modifications needed
Community living supports	N/A	N/A	N/A	N/A	No modifications needed	N/A	N/A
Community support services	N/A	N/A	N/A	No modifications needed	N/A	N/A	N/A
Day habilitation	N/A	Modifications complete	Modifications complete	Modifications complete	N/A	N/A	N/A
Dental treatment	No modifications needed	No modifications needed	No modifications needed	No modifications needed	N/A	N/A	No modifications needed
Dietary services	No modifications needed	No modifications needed	No modifications needed	No modifications needed	N/A	N/A	N/A
EA	No modifications needed.	No modifications needed.	Modifications in progress	Modifications in progress	No modifications needed	No modifications needed	No modifications needed
Family supports	N/A	N/A	N/A	N/A	No modifications needed	N/A	N/A
FMS	No modifications needed	No modifications needed	No modifications needed	No modifications needed	N/A	No modifications needed	No modifications needed
Flexible family support services	N/A	N/A	N/A	N/A	N/A	No modifications needed	N/A
Habilitation (transportation)	No modifications needed	N/A	N/A	N/A	N/A	N/A	N/A
Home-delivered meals	N/A	N/A	N/A	N/A	N/A	N/A	No modifications needed

	§ 1915(c) Waiver Programs						1115 Demonstration Waiver
HCBS Service	CLASS [*FFS*]	DBMD [*FFS*]	HCS [*FFS*]	TxHmL [*FFS*]	YES [*FFS*]	MDCP *[MLTSS]*	STAR+PLUS HCBS *[MLTSS]*
Intervener services	N/A	No modifications needed	N/A	N/A	N/A	N/A	N/A
Medical supplies	N/A	N/A	N/A	N/A	N/A	N/A	No modifications needed
Minor home modifications	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed
Nonmedical transportation	N/A	N/A	N/A	N/A	No modifications needed	N/A	N/A
Orientation and mobility	N/A	No modifications needed	N/A	N/A	N/A	N/A	N/A
Nursing	No modifications needed	No modifications needed	No modifications needed	No modifications needed	N/A	N/A	No modifications needed
Pre-vocational services	Modifications in progress	N/A	N/A	N/A	N/A	N/A	N/A
Residential habilitation (transportation)	N/A	No modifications needed	N/A	N/A	N/A	N/A	N/A
Respite	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed
Social work	N/A	N/A	No modifications needed	N/A	N/A	N/A	N/A
Specialized therapies	No modifications needed	N/A	N/A	N/A	No modifications needed	N/A	N/A
SE	Modifications in progress	No modifications needed.	Modifications in progress	Modifications in progress	No modifications needed	No modifications needed	No modifications needed
Supported home living	N/A	N/A	No modifications needed	N/A	N/A	N/A	N/A

	§ 1915(c) Waiver Programs						1115 Demonstration Waiver
HCBS Service	CLASS [*FFS*]	DBMD [*FFS*]	HCS [*FFS*]	TxHmL [*FFS*]	YES [*FFS*]	MDCP *[MLTSS]*	STAR+PLUS HCBS *[MLTSS]*
Supportive family-based alternatives	N/A	N/A	N/A	N/A	No modifications needed	N/A	N/A
Therapies (OT, PT, Speech)	No modifications needed	No modifications needed	No modifications needed	No modifications needed	N/A	N/A	No modifications needed
TAS	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed	No modifications needed

1915(c) Waiver Programs and Services

Non-Residential Services

Program	Service	Remediation Activities
HCS	• Day habilitation	• HHSC has replaced day habilitation with a new, fully compliant service called individualized skills and socialization.
	• Employment assistance • Supported employment	Policy changes: • HHSC has amended TAC rules to add requirements for all services and settings in the HCS program to comply with HCBS settings requirements at 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 263, Rule.[34] The new TAC rules became effective March 1, 2023. • HHSC is updating program handbooks, billing guidelines, and provider monitoring processes to align with amended TAC rules. Operational changes: • HHSC will increase and enhance training on employment services provided to service coordinators and case managers. • HHSC will increase oversight of the person-centered planning process to ensure current employment-first policies are followed.
TxHmL	• Day habilitation	HHSC has replaced day habilitation with a new, fully compliant service called individualized skills and socialization.
	• Employment assistance • Supported employment	Policy changes: • HHSC has amended TAC rules to add requirements for all services and settings in the TxHmL program to comply with HCBS settings requirements in 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 262 and[35] became effective March 1, 2023. • HHSC is updating program handbooks, billing guidelines, and provider monitoring processes to align with amended TAC rules. Operational changes: • HHSC will increase and enhance training on employment services provided to service coordinators and case managers. • HHSC will increase oversight of the person-centered planning process to ensure current employment-first policies are followed.

[34] In addition to adding new rule requirements to comply with 42 CFR § 441.301(c)(4), HHSC has transferred all HCS program rules from TAC Title 40, Part 1, Chapter 9, Subchapter D to TAC Title 26, Part 1, Chapter 263.
[35] In addition to adding new rule requirements to comply with 42 CFR § 441.301(c)(4), HHSC has transferred all TxHmL program rules from TAC Title 40, Part 1, Chapter 9, Subchapter N to TAC Title 26, Part 1, Chapter 262.

