The Texas Health and Human Services Commission will administratively transfer the rule in [40 TAC §9.181](https://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=9&rl=181) to 26 TAC §565.43. These draft rules reference that rule in the new location.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER A OVERVIEW

§565.1. Purpose.

(a) The purpose of this chapter is to promote the health, safety, and welfare of the individuals by establishing the minimum health and safety expectations and responsibilities of a Home and Community-based Services program provider.

(b) This chapter applies to program providers.

(c) HHSC will use the rules in this chapter to establish regulatory compliance by a program provider.

§565.3. Definitions.

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

 (1) Abuse--

 (A) physical abuse;

 (B) sexual abuse; or

 (C) verbal or emotional abuse.

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

 (A) interactions with the applicant or individual;

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

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

 (3) Actual harm--A negative outcome that compromises an individual's physical, mental, or emotional well-being but does not constitute an immediate threat.

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

 (5) Alarm call--A signal transmitted from an individual's Community First Choice (CFC) emergency response services (ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

 (6) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

 (7) Applicant--A Texas resident seeking services in the Home and Community-based Services (HCS) Program.

 (8) Behavioral emergency--A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

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

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

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

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

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

 (10) Calendar day--Any day, including weekends and holidays.

 (11) CDS option--Consumer directed services option. A service delivery option as defined in 40 TAC §41.103 (relating to Definitions).

 (12) Certification standard--A minimum standard for a program provider used by the Texas Health and Human Services Commission (HHSC) during a survey to ensure health and safety of an individual. Violations of a certification principle or standard are subject to administrative penalties.

 (13) CFC--Community First Choice.

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

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

 (16) CFC FMS--CFC Financial management services. The term used for FMS on the individual plan of care (IPC) of an applicant or individual if the applicant or individual receives only CFC personal assistance services/habilitation (PAS/HAB) through the CDS option.

 (17) CFC PAS/HAB--CFC personal assistance services/habilitation. A service that:

 (A) consists of:

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

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

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

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

 (IV) assistance with health-related tasks; and

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

 (I) self-care;

 (II) personal hygiene;

 (III) household tasks;

 (IV) mobility;

 (V) money management;

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

 (VII) use of adaptive equipment;

 (VIII) personal decision making;

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

 (X) self-administration of medication; and

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

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

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

 (20) Chemical restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

 (21) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

 (22) Cognitive rehabilitation therapy--A service that:

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

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

 (23) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

 (24) Contract--A provisional contract or a standard contract.

 (25) Controlling person--A person who:

 (A) has an ownership interest in a program provider;

 (B) is an officer or director of a corporation that is a program provider;

 (C) is a partner in a partnership that is a program provider;

 (D) is a member or manager in a limited liability company that is a program provider;

 (E) is a trustee or trust manager of a trust that is a program provider; or

 (F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

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

 (27) Critical incident--An event listed in the *HCS Provider User Guide* found on the HHSC website.

 (28) Critical violation--A violation for which HHSC may assess an administrative penalty before giving a program provider an opportunity to correct the violation. A critical violation:

 (A) is an immediate threat;

 (B) has resulted in actual harm and is widespread;

 (C) has resulted in actual harm and is a pattern; or

 (D) has the potential to result in actual harm and is widespread.

 (29) DADS--The Texas Health and Human Services Commission.

 (30) DARS--The Texas Workforce Commission.

 (31) DFPS--The Department of Family and Protective Services.

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

 (33) Emergency Plan--A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency such as a fire or natural disaster.

 (34) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the legally authorized representative (LAR) should be informed, such as:

 (A) an individual needing emergency medical care;

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

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

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

 (35) Enclosed bed--A protective device that:

 (A) is commercially produced;

 (B) includes a 360-degree side enclosure; and

 (C) may or may not have a top cover or canopy.

 (36) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

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

 (38) FMS--Financial management services. A service, as defined in 40 TAC §41.103, that is provided to an individual participating in the CDS option.

 (39) FMSA--Financial management services agency. As defined in 40 TAC §41.103, an entity that provides financial management services to an individual participating in the CDS option.

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

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

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

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

 (42) Four-person residence--A residence:

 (A) that a program provider leases or owns;

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

 (i) residential support;

 (ii) supervised living;

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

 (iv) respite;

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

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

 (E) that is not a dwelling described in 40 TAC §9.155(a)(5)(H) (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

 (43) Good cause--As used in §565.19(a) of this chapter (relating to Community First Choice (CFC) Emergency Response Systems (ERS) Services), a reason outside the control of the CFC ERS provider, as determined by HHSC.

 (44) GRO--General residential operation. The term has the meaning set forth in Texas Human Resources Code §42.002.

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

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

 (47) HHSC--The Texas Health and Human Services Commission.

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

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

 (50) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program is:

 (A) licensed in accordance with Texas Health and Safety Code Chapter 252; or

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

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

 (52) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC for level of care (LOC) determination and level of need (LON) assignment.

 (53) Immediate threat--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of an individual.

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

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

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

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

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

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

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

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

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

 (55) Individual--A person enrolled in the HCS Program.

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

 (57) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

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

 (59) Intermittent survey--A review by HHSC of a program provider, which may originate from a complaint, that is not an initial certification survey, a recertification survey, or a follow-up survey, to determine if the program provider is in compliance with the certification standards.

 (60) IPC--Individual plan of care. A written plan that:

 (A) states:

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

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

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

 (B) is authorized by HHSC.

 (61) IPC cost--Estimated annual cost of HCS Program services included on an IPC.

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

 (63) Isolated--The scope of a violation that has affected a very limited number of individuals or that has occurred only occasionally.

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

 (65) LIDDA--Local intellectual and developmental disability authority. An entity designated by the HHSC Executive Commissioner, in accordance with Texas Health and Safety Code §533A.035.

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

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

 (68) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code Chapter 301.

 (69) Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

 (70) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid for which an applicant or individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income benefits.

 (71) Means of escape--A continuous and unobstructed path of travel from an occupied portion of a building to an outside area.

 (72) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body.

 (73) Microboard--A program provider:

 (A) that is a non-profit corporation:

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

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

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

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

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

 (A) a military member; or

 (B) a former military member.

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

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

 (77) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

 (78) Nursing facility--A facility licensed in accordance with Texas Health and Safety Code Chapter 242.

 (79) Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with certification standards and the failures:

 (A) are found throughout the services provided by the program provider; or

 (B) involve or affect the same individuals, service providers, or volunteers.

 (80) PDP--Person-directed plan. A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the HHSC Person-Directed Plan form and discovery tool found on the HHSC website, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

 (81) Performance contract--A written agreement between HHSC and a LIDDA for the performance of delegated functions, including those described in Texas Health and Safety Code §533A.035.

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

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

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

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

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

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

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

 (85) Physical abuse--Any of the following:

 (A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

 (B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

 (C) the use of a restraint on an individual in a manner that is not in compliance with federal and state laws, rules, and regulations; or

 (D) seclusion.

 (86) Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or prompting of brief duration that an individual does not resist, that restricts:

 (A) the free movement or normal functioning of all or a part of the individual's body; or

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

 (87) Plan of correction--A plan documented on the HHSC Plan of Correction form that includes the corrective action that a program provider will take for each violation identified on a final survey report.

 (88) Plan of removal--A written plan that describes the action a program provider will take to remove an immediate threat that HHSC identifies.

 (89) Post 45-day follow-up survey--A follow-up survey conducted at least 46 calendar days after the exit conference of the survey in which the violation requiring corrective action was identified.

 (90) Post-move monitoring visit--A visit conducted by the service coordinator in accordance with the *Intellectual and Developmental Disability Preadmission Screening and Resident Review (IDD-PASRR) Handbook*.

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

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

 (93) Pre-move site review--A review conducted by the service coordinator in accordance with HHSC’s *IDD PASSR Handbook*.

 (94) Program provider--A “person” as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with HHSC to provide HCS Program services, excluding an FMSA.

 (95) Protective Device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, used only to protect an individual from injury, or for body positioning of the individual to ensure health and safety, and not used to modify or control behavior. The device or item is considered a protective device only when used in accordance with §565.35 of this chapter (relating to Protective Devices).

 (96) Provisional contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than three years, not including any extension agreed to in accordance with §49.208(e).

 (97) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

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

 (99) Related condition--A severe and chronic disability that:

 (A) is attributed to:

 (i) cerebral palsy or epilepsy; or

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

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

 (C) is likely to continue indefinitely; and

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

 (i) self-care;

 (ii) understanding and use of language;

 (iii) learning;

 (iv) mobility;

 (v) self-direction; and

 (vi) capacity for independent living.

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

 (101) Renewal IPC--An IPC developed for an individual in accordance with 40 TAC §9.166(a) (relating to Renewal and Revision of an IPC).

 (102) Repeated violation--A violation that is based on the same certification standard and involves the same HCS Program service or CFC service as a previous violation.

 (103) Residence-- A host home/companion care, three-person, or four-person residence, as defined by the *HCS Program Billing Guidelines*.

 (104) Residential survey--A review of a residence HHSC to determine if the program provider is in compliance with §565.23 of this chapter (relating to Residential Requirements).

 (105) Responder--A person designated to respond to an alarm call activated by an individual.

 (106) Restraint--Any of the following:

 (A) a physical restraint;

 (B) a mechanical restraint; or

 (C) a chemical restraint.

 (107) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with 40 TAC §9.166(b) or (d) to add a new HCS Program service or CFC service or change the amount of an existing service.

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

 (109) Seclusion--The involuntary placement of an individual in an area from which the individual is prevented from leaving.

 (110) Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

 (111) Service coordination--A service as defined in 40 TAC Chapter 2, Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability).

 (112) Service coordinator--An employee of a LIDDA who provides service coordination to an individual.

 (113) Service planning team--One of the following:

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

 (i) an applicant or individual and LAR;

 (ii) service coordinator; and

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

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

 (i) the applicant and LAR;

 (ii) service coordinator;

 (iii) a staff member of the program provider;

 (iv) providers of specialized services;

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

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

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

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

 (i) the individual and LAR;

 (ii) service coordinator;

 (iii) a staff member of the program provider;

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

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

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

 (115) Sexual abuse--Any of the following:

 (A) sexual exploitation of an individual;

 (B) non-consensual or unwelcomed sexual activity with an individual; or

 (C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

 (116) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

 (117) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

 (A) which may include sexual contact; and

 (B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

 (118) Specialized services--The services defined in §303.102 of this title (relating to Definitions).

