



TO: Medical Care Advisory Committee

DATE: August 13, 2020

FROM: Diana Conces, Director of Policy, Rules and Training

SUBJECT: Regulatory Certification Principles and Processes for Home and Community-based Services and Texas Home Living Program Providers

Agenda Item No.: 5

Propose new: Texas Administrative Code (TAC) Title 26, Part 1, Chapter 565, Home and Community-based Services, and Chapter 566, Texas Home Living

BACKGROUND: Federal Requirement Legislative Requirement Other: Program Initiative

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC.

The purpose of this proposal is to draft new rules that describe the regulatory certification principles for the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Medicaid waiver program providers. The proposed new Chapter 565, Home and Community-based Services, and Chapter 566, Texas Home Living, in Title 26, update the content of the existing rules describing HCS and TxHmL certification principles and rules regarding regulatory processes for HCS and TxHmL waiver programs that are in 40 TAC, Chapter 9, Subchapters D and N. The rules in those chapters will be administratively transferred to 26 TAC. The date of those transfers has not been determined.

ISSUES AND ALTERNATIVES:

Stakeholders commented about Restraint Risk Assessments being required for all individuals in HCS and TxHmL programs, requirements for a behavior support plan for dental sedations, and the Site and Grounds section, regarding rental property host homes and apartment complexes.

There are no alternatives to the proposed rules. The expectations outlined in the proposed rules are substantially the same as the requirements codified in 40 TAC 9.

STAKEHOLDER INVOLVEMENT:

The proposed rules were posted for informal comment on the HHSC Rulemaking web page from May 1 - 8, 2020. All informal comments received from stakeholders were resolved. Three stakeholder meetings were held on March 26, April 3, and April 13, 2020. Comments were received from Providers Alliance for Community Services of Texas, Private Providers Association of Texas, Disability Rights Texas and individual HCS providers. Comments were reviewed by HHSC staff and taken into consideration.

FISCAL IMPACT:

None

RULE DEVELOPMENT SCHEDULE:

August 13, 2020	Present to the Medical Care Advisory Committee
August 20, 2020	Present to HHSC Executive Council
September 2020	Publish proposed rules in <i>Texas Register</i>
January 2021	Publish adopted rules in <i>Texas Register</i>
January 2021	Effective date

REQUESTED ACTION: (Check appropriate box)

The MCAC recommends approval of the proposed rules for publication.

Information Only

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES

PROPOSED PREAMBLE

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes new Chapter 565, Home and Community-Based Services in Title 26 of the Texas Administrative Code (TAC). The new chapter is comprised of §§565.10, 565.20, 565.30, 565.40, 565.50, 565.60, 565.70, 565.80, 565.90, 565.100, 565.110, 565.120, 565.130, 565.140, 565.150, 565.160, 565.170, 565.180, 565.190, 565.200, and 565.210.

BACKGROUND AND PURPOSE

The purpose of the proposal is to draft new rules that describe the regulatory certification principles for Home and Community-based Services (HCS) Medicaid waiver program providers.

Currently, rules describing HCS certification principles and rules regarding regulatory processes for HCS waiver programs are in Title 40, Chapter 9, Subchapter D. The rules in those chapters will be administratively transferred to Title 26. The date of that transfer has not been determined.

The proposed rules describe certification principles regarding service delivery, rights of individuals, requirements related to abuse, neglect, and exploitation, staff member and service provider requirements, and quality assurance. The proposed rules also include new requirements for emergency preparedness, fire drills, and evacuation drills in all residential types in the HCS program. Current requirements listed on the waiver survey and certification checklist, that are not currently in rule, are included in the proposed rules. The proposed rules set forth recommendations for auditing critical incidents, clarify restraint and seclusion requirements, and clarify rights restrictions.

SECTION-BY-SECTION SUMMARY

Proposed new §565.10, Purpose and Scope, describes the purpose and scope of the Home and Community-based program.