Program	Service	Remediation Activities
CLASS	• Pre-vocational services	• HHSC has amended TAC rules to add requirements for all services and settings in the CLASS program to comply with HCBS settings requirements in 42 CFR § 441.301(c)(4)(i)-(v).
	• Employment assistance • Supported employment	Policy changes: • HHSC has amended TAC rules to add requirements for all services and settings in the CLASS program to comply with HCBS settings requirements in 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 259.[36] The new TAC rules became effective January 30, 2023. • HHSC is updating program handbooks and provider monitoring processes to align with amended TAC rules. Operational changes: • HHSC will increase and enhance training on employment services provided to service coordinators and case managers. • HHSC will increase oversight of the person-centered planning process to ensure current employment-first policies are followed.
DBMD	• Day habilitation	• HHSC has replaced day habilitation with a new, fully compliant service called individualized skills and socialization.
	• Employment assistance • Supported employment	Policy changes: • HHSC has amended TAC rules to add requirements for all services and settings in the DBMD program to comply with HCBS settings requirements in 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 260.[37] The new TAC rules became effective February 26, 2023. • HHSC is updating program handbooks and provider monitoring processes to align with amended TAC rules. Operational changes: • HHSC will increase and enhance training on employment services provided to service coordinators and case managers. • HHSC will increase oversight of the person-centered planning process to ensure current employment-first policies are followed.

[36] In addition to adding new rule requirements to comply with 42 CFR § 441.301(c)(4), HHSC has transferred all CLASS program rules from TAC Title 40, Part 1, Chapter 45 to TAC Title 26, Part 1, Chapter 259.

[37] In addition to adding new rule requirements to comply with 42 CFR § 441.301(c)(4), HHSC has transferred all DBMD program rules from TAC Title 40, Part 1, Chapter 42 to TAC Title 26, Part 1, Chapter 260.

Residential Services

Program	Residential Settings	Remediation Activities
HCS	• 3-person and 4-person group homes • Host home/companion care	Policy changes: • HHSC has amended TAC rules to add requirements for all settings in the HCS program, including 3-person and 4-person group homes and host home/companion care settings, to comply with HCBS settings requirements at 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 263. • HHSC has amended TAC rules to bring 3-person and 4-person group homes and HH/CC settings into compliance with the HCBS Settings Rule requirements at 42 CFR § 441.301(c)(4)(vi). These new rules have been added as TAC Title 26, Part 1, Chapter 263, Rule §263.502, Requirements for Program Provider Owned or Controlled Residential Settings. The new TAC rules became effective March 1, 2023. ○ Note: The only HH/CC setting the state considers provider owned or controlled is one in which the HH/CC service provider is not a family member of the individual and the individual does not own or lease the home. • HHSC is updating program handbooks and billing guidelines, and provider monitoring processes to align with amended TAC rules.
CLASS	• SFS • CFS	Policy changes: • HHSC has added new TAC rules to bring all settings in the CLASS program, including SFS and CFS settings, into compliance with HCBS settings requirements at 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 259. The new TAC rules became effective January 30, 2023. • HHSC is updating program handbooks and provider monitoring processes to align with amended TAC rules. Operational changes: • Because no individuals currently receive SFS or CFS services, HHSC will make any necessary additional modifications to SFS and CFS on a case-by-case basis.

Program	Residential Settings	Remediation Activities
DBMD	• Licensed ALFs (4-6-person settings) • Licensed home health assisted living (1-3-person settings)	Policy changes: • HHSC has added new TAC rules to bring all settings in the DBMD program, including licensed assisted living and licensed home health assisted living settings, into compliance with requirements in 42 CFR § 441.301(c)(4)(i)-(v). These new rules have been added as TAC Title 26, Part 1, Chapter 260. HHSC anticipates the new TAC rules will become effective in January 2023. • HHSC has amended TAC rules to bring licensed assisted living and licensed home health assisted living settings into compliance with HCBS Settings Rule requirements at 42 CFR § 441.301(c)(4)(vi). These new rules have been added as TAC Title 26, Part 1, Chapter 260, Subchapter G, Program Provider-Owned or Controlled Residential Settings. The new TAC rules became effective February 26, 2023. • HHSC is updating program handbooks and provider monitoring processes to align with amended TAC rules.

1115 Demonstration Waiver (STAR+PLUS HCBS Program)

Non-Residential Services

Through the internal and external assessments, HHSC has determined that non-residential services in the STAR+PLUS HCBS program currently meet requirements of the HCBS Settings Rule. However, to support ongoing compliance, HHSC is amending STAR+PLUS managed care contracts to bolster requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described in the rule. These contract amendments became effective in September 2022.

Residential Services

Program	Service	Remediation Activities
STAR+PLUS HCBS	• Assisted living	<u>Heightened scrutiny:</u> • HHSC submitted all ALFs participating the STAR+PLUS HCBS program for heightened scrutiny. • The process of completing evidentiary packages for each ALF setting included development of setting-specific remediation plans. <u>Policy changes:</u> • HHSC has amended STAR+PLUS managed care contractual requirements to bolster requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR § 441.301(c)(4)(i)-(v). • HHSC has amended STAR+PLUS managed care contractual requirements to require that the MCO ensures ALFs meet requirements of a provider-owned/controlled residential setting at 42 CFR § 441.301(c)(4)(vi), as a condition of contracting or credentialing to provide Medicaid HCBS.
	• AFC	<u>Policy changes:</u> • HHSC has amended STAR+PLUS managed care contractual requirements to bolster requirements for MCOs to ensure their contracted providers meet the requirements of an HCBS setting described at 42 CFR § 441.301(c)(4)(i)-(v). • HHSC has amended STAR+PLUS managed care contractual requirements to require that the MCO ensures AFC settings meet requirements of a provider owned/controlled residential setting at 42 CFR § 441.301(c)(4)(vi), as a condition of contracting or credentialing to provide Medicaid HCBS.