 (119) SSI--Supplemental Security Income.

 (120) Staff member--An employee or contractor of an HCS Program provider.

 (121) Standard contract--A contract that HHSC enters into with a program provider in accordance with 40 TAC §49.209 (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with 40 TAC §49.209(d).

 (122) State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

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

 (124) Support consultation--A service, as defined in 40 TAC §41.103, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

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

 (126) System check--A test of the CFC ERS equipment to determine if:

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

 (B) the equipment is working properly.

 (127) TANF--Temporary Assistance for Needy Families.

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

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

 (i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;

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

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

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

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

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

 (i) purchasing bedroom furniture;

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

 (iii) paying for allergen control.

 (129) Three-person residence--A residence:

 (A) that a program provider leases or owns;

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

 (i) residential support;

 (ii) supervised living;

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

 (iv) respite;

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

 (D) that is not a dwelling described in 40 TAC §9.155(a)(5)(H).

 (130) Transition plan--As described in §303.102 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

 (131) Transportation plan--A written plan based on person-directed planning and developed with an applicant or individual using the HHSC Individual Transportation Plan form found on the HHSC website. A transportation plan is used to document how transportation as a supported home living activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

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

 (133) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

 (A) to:

 (i) harass, intimidate, humiliate, or degrade an individual; or

 (ii) threaten an individual with physical or emotional harm; and

 (B) that:

 (i) results in observable distress or harm to the individual; or

 (ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

 (134) Violation--A finding by HHSC that a program provider is not or was not in compliance with a certification standard.

 (135) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

 (136) Widespread--The scope of a violation that:

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

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

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

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER B CERTIFICATION STANDARDS: INDIVIDUAL’S RIGHTS

§565.5. Rights of Individuals.

(a) The program provider must encourage and assist the:

 (1) individual, or the LAR on behalf of the individual, in exercising the same rights and responsibilities exercised by people without disabilities; and

 (2) LAR or family members in encouraging the individual to exercise the same rights and responsibilities exercised by people without disabilities.

(b) The program provider must develop and implement policies that ensure the individual is informed of his or her rights and can exercise his or her rights without interference, coercion, discrimination, or retaliation from the program provider. This includes the right to:

 (1) manage, be trained to manage, or have assistance in managing financial affairs upon documentation of the individual's written request for assistance;

 (2) access public accommodations;

 (3) be informed of requirements for participation;

 (4) be informed both orally and in writing of all the HCS Program services and CFC services available and rules pertaining to the individual's enrollment and participation in the program provider's program, including those related to the use of restraint, as well as any changes in these that occur;

 (5) be informed of the individual's IPC, implementation plan, and transportation plan, including any restrictions affecting the individual's rights;

 (6) participate in decisions and be informed of the reasons for decisions regarding plans for enrollment, service termination, transfer, relocation, or denial of HCS Program service or CFC services;

 (7) be informed about the individual's own health, mental condition, and related progress;

 (8) be informed of the name and qualifications of any person serving or treating the individual and to choose among various available service providers;

 (9) receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals;

 (10) have privacy in visitation with family and other visitors;

 (11) make and receive telephone calls in private;

 (12) send and to receive sealed and uncensored mail;

 (13) attend or refuse to attend religious activities;

 (14) participate in developing a pre-discharge plan that addresses assistance for the individual after he or she leaves the program;

 (15) be free from the use of unauthorized restraints;

 (16) live in a normative residential living environment;

 (17) access free public schooling according to the Texas Education Code;

 (18) live where the individual is within proximity of and can access treatment and services that are best suited to meet the individual's needs and abilities and enhance that individual's strengths;

 (19) have a personalized IPC, implementation plan, and transportation plan, based on individualized assessments that meet the individual's needs and abilities and enhance that individual's strengths;

 (20) help decide what the implementation plan and transportation plan will be;

 (21) be informed as to the progress or lack of progress being made in the execution of the implementation plan and transportation plan;

 (22) choose from the same services that are available to all community members, including those without disabilities;

 (23) be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the implementation plan and transportation plan;

 (24) complain at any time to a staff member or service provider;

 (25) receive appropriate support and assistance from a staff member or service provider to address concerns if the individual dislikes or disagrees with the services being rendered or thinks that his or her rights are being violated;

 (26) live free from abuse, neglect, or exploitation in a healthful, and safe environment;

 (27) participate in decisions regarding the individual's living environment, including location, furnishings, personal property, other individuals residing in the residence, and moves to other residential locations;

 (28) have service providers who are responsive to the individual and, at the same time, are responsible for the overall functioning of the HCS Program;

 (29) have active personal assistance in exercising civil and self-advocacy rights attainment by provisions for:

 (A) complaints;

 (B) voter registration;

 (C) citizenship information and education;

 (D) advocacy services; and

 (E) guardianship;

 (30) receive counseling concerning the use of money;

 (31) possess and to use money in personal and individualized ways or learn to do so;

 (32) access all financial records regarding the individual's funds;

 (33) have privacy during treatment and care of personal needs;

 (34) have privacy during visits by his or her spouse if living apart;

 (35) share a room when both spouses are living in the same residence;

 (36) be free from serving as a source of labor when residing with persons other than family members;

 (37) communicate, associate, and meet privately with any person, including other individuals, of his or her choice, unless this violates the rights of another individual;

 (38) participate in social, recreational, and community group activities;

 (39) have his or her LAR involved in activities, including:

 (A) being informed of all rights and responsibilities when the individual is enrolled in the program provider's program, as well as any changes in rights or responsibilities before they become effective;

 (B) participating in the planning for HCS Program services and CFC services; and

 (C) advocating for all rights of the individual;

 (40) be informed of the individual's option to transfer to other program providers as chosen by the individual or LAR as often as desired;

 (41) complain to HHSC when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, and to be informed of the Intellectual and Developmental Disability Ombudsman telephone number to initiate complaints (1-800-252-8154); and

 (42) have opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual’s choice and routines of other members of the community.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER C CERTIFICATION STANDARDS: STAFF MEMBER AND SERVICE PROVIDER REQUIREMENTS

§565.7. Staff Member and Service Provider Requirements.

(a) The program provider must employ or contract with a person who oversees the provision of HCS Program services and CFC services to an individual. The person must:

 (1) have at least three years paid work experience in planning and providing HCS Program services or CFC services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer;

 (2) have at least three years of experience planning and providing services similar to HCS Program services or CFC services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; or

 (3) have at least three years of experience on a microboard with duties that include overseeing, planning, or providing services to an individual with an intellectual disability or related condition as verified, in a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(b) The program provider must ensure that a staff member or service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, respite, supportive employment, and employment assistance:

 (1) meets the criteria for employment in the HCS Billing Requirements and Appendix C of the HCS Program waiver application from CMS located on the HHSC website; and

 (2) is qualified to deliver required services from the PDP, IPC, and implementation plan to meet the needs of each individual it provides services to as evidence by:

 (A) documented training specific to the individual’s needs and characteristics conducted before service provision and at least every twelve months thereafter;

 (B) observed competency; and

 (C) if the service provider participates in developing an implementation plan for CFC PAS/HAB, the service provider or staff member must complete person-centered service planning training approved by HHSC within 90 days of hire.

(c) A program provider must develop and implement policy and procedures that ensure only qualified service providers administer nursing, dental, or professional therapies which includes:

 (1) ensuring that the service providers:

 (A) meet eligibility criteria in the HCS Billing Requirements and Waiver Application from CMS located on the HHSC website; and

 (B) if providing behavioral support services, complete the web-based HCS and TxHmL Behavioral Support Services Provider Policy Training available on the HHSC website:

 (i) before providing behavioral support services;

 (ii) within 90 calendar days after the date HHSC issues notice to program providers that HHSC revised the web-based training; and

 (iii) within three years after the most recent date of completion.

 (2) putting safeguards in place to ensure:

 (A) the service provider continues to be licensed and in good standing with its licensing board during the provision of services to an individual;

 (B) the service provider only provides services that fall within the scope of its license as defined in the Texas Occupation Code;

 C) the program provider complies with each applicable regulation required by the State of Texas in ensuring that its operations, staff members and service providers meet state certification, licensure, and regulatory requirements for any tasks performed or services delivered in part or in entirety for the HCS Program; and

 (D) the policy or practice is revised if a shortcoming is identified.

(d) A program provider must ensure that a service provider of TAS:

 (1) is at least 18 years of age;

 (2) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;

 (3) is not a relative of the applicant;

 (4) is not the LAR of the applicant;

 (5) does not live with the applicant; and

 (6) is capable of providing TAS and complying with the documentation requirements described in §565.21(a)(2)(A) of this chapter (relating to Transitional Assistance Service (TAS)).

(e) A program provider must:

 (1) ensure that a service provider of CFC PAS/HAB:

 (A) is at least 18 years of age;

 (B) has:

 (i) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

 (ii) documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

 (I) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

 (II) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served;

 (C) is not:

 (i) the spouse of the individual; or

 (ii) a parent of the individual if the individual is a minor; and

 (D) meets any other qualifications requested by the individual or LAR based on the individual's needs and preferences; and

 (2) if requested by an individual or LAR:

 (A) allow the individual or LAR to:

 (i) train a CFC PAS/HAB service provider in the specific assistance needed by the individual; and

 (ii) have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

 (B) ensure that a CFC PAS/HAB service provider attends training by HHSC to meets any additional qualifications requested by the individual or LAR.

§565.9. Program Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs and characteristics.