Proposed new §565.20, Definitions, describes terms used in the Home and Community-based program.

Proposed new §565.30, Regulatory Certification Standard: Residential Safety Operations and Emergency Preparedness, describes program provider responsibilities to promote safety and emergency preparedness in residences. Requirements for means of egress, emergency response plans, fire extinguishers, and fire drills are included.

Proposed new §565.40, Regulatory Certification Standard: Requirements Specific to a Four Person Residences, describes how to obtain approval of a four-person residence.

Proposed new §565.50, Regulatory Certification Standard: Accessibility, outlines mobility and accessibility requirements and minor home modifications.

Proposed new §565.60, Regulatory Certification Standard: Site and Grounds, describes the program providers responsibilities for upkeep and maintenance of the residences. Requirements specifically address outside areas, floors, walls and ceilings, kitchen, bathroom, and storage of chemicals and toxins.

Proposed new §565.70, Regulatory Certification Standard: Protective Devices, describes the program provider's responsibilities when implementing the use of protective devices, including required documentation and assessments.

Proposed new rule §565.80, Regulatory Certification Standard: Restraint, describes when a program provider may use restraint and when they must not use restraint, including required assessments, documentation, and notifications when restraint is used.

Proposed new §565.90, Regulatory Certification Standard: Restraint Risk Assessment, describes the purpose and requirements of the Restraint Risk Assessment.

Proposed new §565.100, HHSC Review of a Program Provider Compliance and Residential Visit, lists the types of surveys conducted by HHSC and uses the term "recertification survey" instead of "annual certification survey" because this type of survey may not always occur annually.

Proposed new §565.110, Regulatory Certification Standard: Mission, Development, and Philosophy or Program Operations, outlines the requirement for a program provider to implement measures to ensure individual's rights, humanity, and dignity are respected.

Proposed new §565.120, Regulatory Certification Standard: Rights of Individuals, describes individual's rights in the HCS program and the program providers responsibility to ensure those rights are exercised.

Proposed new §565.130, Regulatory Certification Standard: Service Delivery, describes the program provider's responsibility for each service provided in the HCS program.

Proposed new §565.140, Regulatory Certification Standard: Requirements related to Abuse, Neglect and Exploitation of an Individual, outlines program provider responsibilities for documenting, reporting, and ensuring safety of the individual when incidents of abuse, neglect, and exploitation occur.

Proposed new §565.150, Regulatory Certification Standard: Staff Member and Service Provider Requirements, outlines provider responsibilities for employing, training, and contracting with service providers, including service provider minimum qualifications.

Proposed new §565.160, Regulatory Certification Standard: Quality Assurance, describes a program provider's responsibility to ensure the quality of services and residence provided to the individual. A provider must ensure a four-person residence receives certification from HHSC.

Proposed new §565.170, Regulatory Certification Standard: Prohibitions, states that a program provider must not use seclusion.

Proposed new §565.180, Administrative Penalties, allows HHSC to impose and collect an administrative penalty against an HCS program provider for a violation of a certification principle and contains a table that sets forth the ranges of an administrative penalty imposed for a violation of a certification principle, based on the severity and scope of the violation and whether the violation is repeated non-compliance. The proposed rule describes the factors HHSC considers in determining the amount of the administrative penalty to impose for the violation and requires HHSC to give the program provider one opportunity to correct violations.

Proposed new §565.190, Amelioration, allows HHSC to give a program provider the opportunity for amelioration, in lieu of an administrative penalty for a violation. The proposed rule describes the circumstances under which a program provider is, and is not, allowed the opportunity for amelioration and requirements for program providers seeking amelioration. The proposed rule requires HHSC to notify a program provider regarding plan approval, or payment if a plan is denied, and it allows the program provider to appeal the administrative penalty in accordance with 40 TAC §49.541 (relating to Contractor's Right to Appeal).