Transition of Day Habilitation to Individualized Skills & Socialization in HCS, TxHmL and DBMD Programs

HHSC has determined that day habilitation services do not meet the requirements of a home and community-based setting in 42 CFR § 441.301(c)(4)(i-v).

As authorized by the Texas Legislature in the 2022-23 General Appropriations Act (HB 1, 87th Legislature, Regular Session, 2021), HHSC has replaced day habilitation with individualized skills and socialization in the HCS, TxHmL, and DBMD programs.[38] Individualized skills and socialization is a new service that allows individuals greater access to and integration in the community. New TAC rules governing individualized skills and socialization (26 TAC § 559-Subchapter H, 26 TAC § 263-Subchapter L, 26 TAC § 262-Subchapter J, and 26 TAC § 260-Subchapter I) went into effect on January 1, 2023. These rules require individualized skills and socialization settings comply with 42 CFR § 441.301(c)(4). Individualized skills and socialization was implemented in January 2023 and out-of-home day habilitation is no longer offered.

Individualized skills and socialization will include an on-site component that is facility-based and off-site component that is community-based. HHSC anticipates individualized skills and socialization will have lower staffing ratios than day habilitation, to allow staff to provide more individual attention to program participants. The new service is intended to ensure individuals have access to more personalized habilitative activities, and to optimize an individual's initiative, autonomy, and independence in making life choices, in accordance with 42 CFR § 441.301(c)(4)(iv).

To comply with person-centered planning requirements in 42 CFR § 441.301(c)(3) and with requirements in 42 CFR § 441.301(c)(4)(iv) related to choice and autonomy in daily activities and social interactions, on-site individualized skills and socialization is designed to achieve outcomes identified in person-centered plans to a greater degree than the current day habilitation service. Individualized skills and socialization will provide more person-centered activities related to skill development; gaining greater independence, socialization, community participation; and meeting volunteer and employment goals. A provider will be prohibited from requiring individuals to take a skills test or meet similar thresholds to participate in off-site individualized skills and socialization. At any time, a person must be supported to pursue and achieve employment through school, vocational rehabilitation, or Medicaid HCBS waiver employment services.

To comply with community access and integration requirements in 42 CFR § 441.301(c)(4)(i), individualized skills and socialization includes an off-site component to ensure individuals have opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources and receive services in the community, to the same degree as people not receiving Medicaid HCBS. HHSC intends to request a CAP for individualized

[38] Individualized skills and socialization will be available through the Consumer Directed Services option in the TxHmL program.

skills and socialization to allow additional time to achieve full compliance for this service. Implementation of the off-site component of this service, which will ensure access to the broader community, has been directly affected by the public health emergency. Additional time is required to allow providers to achieve required staffing ratios, secure transportation, and build community partnerships necessary to implement the off-site component of this service.

An individualized skills and socialization provider must be either a TxHmL or HCS program provider, a DBMD program provider, or a subcontractor of a TxHmL, HCS or DBMD provider. An individualized skills and socialization provider must also be licensed by HHSC. The new TAC rules for individualized skills and socialization require that all providers receive an on-site licensure survey, conducted by HHSC's LTCR division prior to receiving a license. HHSC issues a license if it finds that the applicant or license holder, and the provider meet all applicable requirements of the TAC rules. LTCR may issue a temporary license for up to 180 days prior to completion of the on-site survey and issuance of a full license. HHSC's Contract Administration and Provider Monitoring (CAPM) staff is conducting on-site assessments of all individualized skills and socialization providers to assess for compliance with the HCBS Settings Rule for all settings that have not yet received a full license. HHSC's CAPM unit will work with providers to complete any remediation activities necessary to achieve full compliance.

HHSC will ensure ongoing compliance of all settings through the following processes:

1.) HHSC LTCR will conduct on-site licensure surveys of all on-site individualized skills and socialization providers. If the setting where on-site services will be provided is in the same building as, on the grounds of, or immediately adjacent to an institutional setting, a prospective individualized skills and socialization provider will be required to undergo heightened scrutiny review before applying for a license. HHSC LTCR division will conduct on-site inspections of licensed individualized skills and socialization providers at least once every two years after the initial survey for compliance with the HHSC LTCR licensing rules located in 26 TAC § 559, Subchapter H, which includes the following components of 42 CFR § 441.301(c)(4)(vi) that apply to non-residential settings:

- Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;
- Individuals are able to have visitors of their choosing at any time; and
- The setting is physically accessible to the individual.

2.) Separately, as part of the annual review of comprehensive HCS and TxHmL service providers, HHSC LTCR division will conduct a review of a sample of licensed individualized skills and socialization providers annually for compliance with the portions of 42 CFR §§ 441.301(c)(4)(i) through (v) that apply to non-residential settings, and 42 CFR § 441.301(c)(4)(vi)(F), including:

- The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in

competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS;

- The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs [and] preferences;
- Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact;
- Facilitates individual choice regarding services and supports, and who provides them; and
- Ensures any modifications to the requirements above are documented in the person-centered service plan.

LTCR surveyors will review service planning documents to ensure modifications or restrictions are documented in the individual's person-centered plan and that the provider is implementing the modification in accordance with what is documented. Service coordinators will be responsible for ensuring that any modification to the HCBS Settings Rule requirements is documented in the individual's person-centered plan in accordance with the requirements listed under 42 CFR § 441.301(c)(4)(vi)(F). HHSC requires service plans to be reviewed and updated at the first available opportunity, to reflect the individual's preferences and goals for individualized skills and socialization.