(b) The program provider must:

 (1) comply with 40 TAC §49.304 (relating to Background Checks);

 (2) comply with 40 TAC §49.312 (relating to Personal Attendants), including when the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider;

 (3) obtain the criminal history record of the potential staff member or potential contractor from the Texas Department of Public Safety (DPS) directly or through a private agency before hiring or contracting with the potential staff member;

 (4) not employ or contract with a potential staff member, service provider, or volunteer who:

 (A) has been convicted of an offense listed in Texas Health and Safety Code §250.006 for the time periods set forth in Texas Health and Safety Code §250.006; or

 (B) has been convicted of an offense that the program provider determines is a contraindication;

 (5) search the following registries before hire or execution of a contract and every twelve months thereafter to determine if a staff member or service provider is eligible for employment:

 (A) the Employee Misconduct Registry; and

 (B) the Nurse Aid Registry;

 (6) search the following registries before hire or execution of a contract and every month thereafter to determine if an employee or contractor is eligible for employment:

 (A) the List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services; and

 (B) the List of Excluded Individuals and Entities maintained by HHSC Office of Inspector General; and

 (7) not hire or continue employment for a staff member or service provider who is listed on:

 (A) the Employee Misconduct Registry as unemployable;

 (B) the Nurse Aide Registry as revoked or suspended;

 (C) the List of Excluded Individuals and Entities maintained by the United States Department of Health; or

 (D) the List of Excluded Individuals and Entities maintained by Health and Human Services office of Inspector General or by HHSC Office of Inspector General.

(c) The program provider must develop and implement policy and procedures that ensure staff members and service providers without a valid driver’s license and insurance do not transport individuals. This includes:

 (1) written policy requiring verification of a valid license and insurance according to Texas state law;

 (2) an ongoing verification process to ensure a staff member and service provider continues to have a valid driver’s license and insurance according to Texas state law; and

 (3) revising a policy or practice if a shortcoming is identified.

(d) If the service provider of supported home living or CFC PAS/HAB is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (b)(2) of this section as if the contractor were the program provider.

(e) The program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service or CFC service to the individual:

 (1) if that person or entity:

 (A) is qualified to provide the service; and

 (B) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter; or

 (2) the program provider has documented good cause to not employ or contract with the individual or LAR’s choice.

(f) If a program provider contracts with a person or entity to provide TAS, the person or entity must have a contract to provide TAS in accordance with 40 TAC Chapter 49 (relating to Contracting for Community Services).

(g) The program provider must create and implement a policy that prevents:

 (1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services (except payment for room and board) from which the program provider, staff member, or service provider could financially benefit;

 (2) financial impropriety toward an individual including:

 (A) unauthorized disclosure of information related to an individual's finances; and

 (B) using an individual’s funds for the purchase of goods that the individual cannot use;

 (3) abuse, neglect, or exploitation of an individual;

 (4) damage to or prevention of an individual's access to the individual's possessions; and

 (5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(h) A program provider must comply with 42 USC §1396a(w), regarding requirements about advance directives.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER D CERTIFICATION STANDARDS: SERVICE DELIVERY

§565.11. Service Delivery.

(a) The program provider must:

 (1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system;

 (2) serve an eligible applicant without regard to age, sex, race, or level of disability;

 (3) provide or obtain as needed and without delay all HCS Program services and CFC services for an individual;

 (4) maintain a system of delivering HCS Program services and CFC services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

 (5) ensure that each applicant or individual, or LAR, chooses where the individual or applicant will reside from available options consistent with the applicant's or individual's needs;

 (6) ensure that an individual’s rights as identified in §565.5 of this chapter (relating to Rights of Individuals) are not violated unless contraindications are documented with justification in a Behavior Support Plan;

 (7) notify the service coordinator if a change in an individual’s condition necessitates a change in residential, educational, or work settings;

 (8) inform appropriate staff members, service providers, and the service coordinator when a circumstance or event occurs in an individual's life or a change to an individual's condition affects the provision of services to the individual;

 (9) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or CFC services or an individual or LAR has requested termination of all HCS Program services or all CFC services;

 (10) ensure that the IPC for each individual:

 (A) is renewed or revised in accordance with 40 TAC §9.166 (relating to Renewal and Revision of an IPC); and

 (B) is authorized by DADS in accordance with 40 TAC §9.160 (relating to DADS Review of a Proposed IPC);

 (11) ensure that HCS Program services and CFC services identified in the individual's implementation plan and transportation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

 (12) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

 (13) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

 (14) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

 (A) accurate recordings of individual production or performance;

 (B) valid and current time studies or monitoring as appropriate; and

 (C) prevailing wage rates;

 (15) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

 (16) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

 (17) ensure the coordination and compatibility of HCS Program services and CFC services with non-HCS Program services and non-CFC services together with an individual's service coordinator;

 (18) ensure that an individual has a current implementation plan;

 (19) ensure the following regarding professional therapies:

 (A) are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website:

 (i) audiology services;

 (ii) speech/language pathology services;

 (iii) occupational therapy services;

 (iv) physical therapy services;

 (v) dietary services;

 (vi) social work services;

 (vii) behavioral support; and

 (viii) cognitive rehabilitation therapy; and

 (B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

 (i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and

 (ii) uses a qualified professional as described in §565.7 of this chapter (relating to Staff Member and Service Provider Requirements) to provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph;

 (20) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website, including:

 (A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

 (B) offering and providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

 (C) complementing any professional therapies listed in the IPC;

 (D) reinforcing skills or lessons taught in school, therapy, or other settings;

 (E) offering training and support activities that promote the individual's integration and participation in the community;

 (F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

 (G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

 (21) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website including:

 (A) emergency dental treatment;

 (B) preventive dental treatment;

 (C) therapeutic dental treatment; and

 (D) orthodontic dental treatment, excluding cosmetic orthodontia;

 (22) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website but are limited to the following categories:

 (A) purchase and repair of wheelchair ramps;

 (B) modifications to bathroom facilities;

 (C) modifications to kitchen facilities;

 (D) specialized accessibility and safety adaptations or additions; and

 (E) repair and maintenance of minor home modifications not covered by a warranty;

 (23) ensure that supported home living:

 (A) is available only to an individual who is not receiving:

 (i) host home/companion care;

 (ii) supervised living; or

 (ii) residential support; and

 (B) is available to an individual who is receiving foster care services from DFPS;

 (24) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, transportation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website and includes the following elements:

 (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

 (B) assisting with meal planning and preparation;

 (C) providing transportation;

 (D) securing transportation;

 (E) assisting with housekeeping;

 (F) assisting with ambulation and mobility;

 (G) reinforcing professional therapy activities;

 (H) assisting with medications and the performance of tasks delegated by an RN;

 (I) supervising of individuals' safety and security;

 (J) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

 (K) habilitation, exclusive of day habilitation;

 (25) ensure that HCS host home/companion care is provided:

 (A) by a host home/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

 (B) in a residence in which the program provider does not hold a property interest;

 (26) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website and includes the following elements:

 (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

 (B) assisting with meal planning and preparation;

 (C) securing and providing transportation;

 (D) assisting with housekeeping;

 (E) assisting with ambulation and mobility;

 (F) reinforcing professional therapy activities;

 (G) assisting with medications and the performance of tasks delegated by an RN;

 (H) supervising of safety and security;

 (I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

 (J) habilitation, exclusive of day habilitation;

 (27) ensure that supervised living is provided:

 (A) in a four-person residence that is approved in accordance with §565.23(i) of this chapter (relating to Residential Requirements) or a three-person residence;

 (B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

 (C) only with approval by the HHSC commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC Executive Commissioner after such 12-month period, if provided to an individual under 22 years of age;

 (28) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website and includes the following elements:

 (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

 (B) assisting with meal planning and preparation;

 (C) securing and providing transportation;

 (D) assisting with housekeeping;

 (E) assisting with ambulation and mobility;

 (F) reinforcing professional therapy activities;

 (G) assisting with medications and the performance of tasks delegated by an RN;

 (H) supervising of individuals' safety and security;

 (I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

 (J) habilitation, exclusive of day habilitation;

 (29) ensure that residential support is provided:

 (A) in a four-person residence that is approved in accordance with §565.23(i) of this chapter or in a three-person residence;

 (B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

 (C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

 (D) only with approval by the HHSC commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC Executive Commissioner after such 12-month period, if provided to an individual under 22 years of age;

 (30) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website, and includes the following elements:

 (A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

 (B) assisting with meal planning and preparation;

 (C) securing and providing transportation;

 (D) assistance with housekeeping;

(E) assisting with ambulation and mobility;

 (F) reinforcing professional therapy activities;

 (G) assisting with medications and the performance of tasks delegated by an RN;

 (H) supervising of individuals' safety and security;

 (I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

 (J) habilitation, exclusive of day habilitation;

 (31) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

 (A) the individual's medical condition;

 (B) a behavior displayed by the individual that poses a danger to the individual or to others; or

 (C) the individual's need for assistance with activities of daily living during normal sleeping hours;

 (32) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

 (33) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website and:

 (A) includes:

 (i) training in self-help and independent living skills;

 (ii) providing room and board when respite is provided in a setting other than the individual's normal residence;

 (iii) assisting with:

 (I) ongoing provision of needed waiver services; and

 (II) securing and providing transportation; and

 (B) is only provided:

 (i) to individuals who are not receiving residential support, supervised living, or host home/companion care; and

 (ii) when the unpaid caregiver is temporarily unavailable to provide supports;

 (34) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care, supervised living, or residential support is provided or in a respite facility or camp, that:

 (A) meets HCS Program requirements and is an environment that ensures the health and safety of the individual; and

 (B) if respite is provided:

 (i) in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of either individual;

 (ii) in a respite facility, the program provider must obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time; or

 (iii) in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association;

 (35) ensure that employment assistance:

 (A) is provided to an individual to help the individual locate competitive employment in the community;

 (B) consists of a service provider performing the following activities:

 (i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

 (ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

 (iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

 (iv) transporting an individual to help the individual locate competitive employment in the community; and

 (v) participating in service planning team meetings;

 (C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website;

 (D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, supported employment, or CFC PAS/HAB is provided; and

 (E) does not include using Medicaid funds paid by HHSC to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

 (i) paying an employer:

 (I) to encourage the employer to hire an individual; or

 (II) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

 (ii) paying an individual:

 (I) as an incentive to participate in employment assistance activities; or

 (II) for expenses associated with the start-up costs or operating expenses of the individual's business;

 (36) ensure that supported employment:

 (A) is assistance provided to an individual:

 (i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

 (ii) in order for the individual to sustain competitive employment; and

 (iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website;

 (B) consists of a service provider performing the following activities:

 (i) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

 (ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

 (iii) participating in service planning team meetings;

 (C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, supported employment, or CFC PAS/HAB is provided; and