Proposed new §565.200, Program Provider and Corrective Action, outlines the requirements of HHSC, if it determines that a program provider is, or is not, in compliance with the certification principles. The proposed rule requires a program provider to submit a plan of correction for each concern identified by HHSC and outlines what happens if the plan needs to be revised, or if it is approved or not approved, and it details follow-up steps. The proposed rule describes administrative penalties for critical violations and HHSC's responsibilities in conducting surveys and citing a program provider for violation of a certification principle based.

Proposed new §565.210, Program Provider's Right to Administrative Hearing, allows a program provider to request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing).

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules update, clarify, and codify existing HHSC agency practices and requirements.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be the health and safety of the individuals in the HCS program. HCS program providers, HHSC staff, and the public will benefit from the proposed rules because rules will clarify provider requirements, which are intended to ensure health and safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules update, clarify, and codify existing HHSC agency practices and requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristin Priddy at (512) 438-3161 in the HHSC Regulatory Services Division.

Written comments on the proposal may be submitted to Kristin Priddy, Senior Policy Specialist, P.O. Box 149030 Austin, Texas 78714-9030; or by email to PolicyRulesTraining@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R040" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

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

ADDITIONAL INFORMATION

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

Legend:

Single Underline = Proposed new language

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

Regular print = Current language

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

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES
SUBCHAPTER A GENERAL PROVISIONS

§565.10. Purpose and Scope.

(a) The purpose of this chapter is to promote health, safety, and welfare by establishing the minimum standards 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 of a program provider.

§565.20. 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 CFC 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 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) CFC--Community First Choice.

(13) 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.

(14) 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.

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

(A) that consists of:

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

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

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

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

(IV) assistance with health-related tasks; and

(ii) habilitation that assists 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) that does not include transporting the individual, which means driving the individual from one location to another.

(16) CFC support management--Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the Home and Community-based Services Handbook.

(17) 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.

(18) 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.

(19) 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 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.

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

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

(22) 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.

(23) Critical incident--An event listed in the HCS Provider User Guide found at hhs.texas.gov.

(24) 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.

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

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

(27) Emergency response 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 other man-made or natural disaster.

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

(A) an individual needing emergency medical care;

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

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

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

(29) Enclosure bed--A bed that is designed to prevent, and does prevent, an individual from exiting the bed without assistance from another person.

(30) 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.

(31) Fire Drill--A practice drill in the conduct and manner of exit in case of a fire, in which all individuals evacuate.

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

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

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

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

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

(35) 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).

(36) Good cause-- a reason outside the control of the provider, as determined by HHSC.

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

(38) 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.

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

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

(41) 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.

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

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

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

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

(44) 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.

(45) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC for LOC determination and LON assignment.

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

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

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

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

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

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

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

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

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

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

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

(49) 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 certification standards.

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

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

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

(53) 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.

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

(55) IPC year--A 12-month time period 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.

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

(57) LAR--Legally authorized representative. A person authorized by law to act for 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.

(58) 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.

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

(60) 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.

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

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

(63) 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.

(64) Means of egress – A continuous and unobstructed path of travel from an occupied portion of a building to a public way.

(65) 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.

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

(67) 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.

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

(69) Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with a certification standard 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.

(70) 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 at hhs.texas.gov, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual or LAR and ensure the applicant's or individual's health and safety.

(71) Pediatric enclosure bed--As defined and approved by Texas Medicaid Provider Procedures Manual, a bed with four side enclosures and a top cover for individuals under the age of 21.

(72) 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.

(73) 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.

(74) Person-directed planning--An ongoing process that empowers the applicant, individual, or LAR 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, individual, or LAR; and

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

(75) 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 not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(76) 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.

(77) 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.

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

(79) 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.

(80) Post-move monitoring visit--As described in §303.701 of this title (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

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

(B) identify gaps in care; and

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

(81) 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.

(82) 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.

(83) Pre-move site review--As described in §303.701 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(84) 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.