10. Monitoring

To ensure compliance with all applicable federal and state rules and regulations, HHSC conducts site-specific evaluations through existing processes such as licensing reviews, provider qualifications reviews and service coordination visit reports.

Current Monitoring Processes

1915(c) Waiver Programs

CLASS

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

DBMD

HHSC Medicaid & CHIP Services Provider Monitoring staff conduct on-site contract monitoring, at least biennially, to determine whether a contractor is following the terms of the contract, including compliance with applicable federal and state laws, rules, and regulations; provider manuals and handbooks; billing guidelines; service documentation requirements; and communications promulgated by HHSC such as information letters and provider letters. HHSC is responsible for developing and maintaining a monitoring schedule that ensures monitoring activities are conducted in accordance with the required monitoring frequency. HHSC may also conduct reviews based on a report of a complaint; death; ANE; and for monitoring visits to any providers. Biennial monitoring reviews of provider owned and controlled DBMD settings will include site-specific monitoring for compliance with all the HCBS Settings Rule requirements.

HCS and TxHmL

HHSC conducts on-site certification reviews of each HCS and TxHmL program provider, at least annually, to evaluate evidence of the program provider’s compliance with the certification principles. HHSC conducts, at least annually, unannounced surveys of each residence in which residential support or supervised living is provided to verify that the residence provides an environment that is healthy and safe for the individuals who live there and complies with all

HHSC rules. These reviews, in addition to certification reviews conducted by HHSC at least every four years, assess compliance with all HCBS Settings Rule criteria.

HHSC may also conduct reviews based on a report of a complaint; death; ANE; and for monitoring visits to any providers. HHSC may, at any time, conduct an unannounced survey of a residence in which host home/companion care is provided to determine if the residence provides an environment that is healthy and safe for the individuals who live there and complies with HHSC rules. Please refer to the HCS waiver application and TxHmL waiver application for complete details of program monitoring processes.

YES

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

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

MDCP

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

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

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

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

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

Please refer to the MDCP waiver application for complete details of program monitoring processes.

1115 Demonstration Waiver

STAR+PLUS HCBS

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

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

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

Monitoring for Ongoing Compliance with the HCBS Settings Rule

Provider Owned or Controlled Residential Settings

HCS

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

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

In addition, HHSC surveys HCS program providers for compliance with HCS certification principles annually. HHSC also reviews an HCS program provider's compliance with program billing requirements and policies and procedures at least once every four years as approved by the HCS Medicaid Application. Additional reviews will be conducted when significant issues or complaints are identified. Following certification reviews, all program providers receive a written certification review report that details any specific areas of non-compliance found during the review and includes instruction regarding the program provider's responsibility with regard to the areas of deficiency. If HHSC determines based on a survey that the program provider is not in compliance with all of the HCBS Settings rule requirements, HHSC may provide technical assistance, require a plan of correction or require evidence of correction, conduct a follow-up survey, impose an administrative penalty, or deny or terminate certification.

DBMD

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

In addition to ALF and home and community support services agency licensure activities, HHSC conducts at least biennial monitoring reviews of the DBMD provider to determine whether the provider is compliant with requirements in provider manuals and handbooks, billing guidelines, service documentation requirements, and communications promulgated by HHSC such as

information letters and provider letters. Biennial monitoring reviews of DBMD providers with owned and controlled settings will include site-specific monitoring for compliance with all the HCBS Settings rules. HHSC levies appropriate actions and sanctions for failure to follow program requirements based on the results of the monitoring activity and will conduct intermittent monitoring for providers that do not meet an acceptable compliance level during formal monitoring reviews.

CLASS

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

HHSC conducts biennial monitoring reviews of provider owned and controlled CLASS settings. This will include any prevocational, EA, and SE settings in which two or more individuals are grouped together for the purposes of receiving services. Site-specific monitoring of these settings includes assessment(s) for compliance with all the HCBS Settings Rule criteria.

STAR+PLUS HCBS

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

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

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

Other Provider Owned or Controlled Group Settings

Individualized Skills and Socialization in HCS, TxHmL, and DBMD

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

Non-Provider Owned or Controlled Settings

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

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

Managed care contracts require MCOs to ensure their contracted non-residential providers meet the applicable HCBS Settings rule requirements. See STP Appendix A, Systemic Internal Policy Assessment.

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

National Core Indicators (NCI)

HHSC relies on participant surveys for various programs, which will be critical in ongoing monitoring to ensure compliance with HCBS settings regulations. The surveys currently in use in Texas are described below. While the specific tools may change, HHSC will continue to use direct participant feedback as one measure of the quality of service delivery. HHSC uses NCI survey information as an indicator of systemic compliance and as a guide to address systemic issues However, NCI survey results are not used for site-specific assessment or monitoring.

- NCI Adult Consumer survey is administered to adult IDD services and supports recipients. Section I can be answered only by the individual in a face-to-face interview. Section II contains questions that can be answered by the individual or, if needed, by someone who knows the individual well, such as a family member, friend, guardian or advocate.
- NCI Child Family survey evaluates Medicaid waiver programs serving children with disabilities. Because these individuals are younger than 21 years, a caregiver is asked to provide information regarding overall experiences with the services and supports received. These surveys are administered by mail.
- Participant Experience Survey (PES) Elderly/Disabled evaluates the experiences and satisfaction of older adults and adults with physical disabilities. The PES is administered through face-to-face interviews. National Core Indicators-Aging and Disabilities (NCI-AD) collects member feedback on how MLTSS affect their quality of life and health outcomes. Face-to-face surveys are conducted biennially using a sample of members or a proxy.