 (D) does not include:

 (i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

 (ii) using Medicaid funds paid by HHSC to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

 (I) paying an employer:

 (-a-) to encourage the employer to hire an individual; or

 (-b-) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

 (II) paying an individual:

 (-a-) as an incentive to participate in supported employment activities; or

 (-b-) for expenses associated with the start-up costs or operating expenses of the individual's business;

 (37) ensure that CFC PAS/HAB is provided in accordance with the individual's PDP, IPC, and implementation plan;

 (38) ensure that CFC support management is provided to an individual or LAR if:

 (A) the individual is receiving CFC PAS/HAB; and

 (B) the individual or LAR requests to receive CFC support management;

 (39) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

 (40) maintain current information in the HHSC data system about the individual and the individual's LAR, including:

 (A) the individual's full name, address, location code, and phone number; and

 (B) the LAR's full name, address, and phone number;

 (41) maintain a single record related to HCS Program services and CFC services provided to an individual for an IPC year that includes:

 (A) the IPC;

 (B) the PDP and, if CFC PAS/HAB is included on the PDP, the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form;

 (C) the implementation plan;

 (D) a behavior support plan, if one has been developed;

 (E) a transportation plan, if one is required;

 (F) documentation that describes the individual's progress or lack of progress on the implementation plan;

 (G) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

 (H) the ID/RC Assessment;

 (I) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

 (J) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

 (K) documentation concerning any use of restraint as described in §565.33(a)(2) and (3) of this chapter (relating to Restraint);

 (L) documentation related to the suspension of an individual's HCS Program services or CFC services;

 (M) for an individual under 22 years of age, a copy of the permanency plan; and

 (N) documentation required by subsections §565.17(a)(2) of this subchapter (relating to Pre-enrollment Minor Home Modification) and §565.21(a)(2) of this subchapter (relating to Transitional Assistance Service (TAS));

 (42) upon request by the service coordinator:

 (A) permit the service coordinator access to the record that is required by paragraph (39) of this subsection; and

 (B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

 (43) provide a copy of the following documents to the service coordinator:

 (A) an individual's IPC; and

 (B) an individual's ID/RC Assessment;

 (44) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual;

 (45) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

 (46) for an HCS Program service or CFC service identified on the PDP as critical to meeting the individual's health and safety:

 (A) develop a service backup plan that:

 (i) contains the name of the critical service;

 (ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

 (iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describe the actions the program provider will take to ensure the individual's health and safety;

 (B) ensure that:

 (i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

 (ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

 (C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

 (i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

 (ii) document whether or not the plan was effective; and

 (iii) revise the plan if the program provider determines the plan was ineffective;

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

 (A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

 (B) assist in the implementation of the applicant's transition plan as described in the plan; and

 (C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

 (48) for 365 calendar days after an individual 21 years of age or older has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility:

 (A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

 (B) assist in the implementation of the individual's transition plan as described in the plan;

 (C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

 (D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

(b) A program provider may suspend HCS Program services or CFC services because an individual is temporarily admitted to a setting described in 40 TAC §9.155(e) (relating to Eligibility Criteria and Suspension of HCS Program Services and of CFC Services).

 (1) If a program provider suspends HCS Program services or CFC services, the program provider must:

 (A) notify HHSC of the suspension by entering data in the HHSC data system in accordance with HHSC instructions; and

 (B) notify the service coordinator of the suspension within one business day after services are suspended.

 (2) A program provider may not suspend HCS Program services or CFC services for more than 270 calendar days without approval from HHSC as described in 40 TAC §9.190(e)(20)(C) (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program).

§565.13. Nursing.

(a) A program provider must:

 (1) ensure that nursing is provided in accordance with the individual's PDP; IPC; implementation plan; Texas Occupations Code Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website and consists of performing health care activities and monitoring the individual's health conditions, including:

 (A) administering medication;

 (B) monitoring the individual's use of medications;

 (C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

 (D) assisting the individual to secure emergency medical services;

 (E) making referrals for appropriate medical services;

 (F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

 (G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

 (H) teaching an unlicensed service provider about the specific health needs of an individual;

 (I) performing an assessment of an individual's health condition;

 (J) an RN doing the following:

 (i) performing a nursing assessment for each individual:

 (I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician; and

 (II) as determined necessary by an RN, including if the individual's health needs change;

 (ii) documenting information from performance of a nursing assessment;

 (iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

 (iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

 (v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

 (K) in accordance with Texas Human Resources Code Chapter 161:

 (i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

 (I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

 (II) the medication is:

 (-a-) an oral medication;

 (-b-) a topical medication; or

 (-c-) a metered dose inhaler;

 (III) the medication is administered to the individual for a predictable or stable condition; and

 (IV) the unlicensed service provider has been:

 (-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

 (-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

 (ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(b) A program provider may determine that an individual does not require a nursing assessment if:

 (1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on HHSC form "Nursing Task Screening Tool"; or

 (2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician.

(c) If an individual or LAR refuses a nursing assessment described in subsection (a)(1)(J)(i) of this section, the program provider must not:

 (1) provide nursing services to the individual; or

 (2) provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, day habilitation, or CFC PAS/HAB to the individual unless:

 (A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

 (B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(d) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (c) of this section, the program provider must:

 (1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

 (2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (d) of this section, the program provider must:

 (1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

 (2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in 40 TAC §9.190(e)(21)(A) (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program), the program provider must immediately send the written notification described in subsection (d) of this section to HHSC.

§565.15. Individuals under the Age of 22.

(a) The program provider must:

 (1) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

 (A) the parent's or LAR's:

 (i) name;

 (ii) address;

 (iii) telephone number;

 (iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

 (v) place of employment and the employer's address and telephone number;

 (B) name, address, and telephone number of a relative of the individual or other person whom HHSC or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

 (i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

 (ii) the name, address, and telephone number of that person's employer; and

 (C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

 (i) notify the program provider of any changes to the contact information submitted; and

 (ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

 (2) inform the parent or LAR that if the information described in paragraph (1) of this subsection is not provided or is not accurate and the service coordinator and HHSC are unable to locate the parent or LAR as described in 40 TAC §9.190(e)(35) (relating to LIDDA Requirements for Providing Service Coordination in the HCS Program) and 40 TAC §9.189 (relating to Referral to DFPS), HHSC refers the case to DFPS;

 (3) for an individual under 22 years of age receiving supervised living or residential support:

 (A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

 (B) take the following actions to assist a LIDDA in conducting permanency planning:

 (i) cooperate with the LIDDA responsible for conducting permanency planning by:

 (I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

 (II) participating in meetings to review the individual's permanency plan; and

 (III) identifying, in coordination with the individual's LIDDA, activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA to prepare the individual for an alternative living arrangement;

 (ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

 (iii) keep a copy of the individual's current permanency plan in the individual's record; and

 (iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

 (C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

 (D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination.

§565.17. Pre-enrollment Minor Home Modification.

(a) The program provider must provide pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment in accordance with this subsection.

 (1) The program provider must:

 (A) complete a pre-enrollment minor home modifications assessment in accordance with the *HCS Program Billing Guidelines;*

 (B) provide pre-enrollment minor home modifications to an applicant for whom the program provider receives from the service coordinator a completed Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by HHSC, as described in 40 TAC §9.158(k)(8)(C) (relating to Process for Enrollment of Applicants);

 (C) provide to the applicant the specific pre-enrollment minor home modifications identified on the form;

 (D) provide the pre-enrollment minor home modifications for the applicant within the monetary amount identified on the form;

 (E) ensure pre-enrollment minor home modifications and pre-enrollment minor home modifications assessments are provided in accordance with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website; and

 (F) complete the pre-enrollment minor home modifications at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

 (2) If the program provider does not complete pre-enrollment minor home modifications in accordance with paragraph (1) of this subsection, the program provider must:

 (A) document the following:

 (i) a description of the pending modifications;

 (ii) the reason for the delay;

 (iii) the date the program provider anticipates it will complete the pending modifications or specific reasons why the program provider cannot anticipate a completion date; and

 (iv) a description of the program provider's ongoing efforts to complete the modifications; and

 (B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

 (i) the applicant or LAR; and

 (ii) the service coordinator.

 (3) Within one business day after completion of the pre-enrollment minor home modifications, the program provider must notify the service coordinator and the applicant or LAR that the modifications have been completed.

§565.19. Community First Choice (CFC) Emergency Response Systems (ERS) Services.

CFC ERS must be provided in accordance with this section.

 (1) A program provider must ensure that CFC ERS is provided only to an individual who:

 (A) is not receiving host home/companion care, supervised living, or residential support;

 (B) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

 (C) would otherwise require extensive routine supervision.

 (2) A program provider must ensure that CFC ERS is provided in accordance with the individual's PDP, IPC, and implementation plan.

 (3) A program provider must ensure that CFC ERS equipment is installed within 14 business days after one of the following dates, whichever is later:

 (A) the date HHSC authorizes the proposed IPC that includes CFC ERS; or

 (B) the effective date of the individual's IPC as determined by the service planning team.

 (4) At the time CFC ERS equipment is installed, a program provider must ensure that:

 (A) the equipment is installed in accordance with the manufacturer's installation instructions;

 (B) an initial test of the equipment is made;

 (C) the equipment has an alternate power source in the event of a power failure;

 (D) the individual is trained on the use of the equipment, including:

 (i) demonstrating how the equipment works; and

 (ii) having the individual activate an alarm call;

 (E) an explanation is given to the individual that the individual must:

 (i) participate in a system check each month; and

 (ii) contact the CFC ERS provider if:

 (I) the individual's telephone number or address changes; or

 (II) one or more of the individual's responders change; and

 (F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

 (5) A program provider must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (3) and (4) of this section are documented in the individual's record.

 (6) A program provider must ensure that, on or before the date CFC ERS equipment is installed:

 (A) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

 (B) public emergency personnel:

 (i) are designated as a second responder if the individual provides the name of only one responder; or

 (ii) are designated as the sole responder if the individual does not provide the names of any responders; and

 (C) the name and telephone number of each responder is documented in the individual's record.

 (7) At least once during each calendar month a program provider must ensure that a system check is conducted on a date and time agreed to by the individual.