(85) Protective Device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if it is only used to protect an individual from injury, or for body positioning of the individual to ensure health and safety, and it is not used to modify or control behavior. The device or item is considered a protective device only when used in accordance with the prescribed order of a licensed professional or a physician.

(86) Provisional contract--A contract that HHSC enters into 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 40 TAC §49.208(e).

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

(88) Recertification survey--A review conducted 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.

(89) 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.

(90) 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*.

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

(92) 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.

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

(94) Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a chemical restraint.

(95) 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.

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

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

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

(99) Service coordination--A service as defined in 40 TAC §2.553(36) (relating to Definitions).

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

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

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

(i) an applicant or individual and LAR;

(ii) service coordinator; and

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

(B) for an applicant at least 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 at least 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.

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

(103) 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.

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

(105) 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.

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

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

(108) Standard contract--A contract that HHSC enters into 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).

(109) 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.

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

(111) 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.

(112) 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.

(113) 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).

(114) Transition plan--As described in §303.701 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.

(115) 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 at hhs.texas.gov. 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.

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

(117) 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.

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

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

(120) 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.

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

SUBCHAPTER B RESIDENTIAL CRITERIA

§565.30. Regulatory Certification Standard: Residential Safety Operations and Emergency Preparedness.

(a) For purposes of this section, a residence means:

- (1) a three-person residence;
- (2) a four-person residence; or
- (3) a residence in which host/home companion care is provided.

(b) A program provider must ensure that:

- (1) a residence has at least two means of egress from the residence;
- (2) a residence has at least two means of egress from a common area;
- (3) all means of egress are kept clear of obstructions and not used for any purpose that would interfere with its use as an exit;
- (4) an individual's bedroom has at least one window that will open freely from the inside and remain open without special tools; and
- (5) a three-person residence or four-person residence in which no automatic sprinkler system is installed has at least two means of egress from an individual's bedroom.

(c) A program provider must develop an emergency response plan for each individual living in a residence. In developing the emergency response plan, the program provider must take into account the:

- (1) abilities of the individual to follow the plan;
- (2) individual's protective devices; and
- (3) individual's physical, medical, or behavioral needs.

(d) A program provider must ensure that:

- (1) an emergency response plan addresses relevant emergencies for:

(A) the individual;

(B) the type of service being provided to the individual; and

(C) the geographic location of the residence;

(2) the individual receives instruction concerning the emergency response plan:

(A) within 48 hours after the individual moves into the residence;

(B) on an annual basis thereafter; and

(C) if the individual's ability to follow the emergency response plan changes;

(3) the individual's service providers demonstrate competence in implementing the emergency response plan at the time job duties:

(A) are initially assumed; and

(B) on an annual basis thereafter;

(4) the service providers and individuals follow the emergency response plan during:

(A) a drill; and

(B) an actual emergency;

(5) documentation is maintained in each residence for:

(A) completion of drills; and

(B) responses to actual emergencies;

(6) the emergency response plan is:

(A) reviewed by the program provider at least annually and revised if necessary; and

(B) reviewed and revised within 30 calendar days after any of the following occurs:

(i) an actual emergency or practice drill identifies a shortcoming in the plan;

(ii) HHSC changes a rule that affects the plan;

(iii) a program provider changes a policy that affects the plan;

(iv) the individual's needs or abilities change; or

- (v) the actions in the emergency response plan are no longer feasible;
- (7) the emergency response plan is maintained in the individual's residence; and
- (8) a copy of the current emergency response plan is available to:

- (A) the individual; and

- (B) service providers who work in the residence.

(e) The program provider must ensure that a residence has working smoke alarms installed to detect smoke from:

- (1) the kitchen;

- (2) common living area; and

- (3) the individuals' bedrooms.

(f) The program provider must ensure that a residence has at least one universal, fully-charged, and unexpired fire extinguisher on each level of the residence.