11. Notification of Provider Non-Compliance

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

The Ombudsman's services include:

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

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

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

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

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

Complaints involving allegations of abuse, neglect, or exploitation are referred immediately to the Texas Department of Family and Protective Services (DFPS) and investigated by the appropriate area within DFPS or HHSC.

Managed Care Organization Complaint Process

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

The MCO's complaint procedures must be provided to members in writing and through oral interpretive services. The MCO must include a written description of the complaint process in their member handbook. The MCO must maintain and publish in the member handbook, at least one local and one toll-free telephone number with teletypewriter/telecommunications device for the deaf (TTY/TDD) and interpreter capabilities for making complaints. The MCO's process must require that every complaint received in person, by telephone, or in writing must be acknowledged and recorded in a written record and logged.

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

12. Heightened Scrutiny

A primary purpose of the HCBS Settings Rule is to ensure people get Medicaid HCBS in settings that are integrated in the community. CMS presumes that certain settings are not home and community-based because they have institutional or isolating qualities. However, the heightened scrutiny process allows states to demonstrate that settings can overcome this institutional presumption. These settings must go through a heightened scrutiny review by CMS.

CMS presumes the following types of settings have institutional or isolating qualities:

- **Prong 1 settings:** Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- **Prong 2 settings:** Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and
- **Prong 3 settings:** Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS

To identify presumptively institutional and isolating settings, HHSC relied on results of its internal and external assessments, which examined a range of criteria used to evaluate whether settings may have the effect of isolating individuals from the greater community. These criteria included geographic location and proximity to community resources; availability of transportation; choice of services and providers; opportunity to seek competitive employment; and the level of person-centered, community-based activities. Based on these assessment results, HHSC determined that all Medicaid HCBS settings, except day habilitation settings[5], currently do or can comply with the HCBS Final Rule by March 17, 2023.

The results of the assessments identified ALFs participating in the STAR+PLUS HCBS program as settings with institutional or isolating qualities. Therefore, HHSC will submit these settings for heightened scrutiny review.

The timelines and milestones for heightened scrutiny are in Appendix F to this STP.

ALFs in STAR+PLUS HCBS

To determine which ALF settings must be submitted for heightened scrutiny, HHSC relied on the results of its internal systemic policy assessment, as well as provider and participant survey data collected and analyzed by the Texas EQRO, as described in Section 7 of this STP. HHSC conducted a geographic analysis to support its determinations for the prongs under which each STAR+PLUS ALF will be submitted for heightened scrutiny. HHSC also conducted site-specific assessment, validation, and remediation processes for STAR+PLUS HCBS ALFs as described in Section 8 of this STP.

The EQRO survey results indicate that nearly all STAR+PLUS ALF settings have isolating qualities that require site-specific remediation. Additionally, both the EQRO survey results and HHSC's internal systemic policy assessment results indicate that policy barriers prevented all ALFs from fully complying with the HCBS Final Rule.[39]

HHSC clarifies that not all ALF settings fall under Prong 3. A list of ALF settings, organized by prongs, was posted in May 2022 and submitted to CMS (see list of settings starting on page 8 of the posting). Six settings fall into Prong 1, 21 settings fall into Prong 2, and 191 settings fall into Prong 3. A link to this list and an earlier initial list posted in October 2021 are included in the STP narrative (Section 12).

Considering all ALFs for heightened scrutiny allows HHSC and STAR+PLUS MCOs, in collaboration with each ALF setting, to confirm the ALF's compliance status and oversee any necessary remediation prior to the deadline for compliance with the HCBS Settings Rule. The site-specific assessment, validation, and remediation processes for STAR+PLUS HCBS ALFs are described in Section 8 of this STP.

In October 2021, HHSC posted a description of the heightened scrutiny process for STAR+PLUS HCBS ALFS and an initial list of settings for public comment. In May 2022, HHSC posted an updated list of STAR+PLUS HCBS ALF settings and a description of non-compliance issues and remediation activities necessary for ALFs to comply with the HCBS Settings Rule.

Intentional Communities

HHSC will submit intentional community settings to CMS for heightened scrutiny review.

Before new TAC rules for the HCS waiver program became effective March 1, 2023, intentional community settings were listed in the rules as a non-allowable setting for delivery of HCS program services. Under the new rules, an intentional community is an allowable setting type if compliant with the HCBS Settings Rule. Though not all intentional communities automatically fall under Prong 3, HHSC expects to submit for heightened scrutiny review intentional communities that apply to become HCS providers, because intentional communities are by definition settings where the entire community is made up of individuals with disabilities. HHSC does not have an expected number because it will depend on how many intentional communities seek to become Medicaid waiver providers.

HHSC will conduct an on-site assessment of identified intentional community settings to assess compliance with the HCBS Settings Rule and determine if the setting requires a heightened scrutiny review. Assessments will include: observing the physical characteristics of the setting; interviewing administrative staff, direct care staff, and individual(s) receiving services and/or their legally authorized representative(s); and reviewing the setting's written policies and procedure documents, such as the setting's residential agreement, money management forms,

[39] HHSC has revised its rules, managed care contracts, and managed care handbooks to ensure policies for STAR+PLUS HCBS ALFs meet requirements of the HCBS Settings Rule.

community activities and events calendar, and service planning documentation. HHSC uses a 79-question interview tool and 30-item observation tool for assessments. Observation criteria and interview questions are based on CMS Exploratory Questions.

As of March 27, 2023, HHSC has identified one intentional community setting. HHSC's determination that the setting should undergo heightened scrutiny was based on factors which included stakeholder feedback, and a request from the setting to undergo a heightened scrutiny review in order to demonstrate that the setting is able to overcome the isolating presumption. The setting was posted for public comment from March 13, 2023, through April 13, 2023.