 (8) A program provider must ensure that the date, time, and result of the system check is documented in the individual's record.

 (9) If, as a result of the system check:

 (A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the program provider must ensure that a request is made of the service coordinator to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

 (B) the equipment is not working properly, the program provider must ensure that, within three calendar days of the system check, the equipment is repaired or replaced.

 (10) If a system check is not conducted in accordance with paragraph (7) of this section, the program provider must ensure that:

 (A) the failure to comply is because of good cause; and

 (B) the good cause is documented in the individual's record.

 (11) A program provider must ensure that an alarm call is responded to 24 hours a day, seven days a week.

 (12) A program provider must ensure that, if an alarm call is made, the CFC ERS provider:

 (A) within 60 seconds of the alarm call, attempts to contact the individual to determine if an emergency exists;

 (B) immediately contacts a responder, if as a result of attempting to contact the individual:

 (i) the CFC ERS provider confirms there is an emergency; or

 (ii) the CFC ERS provider is unable to communicate with the individual; and

 (C) documents the following information in the individual's record when the information becomes available:

 (i) the name of the individual;

 (ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

 (iii) the response time, recorded in seconds;

 (iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

 (v) the name of the contacted responder, if applicable;

 (vi) a brief description of the reason for the alarm call; and

 (vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

 (13) If an alarm call results in a responder being dispatched to the individual's home for an emergency, the program provider must ensure that:

 (A) the service coordinator receives written notice of the alarm call within one business day after the alarm call;

 (B) if the CFC ERS provider is a contracted provider, the program provider receives written notice from the contracted provider within one business day after the alarm call; and

 (C) the written notices required by subparagraphs (A) and (B) of this paragraph are maintained in the individual's record.

 (14) A program provider must ensure that, if an equipment failure occurs, other than during a system check required by paragraph (7) of this section:

 (A) the individual is informed of the equipment failure; and

 (B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

 (15) If an individual is not informed of the equipment failure and the equipment is not replaced in compliance with paragraph (14) of this section, the program provider must ensure that:

 (A) the failure to comply is because of good cause; and

 (B) as soon as possible, the individual is informed of the equipment failure and the equipment is replaced.

 (16) A program provider must ensure that, if the CFC ERS equipment registers five or more "low battery" signals in a 72-hour period:

 (A) a visit to an individual's home is made to conduct a system check within five business days after the low battery signals occur; and

 (B) if the battery is defective, the battery is replaced during the visit.

 (17) A program provider must ensure that, if a system check or battery replacement is not made in accordance with paragraph (16) of this section:

 (A) the failure to comply is because of good cause; and

 (B) as soon as possible, the program provide makes a system check or battery replacement.

 (18) A program provider must ensure that the following information is documented in an individual's record:

 (A) the date the equipment failure or low battery signal became known by the CFC ERS provider;

 (B) the equipment or subscriber number;

 (C) a description of the problem;

 (D) the date the equipment or battery was repaired or replaced; and

 (E) the good cause for failure to comply as described in paragraphs (15)(A) and (17)(A) of this section.

§565.21. Transitional Assistance Service (TAS).

The program provider must provide TAS in accordance with this section.

 (1) The program provider must:

 (A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed TAS Assessment and Authorization form authorized by HHSC, as described in 40 TAC §9.158(k)(6)(C) (relating to Process for Enrollment of Applicants);

 (B) purchase TAS for the applicant within the monetary amount identified on the form;

 (C) deliver to the applicant the specific TAS identified on the form;

 (D) ensure TAS is provided in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website; and

 (E) complete the delivery of TAS at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

 (2) If the program provider does not deliver TAS in accordance with paragraph (1) of this section, the program provider must:

 (A) document the following:

 (i) a description of the pending TAS;

 (ii) the reason for the delay;

 (iii) the date the program provider anticipates it will deliver the pending TAS or specific reasons why the program provider cannot anticipate a delivery date; and

 (iv) a description of the program provider's ongoing efforts to deliver the TAS; and

 (B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

 (i) the applicant or LAR; and

 (ii) the service coordinator.

 (3) Within one business day after the TAS has been delivered, the program provider must notify the service coordinator and the applicant or LAR that the TAS has been delivered.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER E CERTIFICATION STANDARDS: QUALITY ASSURANCE

§565.23. Residential Requirements.

(a) This applies to all three-person and four-person residences and host home/companion care settings unless otherwise specified.

(b) A program provider must ensure:

 (1) the residence, neighborhood, and community meet the needs of the individual and provide an environment that ensures the health, safety, and welfare of the individual;

 (2) the home is modified to meet the specific adaptive needs of the individual;

 (3) adaptive equipment is not broken and is functional for the individual;

 (4) mattresses are off the floor and a mattress cover is utilized unless contraindicated and documented by the service planning team;

 (5) home furnishings are in good repair;

 (6) the home is clean and sanitary;

 (7) the home is free of infestations including bugs, rodents, and other pests;

 (8) the walls, ceilings, floors, and windows are in good condition and not hazardous to the individual;

 (9) the bathrooms are functional and safe to use;

 (10) there is hot water available at sinks and in bathing facilities;

 (11) the temperature of the hot water at sinks and bathing facilities does not exceed 120 degrees Fahrenheit unless the program provider, in accordance with subsection (c) of this section, conducts a competency-based skills assessment evidencing that all individuals in the residence can independently regulate the temperature of the hot water from the sinks and bathing facilities;

 (12) the major home appliances are in working order, including kitchen appliances and heating and cooling systems;

 (13) the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR, unless contraindications are documented with justification by the service planning team;

 (14) the lock installed in accordance with subparagraph (13) of this paragraph:

 (A) is a single-action lock;

 (B) can be unlocked with a key from the outside of the door by the program provider; and

 (C) is not purchased and installed at the individual's or LAR's expense;

 (15) household cleaners and chemicals are stored securely;

 (16) perishable foods are refrigerated or stored safely;

 (17) animals and pets are kept free of disease and vaccinated as required by Texas Health and Safety Code, Chapter 826; and

 (18) the interior and exterior of the home:

 (A) is free of accumulation of waste and trash;

 (B) is accessible and free of hazards to an individual; and

 (C) does not compromise the health or safety of an individual.

(c) If the program provider conducts the competency-based skills assessment described in subsection (b)(11) of this section:

 (1) the assessment must:

 (A) be conducted by a staff member who is not a service provider of residential support, supervised living, or host home/companion care who works or lives in the residence;

 (B) be conducted for each individual;

 (C) evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance from each sink and bathing facility in the residence; and

 (D) be based on a face-to-face demonstration by the individual; and

 (2) the program provider must:

 (A) complete the assessment at least annually;

 (B) document the results of the assessment; and

 (C) keep a copy of the results in the residence.

(d) The program provider must ensure that each residence has:

 (1) exterior doors that are unobstructed and accessible to all individuals living in the residence;

 (2) two means of escape from the residence;

 (3) two means of escape from an individual’s bedroom, unless the program provider has a fire sprinkler system that is checked and maintained according to Texas Insurance Code, Chapter 6003, at which point there can be one means of escape from an individual’s bedroom;

 (4) working smoke alarms in the bedroom and immediately outside the bedrooms; and

 (5) fire extinguishers that are:

 (A) accessible and unobstructed to the service provider;

 (B) on each level of the home;

 (C) serviced or replaced after each use; and

 (D) if unused, serviced according to the manufacturer’s instructions, or as required by the state or local fire marshal.

(e) The program provider, as it relates to fire drills, must:

 (1) conduct at least one fire drill every 90 days with two drills during sleeping hours at each residence;

 (2) ensure that each staff member participates in a fire drill within 90 days of hire and at least annually thereafter;

 (3) ensure that the staff member can explain the emergency plans for the residence;

 (4) provide training for a staff member who does not follow the emergency plan during the fire drill; and

 (5) revise the emergency plan to ensure the individual can exit the residence safely if the individual is unable to exit the home according to the emergency plan.

(f) The program provider, as it relates to emergency plans, must:

 (1) ensure that a staff member reviews the emergency plans for each individual at a residence before providing services;

 (2) instruct staff members where to locate the emergency plans at the residence; and

 (3) maintain documentation related to emergency preparedness accessible to staff members at the residence, including:

 (A) emergency plans that address:

 (i) the relevant emergencies given the geographic location;

 (ii) the needs of the individuals living in the residence; and

 (iii) fire drill responses; and

 (B) emergency numbers publicly posted in an area of the residence that is easily accessible to staff members.

(g) A program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases, which includes:

 (1) using standard precautions in the care of all individuals, including hand hygiene and maintaining a sanitary environment to avoid sources and transmission of infections;

 (2) creating written policies for the prevention and control of communicable diseases among employees and individuals, including the appropriate use of transmission-based precautions and protective measures the program provider must take if an employee contracts a communicable disease; and

 (3) revising a policy or practice if a shortcoming is identified.

(h) A program provider must implement and maintain medication administration and storage practices that safeguard an individual’s medication, which includes:

 (1) creating written policies for the prevention of unauthorized access to medications;

 (2) using a procedure that ensures safe medication administration to the individual;

 (3) ensuring staff are trained and knowledgeable about the individuals’ medications;

 (4) ensuring staff who are administering medications have been trained and delegated by an RN;

 (5) maintaining accurate, current, and accessible documentation of medication administration; and

 (6) revising a policy or practice if a shortcoming is identified.

(i) A program provider must comply with the requirements in this subsection regarding a four-person residence.

 (1) Before providing residential support in a four-person residence, the program provider must:

 (A) obtain an inspection by the local fire marshal, or the Texas State Fire Marshal’s office in locations where there is no local fire marshal, and correct any items cited by the local fire marshal, or the Texas State Fire Marshal’s Office, to the satisfaction of those authorities; and

 (B) obtain HHSC approval of the residence in accordance with §565.41 of this chapter (relating to HHSC Approval of Four Person Residences).

 (2) HHSC inspects for certification as described in paragraph (1)(A) of this subsection only if the program provider submits to the HHSC Architectural Unit:

 (A) one of the following:

 (i) if the four-person residence is located in a jurisdiction with a local fire safety authority:

 (I) a completed HHSC Form 5606 available on the HHSC website documenting that the local fire safety authority having jurisdiction refused to inspect for certification using the code (i.e., the Life Safety Code or IFC) for that jurisdiction; and

 (II) written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; or

 (ii) if the four-person residence is located in a jurisdiction without a local fire safety authority, written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; and

 (B) a completed HHSC form "Request for Life Safety Inspection-HCS Four-Person Home" available on the HHSC website.