(g) The program provider must inspect and maintain fire extinguishers by:

- (1) conducting regular monthly inspections to ensure:

- (A) extinguishers are properly located, as required by subsection (f) of this section;

- (B) access to extinguisher locations is not obstructed; and

- (C) the pressure gauge reading or indicator on the extinguisher is in the operable range or position;

- (2) maintaining in the residence a record of fire extinguisher inspections and maintenance performed;

- (3) replacing unserviceable fire extinguishers; and

- (4) replacing discharged fire extinguishers.

(h) Except as provided in subsection (i) of this section, the program provider must ensure:

- (1) an individual participates in a fire drill within 48 hours after the individual moves into the residence;

- (2) a fire drill is conducted in a residence at least six times during a calendar year;

(3) at least two fire drills conducted in accordance with paragraph (2) of this subsection are conducted between the hours of 10:00 p.m. and 6:00 a.m.;

(4) an individual participates in a fire drill within 48 hours after a change occurs in the individual's condition that may negatively affect the individual's ability to participate in a fire drill; and

(5) a service provider participates in at least one fire drill conducted in each residence in which the service provider provides services before service provision.

(i) An individual is not required to participate in a fire drill if medically contraindicated, as documented by a physician's order.

(j) The program provider must ensure that a residence has a first aid kit that complies with American Red Cross recommendations with contents that are not out-of-date.

§565.40. Regulatory Certification Standard: Requirements to Request Approval for a Four-Person Residence.

(a) A program provider must obtain HHSC written approval in accordance with 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 of the residence;

(2) county of the residence;

(3) 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;

(4) written certification from the program provider that the residence to be approved is not the residence of any person except a person permitted to live in a four-person residence, as described in §565.20 of this subchapter (relating to Definitions);

(5) a completed HHSC Form 8491 for Request for a Four-Person Residence Approval available at hhs.texas.gov; and

(6) a current copy of the certification or inspection, as described in subsection (d)(1) of this section.

(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.

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

(1) Before providing residential support in a four-person residence, the program provider must ensure that the four-person residence meets one of the following:

(A) is certified by:

(i) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the National Fire Protection Association 101: Life Safety Code (Life Safety Code); or

(ii) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the International Fire Code (IFC); or

(iii) the Texas State Fire Marshal's Office as being in compliance with the applicable portions of the Life Safety Code; or

(B) as described in paragraph (2) of this subsection, is certified by HHSC as being in compliance with the portions of the Life Safety Code applicable to small residential board and care facilities and most recently adopted by the Texas State Fire Marshal's Office; and

(2) HHSC inspects for certification as described in paragraph (1)(B) 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 at hhs.texas.gov 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 5604 Request for Life Safety Inspection-HCS Four-Person Home, available at hhs.texas.gov.

(3) The program provider must:

(A) obtain the certification required by paragraph (1)(A) of 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.

§565.50. Regulatory Certification Standard: Accessibility.

(a) For purposes of this section, a residence means:

(1) a three-person residence;

(2) a four-person residence; or

(3) a residence in which host/home companion care is provided.

(b) A program provider must ensure:

(1) that adaptive aids are provided in accordance with the individual's PDP, IPC, and implementation plan, HCS Program Billing Guidelines and Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov, 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.

(2) minor home modifications, including maintenance and repair, are provided in accordance with the individual's PDP, IPC, and implementation plan, HCS Program Billing Guidelines, and Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov, 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.

(c) 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 and in consideration of funds available to the individual within their \$7,500 lifetime limit;

(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 at hhs.texas.gov; 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.

§565.60. Regulatory Certification Standard: Site and Grounds.

(a) Applicability. For purposes of this section, a residence means:

(1) a three-person residence;

(2) a four-person residence; or

(3) a residence in which host/home companion care is provided.