Individualized Skills and Socialization

In the 2020-21 General Appropriations Act, the Texas Legislature directed HHSC to develop a plan to replace day habilitation services in the DBMD, HCS and TxHmL programs with more integrated services (HB 1, 86th Legislature, Regular Session, 2019). HHSC submitted its plan in December 2020 to the Texas Legislature and Office of the Governor. In 2021, the Texas Legislature authorized implementation of individualized skills and socialization to replace day habilitation (Rider 23, General Appropriations Act, 87th Legislature, Regular Session, 2021).

HHSC anticipates many day habilitation settings will apply for a license to deliver individualized skills and socialization. HHSC screens prospective individualized skills and socialization providers during the license application process to identify settings that may meet the institutional or isolating presumption.

As of July 13, 2023, HHSC has submitted one prospective individualized skills and socialization setting for heightened scrutiny review. This was based on the setting's proximity to a nearby public institution. As of July 13, 2023, HHSC has not identified any individualized skills and socialization settings that fall into Prong 3.

13. Communication with Beneficiaries Regarding Provider Choice

Based on external surveys and site-specific assessment results, HHSC anticipates all providers can comply with the HCBS Settings Rule by March 2023. HHSC is providing support and technical assistance to all providers of all HCBS programs to ensure full compliance with HCBS Settings Rule.

If an individual's provider is not able to fully comply with the HCBS Settings Rule and a change of providers is necessary, HHSC will provide at least 30 days' notice to the individual, their LARs and others regarding the need for relocation and the retention of Medicaid HCBS. Through existing person-centered service planning processes, HHSC will ensure the individual is provided the opportunity, necessary information, and support to make an informed choice of alternate setting(s) that comply with the HCBS Settings Rule. HHSC will also ensure critical services and supports are in place prior to the individual's transition. If relocation to a new Medicaid HCBS residential setting is determined necessary, HHSC will provide to CMS the timeline for the relocation process and the number of individuals affected.

HHSC will address provider and setting transitions on a case-by-case basis and utilizing the existing person-centered service planning process in each program to ensure all individuals are successfully transferred to a compliant provider. HHSC will provide information to individuals who choose to remain in non-compliant settings, informing them that any setting that is not compliant with HCBS Settings Rule after March 2023 will no longer be eligible as a setting in which Medicaid HCBS may be provided to Medicaid individuals and choosing to remain in a non-compliant setting after this date will affect their ability to receive Medicaid services in that setting.

HHSC has implemented processes intended to ensure that there will be no disruption of services during the transition period[40] and does not anticipate at this time that any individuals will need assistance in this regard.

[40] Individuals receiving day habilitation in the HCS, TxHmL and DBMD waiver programs will transition to receiving individualized skills and socialization, if an individual chooses this new service. HHSC anticipates there will not be gaps in service for these individuals during the transition to the new service.

Program-Specific Processes

HCS and TxHmL

In the event of a provider's contract termination, HHSC will work with LIDDA service coordinators and program providers to ensure continuity of services for each individual affected, utilizing the programs' existing person-centered service planning process.

The individual plan of care (IPC) must be revised to reflect the transfer. Within 14 calendar days of identifying the need for the transfer, the service coordinator must convene the service planning team to discuss the transfer, provide the individual with options for a new program provider or setting, and develop proposed revision(s) to the IPC.[41] The implementation plan and person-developed plan (PDP) will also be revised, as needed.

Note: The individual is not required to relocate to a new setting within the 14 calendar days. This is the required timeframe in which the service coordinator must convene the service planning team to discuss the relocation.

CLASS

As of March 2023, all individuals in the CLASS program live in their own homes or family home settings that are private residences. Relocations to new residential settings will not be necessary as private residences are presumed to be compliant with the HCBS Settings Rules. There are currently no individuals receiving SFS or CFS, the residential services available in CLASS.

In the event of a provider's contract termination, HHSC will work with case management agencies (CMAs) and direct services agencies (DSAs) to ensure continuity of services for each individual affected, utilizing the programs' existing person-centered service planning process for transfers to a new provider of non-residential services, including providers of prevocational, EA and SE services, as applicable.

The case manager provides the individual with the most current provider choice list and, within three business days following the individual's selection of a new provider, must make transfer arrangements with the new provider and establish an effective date for the transfer that is at least 14 calendar days **after** the date of receiving the notice of intent to transfer. The case manager coordinates with the providers involved to ensure a smooth transfer and submits to HHSC the individual's IPC, IPC Service Delivery Transfer Worksheet, and CLASS Selection Determination form.[42]

[41] 40 TAC § 9.166(b), Renewal and Revision of an IPC
[42] CLASS Provider Manual, Section 2340: Transfer

DBMD

In the event of a provider's contract termination, HHSC will work with program providers to ensure continuity of services for each individual affected, utilizing the programs' existing person-centered service planning process for provider transfers to a new provider of non-residential services, including providers of EA and SE services, as applicable.

The individual's current program provider coordinates transfer arrangements with the individual or LAR and the receiving program provider.[43] This includes designating an effective date that is at least 14 calendar days **after** the date of the transfer request. The program provider also submits a completed Service Delivery Transfer Worksheet to HHSC and the receiving program provider. The receiving program provider must ensure service delivery is not disrupted as a result of the transfer and must ensure a case manager meets with the individual or LAR face-to-face within 14 calendar days after the effective date of transfer. If necessary, the individual's IPC and IPP are revised.