 (3) The program provider must:

 (A) obtain the certification required by this subsection annually; and

 (B) ensure that a four-person residence:

 (i) contains a copy of the most recent inspection of the residence by the local fire safety authority, Texas State Fire Marshal's Office, or HHSC; and

 (ii) is in continuous compliance with all applicable local building codes and ordinances and state and federal laws, rules, and regulations.

§565.25 Programmatic Requirements.

(a) Before providing services to an individual in a residence in which supervised living or residential support is provided, and annually thereafter, the program provider must:

 (1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is safe, accessible and suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

 (2) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided:

 (A) before an individual moves in;

 (B) within 30 days if an individual is already in the residence; and

 (C) document justification for any actions that cannot be completed before the individual moving in or within 30 days with a plan for completion.

(b) Before providing services to an individual in a residence in which host home/companion care is provided and quarterly thereafter, the program provider must:

 (1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is safe, accessible and suited for the individual's abilities and needs, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives; and

 (2) require proof of completion of any action identified in the on-site inspection for a residence in which host home/companion care will be provided to ensure that the residence meets the needs of the individual:

 (A) before an individual moves in; or

 (B) within 30 days if an individual is already in the residence; and

 (C) document justification for any actions that cannot be completed before the individual moving in or within 30 days and include a plan for completion.

(c) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee:

 (1) at least annually, reviews the information provided to the committee by the program provider in accordance with subsection (l)(6) of this section; and

 (2) based on the information reviewed, makes recommendations to the program provider for improvements to the processes and operations of the program provider.

(d) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services and CFC services as requested by HHSC, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(e) The program provider must establish a procedure to assess at least annually the individuals’ and LARs’ satisfaction of the program provider’s services and take action within 60 days regarding any areas of dissatisfaction.

(f) The program provider must comply with 40 TAC §49.309 (relating to Complaint Process).

(g) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

 (1) the name, address, and telephone number of the program provider;

 (2) the effective date of the contract; and

 (3) the name of the legal entity named on the contract.

(h) A program provider must report the death of an individual:

 (1) to HHSC and the LIDDA by the end of the next business day after the program provider becomes aware of the death; and

 (2) if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider becomes aware of the death.

(i) A program provider must not retaliate against:

 (1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:

 (A) the use of seclusion; and

 (B) the use of a restraint not in compliance with federal and state laws, rules, and regulations; and

 (2) an individual because a person on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:

 (A) the use of seclusion; and

 (B) the use of a restraint not in compliance with federal and state laws, rules, and regulations.

(j) A program provider must enter critical incident data in the HHSC data system no later than the last calendar day of the month that follows the month being reported in accordance with the *HCS Provider User Guide*.

(k) A program provider must ensure that:

 (1) the name and phone number of an alternate to the Chief Executive Officer (CEO) of the program provider is entered in the HHSC data system; and

 (2) the alternate to the CEO:

 (A) performs the duties of the CEO during the CEO's absence; and

 (B) acts as the contact person in an HHSC investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual, and complies with §565.31(d) - (f) of this subchapter (relating to Requirements Related to the Abuse, Neglect, and Exploitation).

(l) At least annually, the program provider must:

 (1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

 (2) review complaints, as described in 40 TAC §49.309, and identify program process improvements to reduce the need for filing complaints;

 (3) review all final investigative reports from HHSC and based on the review, identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation and improve the delivery of services;

 (4) review the reasons for terminating HCS Program services or CFC services and identify any related need for program process improvements;

 (5) evaluate critical incident data described in subsection (j) of this section and compare the program provider's use of restraint to aggregate data provided by HHSC on the HHSC website and identify program process improvements that help prevent the reoccurrence of restraints and improve service delivery;

 (6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (c) of this section;

 (7) implement any program process improvements identified by the program provider in accordance with this subsection; and

 (8) review recommendations made by the consumer/advocate advisory committee as described in subsection (c)(2) of this section and implement the recommendations approved by the program provider.

(l) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program or provision of CFC services, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or the individual's LAR is obtained beforehand.

(m) The program provider must include the individual or LAR in planning the individual's residential relocation, except in cases of emergency.

§565.27. Finances and Rent.

(a) The program provider must comply with this subsection regarding charges against an individual's personal funds.

 (1) The program provider must, in accordance with this paragraph, collect a monthly amount for room from an individual who lives in a three-person or four-person residence. The cost for room must consist only of:

 (A) an amount equal to:

 (i) rent of a comparable dwelling in the same geographical area that is unfurnished; or

 (ii) the program provider's ownership expenses, limited to the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance; and

 (B) the cost of:

 (i) shared appliances, electronics, and housewares;

 (ii) shared furniture;

 (iii) monitoring for a security system;

 (iv) monitoring for a fire alarm system;

 (v) property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;

 (vi) utilities, limited to electricity, gas, water, garbage collection, and a landline telephone; and

 (vii) shared television and Internet service used by the individuals who live in the residence.

 (2) Except as provided in subparagraphs (B) and (C) of this paragraph, a program provider must collect a monthly amount for board from an individual who lives in a three-person or four-person residence.

 (A) The cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products.

 (B) A program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

 (C) A program provider must not collect a monthly amount for board from an individual if the individual chooses to purchase the individual's own food, as documented in the individual's implementation plan.

 (3) To determine the maximum room and board charge for each individual, a program provider must:

 (A) develop a process or formula that divides the rent equitably and considers the following:

 (i) the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who live in the residence; and

 (ii) the features or space to which an individual has exclusive or shared access, unless the additional space is requested and needed for accessibility purposes;

 (B) divide the board cost described in paragraph (2) of this subsection by the number of persons consuming the food; and

 (C) add the amounts calculated in accordance with subparagraphs (A) and (B) of this paragraph.

 (4) A program provider must not increase the charge for room and board because a resident moves from the residence.

 (5) A program provider:

 (A) must not charge an individual a room and board amount that exceeds an amount determined in accordance with paragraphs (1) - (3) of this subsection; and

 (B) must maintain documentation demonstrating that the room and board charge was determined in accordance with paragraphs (1) - (3) of this subsection.

 (6) Before an individual or LAR selects a residence, a program provider must provide the room and board charge, in writing, to the individual or LAR.

 (7) Except as provided in paragraph (8) of this subsection, a program provider may not charge or collect payment from any person for room and board provided to an individual receiving host home/companion care.

 (8) If a program provider makes a payment to an individual's host home/companion care provider while waiting for the individual's federal or state benefits to be approved, the program provider may seek reimbursement from the individual for such payments.

 (9) A program provider who manages personal funds of an individual who receives host home/companion care:

 (A) may pay a room and board charge for the individual that is less than the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion care provider's home;

 (B) must pay the host home/companion care provider directly from the individual's account; and

 (C) must not pay a host home/companion care provider a room and board charge that exceeds the host home/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion care provider's home.

 (10) For an item or service other than room and board, the program provider must apply a consistent method in assessing a charge against the individual's personal funds that ensures that the charge for the item or service is reasonable and comparable to the cost of a similar item or service generally available in the community.

(b) The program provider must inform the individual and LAR orally or in writing of any charges assessed by the program provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status.

(c) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(d) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program or through CFC.

(e) At the written request of an individual or LAR, the program provider must manage the individual's personal funds entrusted to the program provider, without charge to the individual or LAR in accordance with this subsection.

 (1) The program provider must not commingle the individual's personal funds with the program provider's funds.

 (2) The program provider must maintain a separate, detailed record of:

 (A) all deposits into the individual's account; and

 (B) all expenditures from the individual's account.

 (3) If an expenditure is for the individual to use as personal spending money, the program provider must have a process to show the individual acknowledged receiving the funds.

 (4) The program provider may accrue an expense for necessary items and services for which the individual's personal funds are not available for payment, such as room and board, medical and dental services, legal fees or fines, and essential clothing.

 (5) If an expense is accrued as described in paragraph (3) of this subsection, the program provider must enter into a written payment plan with the individual or LAR for reimbursement of the funds.

§565.29. Behavior Support Plan.

If the program provider determines that an individual's behavior may require the implementation of behavior management techniques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this section.

 (1) The program provider must:

 (A) obtain an assessment of the individual's needs and current level and severity of the behavior; and

 (B) ensure that a service provider of behavioral support services:

 (i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

 (ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

 (2) The behavior support plan must:

 (A) describe how the behavioral data concerning the behavior is collected and monitored;

 (B) allow for the decrease in the use of the techniques based on the behavioral data; and

 (C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

 (3) Before implementation of the behavior support plan, the program provider must:

 (A) obtain written consent from the individual or LAR to implement the plan;

 (B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

 (C) notify the individual's service coordinator of the plan.

 (4) The program provider must, at least annually:

 (A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and

 (B) notify the service coordinator if the plan needs to be continued.

§565.31 Requirements Related to Abuse, Neglect, and Exploitation.

(a) A program provider must:

 (1) ensure that an individual and LAR are, at the time the individual begins receiving an HCS Program service or a CFC service and at least annually thereafter:

 (A) informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the toll-free telephone number, 1-800-647-7418, in writing; and

 (B) educated about protecting the individual from abuse, neglect, and exploitation;

 (2) ensure that each staff member, service provider, and volunteer are:

 (A) trained and knowledgeable of:

 (i) acts that constitute abuse, neglect, and exploitation;

 (ii) signs and symptoms of abuse, neglect, and exploitation; and

 (iii) methods to prevent abuse, neglect, and exploitation;

 (B) instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited, by:

 (i) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or

 (ii) using the DFPS Abuse Hotline website; and

 (C) provided with the instructions described in subparagraph (B) of this paragraph in writing;

 (3) ensure that each staff member, service provider, and volunteer sign an acknowledgement that they understand all individuals must live free of abuse, neglect, and exploitation; and

 (4) conduct the activities described in paragraph (2) and (3) of this subsection before a staff member, service provider, or volunteer assumes job duties and at least annually thereafter.

(b) If a program provider, staff member, service provider, volunteer, or controlling person knows or suspects an individual is being or has been abused, neglected, or exploited, the program provider must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to DFPS immediately, but not later than one hour after having knowledge or suspicion, by:

 (1) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-647-7418; or

 (2) using the DFPS Abuse Hotline website.

(c) If a report required by subsection (b) of this section alleges abuse, neglect, or exploitation by a person who is not a service provider, staff member, volunteer, or controlling person, a program provider must:

 (1) assess the individual and allegation and as necessary:

 (A) obtain appropriate medical or psychological services for the individual; and

 (B) assist in obtaining ongoing medical or psychological services for the individual;

 (2) discuss with the individual or LAR safety measures, including alternative residential settings that may help ensure the individual's safety;

 (3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual; and

 (4) preserve and protect evidence related to the allegation.

(d) If a report required by subsection (b) of this section alleges abuse, neglect, or exploitation by a service provider, staff member, volunteer, or controlling person; or if a program provider is notified by HHSC of an allegation of abuse, neglect, or exploitation by a service provider, staff member, volunteer, or controlling person, the program provider must:

 (1) assess the individual and allegation as necessary:

 (A) obtain appropriate medical or psychological services for the individual; and

 (B) assist in obtaining ongoing medical or psychological services for the individual;

 (2) take actions to secure the safety of the individual, including if necessary, ensuring that the alleged perpetrator does not have contact with the individual or any other individual until HHSC completes the investigation;

 (3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual;

 (4) preserve and protect evidence related to the allegation; and

 (5) notify, as soon as possible, but no later than 24 hours after the program provider reports or is notified of the allegation, the individual, the LAR, and the service coordinator of:

 (A) the allegation report; and

 (B) the actions the program provider has taken or will take based on the allegation, the condition of the individual, and the nature and severity of any harm to the individual, including the actions required by paragraph (2) of this subsection.

(e) During an HHSC investigation of an alleged perpetrator who is a service provider, staff member, volunteer, or controlling person, a program provider must:

 (1) cooperate with the investigation as requested by HHSC, including providing documentation and participating in an interview;

 (2) provide HHSC access to:

 (A) sites owned, operated, or controlled by the program provider;

 (B) individuals, service providers, staff members, volunteers, and controlling persons; and

 (C) evidence pertinent to the investigation of the allegation; and

 (3) ensure that staff members, service providers, volunteers, and controlling persons comply with paragraphs (1) and (2) of this subsection.

(f) After a program provider receives a final investigative report from HHSC for an investigation described in subsection (e) of this section, the program provider must:

 (1) if the allegation of abuse, neglect, or exploitation is confirmed by HHSC:

 (A) review the report, including any concerns and recommendations by HHSC; and

 (B) take action within the program provider's authority to prevent the reoccurrence of abuse, neglect or exploitation, including disciplinary action against the service provider, staff member, or volunteer confirmed to have committed abuse, neglect, or exploitation;

 (2) if the allegation of abuse, neglect, or exploitation is unconfirmed, inconclusive, or unfounded:

 (A) review the report, including any concerns and recommendations by HHSC; and

 (B) take appropriate action within the program provider's authority, to ensure the individual’s safety, as necessary;

 (3) immediately, but not later than five calendar days after the date the program provider receives the HHSC final investigative report:

 (A) notify the individual, the LAR, and the service coordinator of:

 (i) the investigation finding; and

 (ii) the action taken by the program provider in response to the HHSC investigation as required by paragraphs (1) and (2) of this subsection; and

 (B) notify the individual or LAR of:

 (i) the process to appeal the investigation finding as described in 26 TAC Chapter 711, Subchapter J (relating to Appealing the Investigation Finding); and

 (ii) the process for requesting a copy of the investigative report from the program provider;

 (4) within 14 calendar days after the date the program provider receives the final investigative report, complete and send to HHSC the HHSC Notification to Waiver Survey and Certification (WSC) Regarding an Investigation of Abuse, Neglect or Exploitation form; and

 (5) upon request of the individual or LAR, provide to the individual or LAR a copy of the HHSC final investigative report after removing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

§565.33. Restraint.

(a) Within 30 calendar days of receiving services from a program provider and annually thereafter, a program provider must:

 (1) with the involvement of a physician, identify:

 (A) the individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint;

 (B) the individual's ability to communicate; and

 (C) other factors that must be taken into account if the use of restraint is considered, including the individual's:

 (i) cognitive functioning level;

 (ii) height;

 (iii) weight;

 (iv) emotional condition that could contraindicate the use of restraint, including whether the individual has a history of having been physically or sexually abused; and

 (v) age;

 (2) document the conditions and factors identified in accordance with paragraph (1) of this subsection, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the individual's record; and

 (3) review and update with a physician, RN, or LVN, at least annually or when a condition or factor documented in accordance with paragraph (2) of this subsection changes significantly, information in the individual's record related to the identified condition, factor, or limitation.

(b) A program provider may use restraint:

 (1) in a behavioral emergency;

 (2) as part of a behavior support plan that addresses inappropriate behavior exhibited voluntarily by an individual;

 (3) during or as a follow-up to a medical or dental procedure or treatment of an injury if the restraint is ordered by the physician or dentist as necessary to protect the individual or others or promote the healing of wounds;

 (4) to protect the individual from involuntary self-injury; and

 (5) to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning if ordered by a physician or professional habilitation therapist.

(c) A program provider must not use restraint:

 (1) in a manner that:

 (A) restricts circulation;

 (B) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

 (C) impairs the individual's breathing by putting pressure on the individual's torso;

 (D) interferes with the individual's ability to communicate;

 (E) places the individual in a prone or supine position;

 (F) extends muscle groups away from each other;

 (G) uses hyperextension of joints;

 (H) uses pressure points or pain; or

 (I) secures the individual to a stationary object while the individual is in a standing position;

 (2) for disciplinary purposes, that is, as retaliation or retribution;

 (3) for the convenience of a staff member or service provider or other individuals; or

 (4) as a substitute for effective treatment or habilitation.

(d) If a program provider restrains an individual as provided in subsection (b) of this section, the program provider must:

 (1) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subsection (a)(2) and (3) of this section;

 (2) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others; and

 (3) safeguard the individual's dignity, privacy, and well-being.

(e) In a circumstance described in subsection (b)(1) or (2) of this section, a program provider may use only a restraint hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subsection (c)(1) of this section.

(f) A program provider must release an individual from restraint:

 (1) as soon as the individual no longer poses a risk of imminent physical harm to the individual or others;

 (2) if the individual in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency; or

 (3) as soon as an individual in a restraint hold described in subsection (e) of this section who moves toward the floor reaches the floor.

(g) After restraining an individual in a behavioral emergency, a program provider must:

 (1) as soon as possible but no later than one hour after the use of restraint, notify an RN or LVN of the restraint;

 (2) ensure that medical services are obtained for the individual as necessary;

 (3) as soon as possible but no later than 24 hours after the use of restraint, notify one of the following persons, if there is such a person, that the individual has been restrained:

 (A) the individual's LAR; or

 (B) a person actively involved with the individual, unless the release of this information would violate other law; and

 (4) notify the individual's service coordinator by the end of the first business day after the use of restraint.

(h) If, under the Health Insurance Portability and Accountability Act, the program provider is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subsection (g)(3)(B) of this section must be to a person to whom the program provider is allowed to release information under 45 CFR §164.510.

§565.35. Protective Devices.

(a) If a protective device is used, the program provider must ensure that it is used in accordance with this section.

(b) A program provider must not use a protective device:

 (1) to modify or control an individual's behavior;

 (2) for disciplinary purposes;

 (3) for staff convenience; or

 (4) as a substitute for an effective, less restrictive method.

(c) If a need for a protective device is identified, the program provider must ensure that a physician, occupational therapist, physical therapist, or RN:

 (1) conducts an initial assessment to determine:

 (A) if the individual has a medical need for a protective device;

 (B) that less restrictive methods would be ineffective in protecting the individual, and the reasons for that determination;

 (C) the type of protective device to be used, which must be the least restrictive protective device that will protect the individual;

 (D) the circumstances under which the protective device may be used;

 (E) how to use the protective device and any contraindications specific to the individual;

 (F) how and when to document the use of the protective device; and

 (G) how to monitor the use of the protective device to ensure it is being used in accordance with the assessment; and

 (2) then annually and after any significant change to determine:

 (A) if the individual has a medical need for a protective device;

 (B) that less restrictive methods would be ineffective in protecting the individual, and the reasons for that determination; and

 (C) the type of protective device to be used, which must be the least restrictive protective device that will protect the individual.

(d) If a need for a protective device is an enclosed bed, the individual’s physician, occupational therapist, or physical therapist must conduct the assessments listed in subsection (c) of this section.

(e) Before a program provider uses a protective device, the program provider must:

 (1) obtain and retain in the individual's record:

 (A) an order for the use of the protective device identified in the initial assessment;

 (B) complete initial and subsequent assessments from subsection (c) of this section; and

 (C) consent of the individual or LAR to use the protective device;

 (2) provide oral and written notification to the individual or LAR of the right at any time to withdraw consent for the use of the protective device; and

 (3) develop a policy and procedure to ensure that each service provider who will use the protective device has been trained in the proper use of the protective device, in accordance with the initial assessment.

(f) If the protective device is an enclosed bed, the program provider must:

 (1) acquire the following documentation before permitting the use of an enclosed bed:

 (A) a letter of medical necessity from the prescribing physician or professional therapist;

 (B) documentation of at least two alternative measures, durable medical equipment, or supplies that have been tried and have failed to meet the individual’s medical needs or have been ruled out as appropriate and an explanation of why they have failed or have been ruled out; and

 (C) receipt from a durable medical equipment company for the enclosed bed;

 (2) ensure the bed can be opened by the individual from the inside; and

 (3) develop and implement policies and procedures that require:

 (A) routine checks of the enclosure bed to ensure it is in good repair and safe for the individual;

 (B) a documented quarterly review by an RN or professional therapist to ensure the enclosed bed is still safe and necessary given the individual’s current needs and other less restrictive options available;

 (C) a meeting with the IDT to determine if there is a less restrictive option available by conducting a review annually, or sooner if the RN or professional therapist has determined there is a significant change to the individual’s condition; and

 (D) an order for the enclosed bed updated annually, or sooner if the RN has determined there is a significant change to the individual’s condition.