Note: The individual is not required to relocate to a new setting within 14 calendar days; the transfer date must be a minimum of 14 calendar days after the date of the transfer request.

STAR+PLUS HCBS

If a managed care provider is terminated from an MCO's network and individuals need to be relocated to another facility or residence, HHSC requires the MCO to identify all affected individuals and submit a work plan to HHSC that outlines the MCO's strategy for relocating the individuals, including where individuals are being relocated; any new or additional services being put into place; and any other steps taken to ensure the individual's health, safety, continuity of care, and choice of provider. HHSC requires MCOs to maintain a provider network with sufficient capacity to provide timely access to all covered services to all individuals. If network access and adequacy are affected by the termination of a provider, HHSC will work with the MCOs to address this issue.

Residential Settings

For an individual who resides in an ALF or AFC, if the ALF or AFC provider is terminated or otherwise leaves the MCO's network, the MCO must notify the individual of the upcoming change within ten days of receiving final termination notice from the provider or ten days prior to the MCO's effective date of termination, whichever is earlier. Individuals who reside in an ALF or AFC setting that is found to be noncompliant will be provided a notice of at least 30 days prior to being required to transition to a compliant setting. If the individual wishes to stay with the current MCO, the MCO must notify the Individual of the date by which the provider will no longer

[43] 40 TAC § 42.231, Coordination of Transfers

be in network or eligible for reimbursement to serve the individual and assist the individual in locating and beginning services with a new provider.[44]

MDCP and YES Waiver

HHSC has determined that MDCP and YES waiver program providers are fully compliant with the HCBS Settings Rule. Therefore, no provider transitions will be needed related to compliance with the HCBS Settings Rule.

[44] UMCC, Section 8.2.1.1. HCBS LTSS Continuity of Care

14. Non-Disability Specific Settings

Current Settings

In all of the state's waiver programs, an individual may choose to live in their own home or family home. Some children and youth receiving Medicaid HCBS may be in Texas Department of Family and Protective Services (DFPS) conservatorship and reside in foster care settings; these are non-disability specific settings.

HHSC also offers choice of non-disability specific settings for non-residential services, in particular through individualized skills and socialization, employment services, and CFC.

Individualized Skills and Socialization

Individuals in the HCS, TxHmL and DBMD programs may currently receive day habilitation services, which are delivered in non-residential congregate settings. HHSC is replacing day habilitation with individualized skills and socialization, which includes an off-site component that is community based. Off-site individualized skills and socialization will be delivered in non-disability specific community settings and will allow greater choice among non-disability specific settings in which to receive day services and will facilitate community integration.

Settings for Employment Services

The state's 1915(c) waivers and the STAR+PLUS HCBS program offer EA and SE services. These are individualized services delivered in community settings. Individuals may choose to receive these services in locations that are not disability-specific, such as a typical business or office in the community. Individuals may receive EA services in HCBS Settings-compliant group settings, including at individualized skills and socialization settings (section nine of the STP describes HHSC's approach for compliance with the HCBS Settings Rule for individualized skills and socialization settings). If the state identifies settings in which individuals are grouped or clustered together for the purposes of receiving EA, SE, or prevocational services, the state will conduct an on-site assessment of the setting for compliance with all the HCBS Settings Rule requirements.

CFC

In 2015, Texas implemented the 1915(k) CFC option, which provides personal assistance services, habilitation, emergency response services, and support management to individuals. Implementation of CFC expanded access to personal care services, enabling more people to receive Medicaid HCBS in their own homes and non-disability specific community settings of their choice.

Initiatives to Expand Non-Disability Specific Setting Options

Money Follows the Person Demonstration

CMS sponsors the Money Follows the Person Demonstration (MFPD) to support state efforts to rebalance their long-term services and supports system so that people have a choice of where they live and receive services. Since its inception, MFPD has helped over 44,000 Texans move from institutions to the community. MFPD helps Texas increase the use of HCBS and reduce the use of institutionally-based services.

MFPD is part of the state's Promoting Independence Initiative, the state's response to the supreme court Olmstead decision (119 S.CT. 2176). Promoting Independence uses state general revenue to provide community-based services in the most integrated setting, within certain limitations.

In calendar year 2021, HHSC received over $28 million in federal funds to help people transition out of nursing facilities, state supported living centers (SSLCs), intermediate care facilities for individuals with intellectual disabilities (ICFs/IID), and other institutions. Funds also support behavioral health services that help people remain in the community, integrated employment that promotes greater self-sufficiency, and community-based supports to persons with intellectual and developmental disabilities who have complex medical and behavioral health needs.

HHSC also collaborates with the Texas Department of Housing and Community Affairs (TDHCA) to provide affordable, accessible, and integrated housing for persons transitioning from institutional settings. The Section 811 Project Rental Assistance (PRA) program is a federally funded program that pays part of a tenant's rent, based on income, making their housing more affordable. In this program, the U.S. Department of Housing and Urban Affairs (HUD) funds the housing assistance while HHSC provides services under a Medicaid waiver. The Money Follows the Person Demonstration supports administration of the program. The rental housing support is available in Section 811 PRA housing located in eight regions of the state. The program has housed over 600 people since it began in 2016.

TDHCA also operates Project Access, a rental assistance program that provides housing vouchers to low-income people transitioning from nursing facilities. HUD funds are used to pay for the vouchers while HHSC provides services under a Medicaid waiver. MFPD funds are used for administration of the program. Housing vouchers allow people to rent privately owned housing in the community at a lower cost. Thus far, the program has helped 1,761 people.