(g) To prevent misuse or overuse of the enclosed bed, the program provider must:

 (1) develop and implement a usage plan that details when the enclosed bed will be used that is consistent with the assessment and order;

 (2) require any staff member who provides services to an individual with an enclosed bed to read and document understanding of the usage plan before providing services; and

 (3) make the usage plan readily available to staff members providing services.

(h) Program providers may only allow commercially produced enclosed beds.

§565.37. Prohibitions.

(a) A program provider must not use seclusion.

(b) An enclosed bed must not be used for behavioral management.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER F HHSC ACTIONS

§565.39. HHSC Surveys of a Program Provider.

(a) A program provider must be in continuous compliance with the certification standards contained in this subchapter that apply to program providers.

(b) HHSC conducts the following surveys:

 (1) an initial certification survey;

 (2) a recertification survey;

 (3) a follow-up survey;

 (4) a residential survey; and

 (5) an intermittent survey.

(c) HHSC conducts an initial certification survey within 120 calendar days after the date HHSC approves the enrollment or transfer of the first individual to receive HCS Program services from the program provider.

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

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

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

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

(h) During a survey, HHSC may:

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

 (2) determine if a program provider has implemented an approved plan for amelioration as described in §565.45 of this subchapter (relating to Amelioration).

(i) HHSC conducts an exit conference at the end of a survey, at a time and location determined by HHSC. At the exit conference, HHSC informs a program provider of preliminary findings, in writing, including findings that may result in a critical violation.

(j) If HHSC identifies a finding that may be a critical violation not discussed during an exit conference, HHSC holds a new exit conference with a program provider to discuss the finding.

(k) In addition to the surveys described in this section, HHSC conducts, at least annually, an unannounced visit of each residence in which residential support or supervised living is provided to determine if the residence provides a safe and healthy environment that complies with the certification standards.

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

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

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

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

 (4) conduct an intermittent survey of the program provider.

(m) Based on a survey, HHSC takes action as described in §565.47 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(n) HHSC may evaluate the health and safety of an individual at any time.

(o) HHSC may conduct an unannounced residential survey of a residence in which host home/companion care, residential support, or supervised living is provided to determine if the residence provides a safe environment.

§565.41. HHSC Approval of Four Person-Residences.

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

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

 (1) the address and county of the residence;

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

 (3) one of the certifications required by §565.23(i)(1)(A) of this chapter (relating to Residential Requirements); and

 (4) written certification from the program provider that the residence to be approved is not the residence of any person other than a person permitted to live in a "four-person residence," as defined in §565.3 of this chapter (relating to Definitions).

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

§565.45. Amelioration.

(a) In lieu of requiring payment for an administrative penalty imposed against a program provider in accordance with §565.43 of this chapter (relating to Administrative Penalties), HHSC may give the program provider the opportunity for amelioration in accordance with this section.

(b) HHSC does not give a program provider the opportunity for amelioration:

 (1) more than three times in a two-year period;

 (2) more than one time in a two-year period for the same or similar violation;

 (3) for a critical violation that is an immediate threat; or

 (4) for the actions or failures to act described in §565.43(a)(2) of this chapter.

(c) HHSC gives a program provider the opportunity for amelioration in the notice required by 40 TAC §49.535(c) (relating to Administrative Penalties in the HCS and TxHmL Programs). If the program provider does not notify HHSC that the program provider chooses amelioration within the required period described in the notice, the program provider forfeits the opportunity to choose amelioration and HHSC requires the program provider to pay the administrative penalty in accordance with 40 TAC §49.535(f).

(d) If a program provider chooses amelioration in accordance with the notice required by 40 TAC §49.535(c), the program provider must submit a written plan for amelioration to HHSC within 45 calendar days after the date of the notice required by 40 TAC §49.535(c). If a program provider does not submit a plan for amelioration within 45 calendar days, HHSC requires the program provider to pay the administrative penalty in accordance with 40 TAC §49.535(d)(1).

(e) A plan for amelioration must include:

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

 (2) the ways in which and the extent to which the proposed changes will improve services or quality of care for the individuals through measurable outcomes;

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

 (4) a timeline for implementing the proposed changes;

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

 (6) the cost of the proposed changes; and

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

(f) The cost of the proposed changes must be incurred by the program provider after HHSC approves the plan for amelioration. If HHSC approves the plan and the cost of the proposed changes is less than the amount of the administrative penalty, HHSC requires the program provider to pay the difference between the cost of the proposed changes and the administrative penalty.

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

(h) HHSC notifies a program provider of its decision to approve or deny a plan for amelioration within 45 calendar days after the date HHSC receives the plan. During the 45-day period, HHSC may allow the program provider an opportunity to revise the plan.

 (1) If HHSC approves the plan:

 (A) the program provider must implement the plan; and

 (B) HHSC:

 (i) requires the program provider to pay the amount of the difference between the cost of the proposed changes and the administrative penalty, if any; and

 (ii) determines in one or more surveys conducted in accordance with §565.39 of this subchapter (relating to HHSC Surveys of a Program Provider) if the program provider has implemented the plan.

 (2) If HHSC denies the plan, HHSC requires the program provider to pay the amount of the administrative penalty in accordance with 40 TAC §49.535(d)(2). The program provider may appeal the administrative penalty in accordance with 40 TAC §49.541 of this title (relating to Contractor's Right to Appeal).

(i) If HHSC determines that a program provider did not implement an approved plan for amelioration, HHSC requires the program provider to pay the amount of the administrative penalty in accordance with 40 TAC §49.535(d)(3). The program provider may appeal the sole issue of whether the plan for amelioration was implemented.

§565.47. Program Provider Compliance and Corrective Action.

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

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

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

 (3) if the survey is an initial or a recertification survey, certifies the program provider as described in 40 TAC §9.171(f) (relating to HHSC Surveys and Residential Visits of a Program Provider).

(b) If HHSC determines from a survey that a program provider is not in compliance with a certification standards and the violation is an immediate threat, HHSC notifies the program provider of the determination. The program provider must immediately provide HHSC with a plan of removal.

(c) In a plan of removal provided in accordance with subsection (b) of this section, a program provider must specify the time by which the program provider will remove the immediate threat. HHSC approves or disapproves the plan of removal and monitors to ensure the immediate threat is removed.

(d) If a program provider that is required to provide a plan of removal does not provide a plan of removal, HHSC does not approve the program provider's plan of removal, or the program provider does not implement the plan of removal approved by HHSC, HHSC:

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

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

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

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

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

 (3) if HHSC imposes an administrative penalty in accordance with §565.43 of this chapter (relating to Administrative Penalties), a written notice of the administrative penalty as described in 40 TAC §49.535(b (relating to Administrative Penalties in the HCS and TxHmL Programs).

(f) If HHSC determines from an initial certification survey, recertification survey, or intermittent survey that a program provider is not in compliance with the certification standards, the program provider must submit to HHSC, within 14 calendar days after the date the program provider receives the final survey report, a plan of correction for each violation identified by HHSC in the final survey report. The program provider must submit a plan of correction in accordance with this subsection even if the program provider disagrees with the violation or requests an informal dispute resolution.

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

 (1) for a critical violation, be no later than 30 calendar days after the date of the survey exit conference; and

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

(h) After HHSC receives the plan of correction required by subsection (f) of this section, HHSC notifies the program provider whether the plan is approved or not approved.

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

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

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

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

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

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

 (2) conducts:

 (A) for a critical violation, a follow-up survey after the date specified in the plan of correction for correcting the violation but within 45 calendar days after the survey exit conference, unless HHSC conducts an earlier follow-up survey as described in subsection (l) of this section; or

 (B) for a violation that is not critical, a post 45-day follow-up survey, unless HHSC conducts an earlier follow-up survey as described in subsection (l) of this section.

(l) At the request of a program provider, HHSC may conduct a follow-up survey earlier than the timeframes described in subsection (k)(2) of this section.

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

 (2) If HHSC determines from the earlier follow-up survey that corrective action has not been completed for a violation that is not critical, HHSC conducts the post 45-day follow-up survey.

(m) If HHSC determines from a follow-up survey described in subsection (k)(2)(A) or (l) of this section that the program provider has completed corrective action for a critical violation, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in 40 TAC §49.535(c).

(n) If HHSC determines from a follow-up survey described in subsection (k)(2)(A) or (l) of this section that the program provider has not completed the corrective action for a critical violation, HHSC:

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

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

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

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

 (1) If HHSC determines from the survey that the program provider has completed the corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in 40 TAC §49.535(c).

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

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

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

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

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

 (1) imposes an administrative penalty for the non-critical violation in accordance with 40 TAC §9.181 (relating to Administrative Penalties);

 (2) notifies the program provider of the administrative penalty, as described in 40 TAC §49.535(b); and

 (3) conducts a survey:

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

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

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

 (1) If HHSC determines from the survey that the program provider has completed corrective action, the administrative penalty stops accruing on the date corrective action was completed, as determined by HHSC. HHSC sends the program provider a written notice as described in 40 TAC §49.535(c).

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

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

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

(s) If HHSC determines that a program provider committed any of the actions described in §565.43(a)(2) of this chapter, HHSC takes one of the following actions:

 (1) imposes an administrative penalty against the program provider as described in §565.43 of this chapter;

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

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

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

 (1) for a program provider with a provisional contract, HHSC initiates termination of the program provider's contract in accordance with 40 TAC §49.534 (relating to Termination of Contract by HHSC); or

 (2) for a program provider with a standard contract, HHSC conducts a survey at least 31 calendar days after the effective date of the vendor hold to determine if the program provider completed the corrective action required to release the vendor hold and:

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

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

(u) If HHSC determines that a program provider is out of compliance with §565.9(b)(2) of this chapter (relating to Program Provider Requirements), corrective action required by HHSC may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §565.9(b)(2) of this chapter, the difference between the amount required and the amount paid to the service provider.

(v) HHSC does not cite a program provider for violation of a certification standard based solely on the action or inaction of a person who is not a service provider or a staff member. HHSC may cite a program provider for violation of a certification standard based on the program provider's response to the action or inaction of such a person.