American Rescue Plan Act (ARPA) Initiatives

HHSC is utilizing federal funds available through ARPA to support delivery of Medicaid HCBS, including initiatives that will support expansion of non-disability specific setting options for individuals. Initiatives include:

- Implementing the new individualized skills and socialization service in the HCS, TxHmL, and DBMD waiver programs;
- Offering provider recruitment and retention bonuses to direct care community-based providers (i.e., providers of Medicaid attendant care services and HCBS nursing services);
- Developing a registry system that will assist in matching direct care attendants with employers, including home health agencies and employers participating in the Consumer Directed Services option;[45]
- Supporting providers of mental health services in the YES Waiver and HCBS-AMH programs, including identifying and recruiting new providers across the state and strategizing with provider agencies to identify innovative solutions to provider shortages;
- Increasing technology use by providers in the YES Waiver and HCBS-AMH programs to increase availability of remote delivery for mental health services; and
- Funding additional slots for individuals in the HCS, TxHmL, CLASS, DBMD, MDCP, and STAR+PLUS HCBS waiver programs.

[45] The CDS option is Texas Medicaid's self-direction option that is available for state plan personal care services, CFC PAS/HAB, and certain waiver services.

15. Corrective Action Plan

HHSC submitted a Corrective Action Plan (CAP) to CMS on November 29, 2022. HHSC intends to modify the CAP to include the activities described below. HHSC will request an end date of March 2024, by which time all activities described in the CAP will be fully implemented.

HHSC Planned CAP Requests

All HCBS Programs

HHSC will request additional time to identify, assess and validate compliance, remediate, and if needed, conduct provider disenrollment and participant relocation to a compliant setting for all SE, EA, and prevocational services settings where people are grouped or clustered together for the purpose of receiving services.

Note: Prevocational services are offered only in the CLASS waiver.

Individualized Skills and Socialization

HHSC will request additional time to complete assessments and remediation for compliance with access to the broader community, and if needed provider disenrollment and participant relocation to a compliant setting.

On-Site Component

HHSC will request additional time to complete assessments and remediation for compliance with access to the greater community, and if needed, provider disenrollment and participant relocation to a compliant setting[46].

Off-Site Component

HHSC will request additional time to work towards full compliance by March 2024.

HCS Program

3 and 4 person Residences HHSC will request additional time for the completion of on-site assessments, remediation, and if needed provider disenrollment and participant relocation to a compliant setting.

[46] Individualized skills and socialization is a non-residential service, so is not required to meet all residential criteria of the HCBS Settings Rule.

Host Home and Companion Care Homes

HHSC will request additional time for the completion of on-site assessments, remediation, and if needed provider disenrollment and participant relocation to a compliant setting.

DBMD

ALFs

HHSC will request additional time for the completion of remediation, and if needed, provider disenrollment and participant relocation to a compliant setting.

STAR+PLUS

STAR+PLUS, ALFs and AFCs

HHSC will request additional time for completion of on-site assessments, remediation and if needed provider disenrollment and participant relocation to a compliant setting.

Findings from CMS Site Visit Report

Heightened Scrutiny

HHSC will request additional time to submit any additional heightened scrutiny requests for settings following the public comment and address heightened scrutiny findings related to CMS' heightened scrutiny reviews, including remediation as a result of the site visit report.

16. List of Acronyms

Acronym	Term
AFC	Adult Foster Care
ALF	Assisted Living Facility
ANE	Abuse, Neglect and Exploitation
CAP	Corrective Action Plan
CAPM	Contract Administration and Provider Monitoring
CBA	Community Based Alternatives
CFC	Community First Choice
CLASS	Community Living Assistance and Support Services
CFR	Code of Federal Regulation
CFS	Continued Family Services
CMS	Centers for Medicare & Medicaid Services
DADS	Department of Aging and Disability Services
DBMD	Deaf Blind with Multiple Disabilities
DFPS	Department of Family and Protective Services
DSHS	Department of State Health Services

Acronym	Term
EA	Employment Assistance
EQRO	External Quality Review Organization
FFS	Fee-for-service
FFSS	Flexible Family Support Services
FMS	Financial Management Services
HCS	Home and Community-based Services
HCBS	Home and Community Based Services
HCBS-AMH	Home and Community Based Services – Adult Mental Health
HCSSA	Home and Community Support Services Agency
HHSC	Health and Human Services Commission
ICF/IID	Intermediate Care Facility for an Individual with an Intellectual Disability
ID	Intellectual Disability
IDD	Intellectual and Developmental Disabilities
IDD SRAC	Intellectual and Developmental Disabilities System Redesign Advisory Committee
IMD	Institution for Mental Disease

Acronym	Term
LAR	Legally Authorized Representative
LHHAL	Licensed Home Health Assisted Living
LOC	Level of Care
LIDDA	Local Intellectual and Developmental Disability Authority
LTCR	Long-Term Care Regulation
LTSS	Long-Term Services and Supports
MCO	Managed Care Organization
MDCP	Medically Dependent Children Program
MLTSS	Managed Long Term Services and Supports
NCI	National Core Indicators
NCI-AD	National Core Indicators – Aging and Disability
NF	Nursing Facility
PES	Participant Experience Survey
PNI	Public Notice of Intent
SE	Supported Employment
SPA	State Plan Amendment

Acronym	Term
SSLC	State Supported Living Center
STAR Kids	State of Texas Access Reform Kids
STAR+PLUS HCBS	State of Texas Access Reform PLUS Home and Community Based Services
TAC	Texas Administrative Code
TAS	Transition Assistance Services
TxHmL	Texas Home Living
UR	Utilization Review
YES	Youth Empowerment Services