(b) Appearance and cleanliness of a residence. A program provider must ensure:

(1) all outside areas, grounds, and walkways under the responsibility of the owner or lessor are maintained in a condition that is free of rubbish, garbage, excessive clutter, untended growth, and other conditions which may constitute a fire or health hazard;

(2) the exterior appearance of a residence looks similar to other residences in the neighborhood and does not stand out as a home in which persons receive HCS services;

(3) a residence is in a location that is accessible to services in the community;

(4) a residence is kept free of insects, rodents, and vermin by:

(A) implementing an ongoing and effective pest control program, executed by provider staff or by contract with a licensed pest control company; and

(B) ensuring windows are operable with insect screens;

(5) garbage and trash are stored:

(A) in a receptacle to protect against leakage;

(B) in a closed container, if directly outside the residence to protect against access from animals; and

(C) in a clean storage area;

(6) a residence provides a comfortable living environment that:

(A) provides sufficient space for an individual to move without obstruction;

(B) is sanitary;

(C) is free of odors that originate from waste, garbage, or toxins;

(D) provides cooling and heating; and

(E) provides furnishings that are sanitary and free of rips, stains, and broken pieces.

(7) plumbing fixtures are in good repair; and

(8) electrical fixtures are in good repair with no exposed wiring.

(c) Floors, walls, and ceilings. A program provider must ensure:

(1) floors are in good condition and cleaned regularly;

(2) floors are free from irregularities that may pose a risk of injury to individuals;

(3) ceilings are repaired and repainted or cleaned as needed;

(4) ceilings are free from irregularities that may pose a risk of injury to individuals;

(5) walls are repaired and repainted or cleaned as needed; and

(6) walls are free from irregularities that may pose a risk of injury to individuals.

(d) Kitchen. A program provider must:

(1) allow an individual unrestricted access to the kitchen, unless contraindicated by current medical or behavioral documentation;

(2) provide enough food and beverages to meet the nutritional needs of each individual;

(3) protect food items from contamination by:

(A) covering or storing them in a container to prevent rodents, insects, and vermin;

(B) storing them off the floor if the packaging has been opened;

(C) storing them on sanitary surfaces; and

(D) refrigerating them immediately after use and after meals, if the food requires refrigeration;

(4) discard food and drink items immediately upon expiration;

(5) sanitize areas where food is prepared or eaten; and

(6) keep kitchen appliances sanitary and in working condition.

(e) Bathrooms. A program provider must ensure a residence has a bathroom for use by an individual which:

(1) is accessible;

(2) is sanitary;

(3) has working plumbing fixtures;

(4) has towels, soap, and toilet tissue available at all times for an individual, unless contraindicated by current medical or behavioral documentation; and

(5) is designed for privacy when being used independently and during the delivery of services.

(f) Chemicals and toxins. A program provider must ensure:

(1) all cleaning products and chemicals are labeled; and

(2) all bleaches, detergents, disinfectants, insecticides, and other poisonous substances are stored in an area of the residence that is:

(A) not exposed to high temperatures; and

(B) not readily accessible to individuals to whom they may pose a safety hazard or who are unable to handle them safely.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES

SUBCHAPTER C PROTECTIVE DEVICES AND RESTRAINTS

§565.70. Regulatory Certification Standard: Protective Device.

(a) If a protective device, which is a restrictive intervention, 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 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 or an RN conducts an assessment at least annually and after any significant change in the individual's condition to determine:

- (1) if the individual has a medical need for a protective device;
- (2) that less restrictive methods would be ineffective in protecting the individual, and the reasons for that determination;
- (3) the type of protective device to be used, which must be the least restrictive protective device that will protect the individual;
- (4) the circumstances under which the protective device may be used;
- (5) how to use the protective device and any contraindications specific to the individual;
- (6) how and when to document the use of the protective device; and
- (7) how to monitor the use of the protective device to ensure it is being used in accordance with the assessment.

(d) Before a program provider uses a protective device in the assessment required by subsection (c) of this section, the program provider must:

(1) obtain and retain in the individual's record a physician's order for the use of the protective device identified in the assessment;

(2) obtain and retain in the individual's record the consent of the individual or LAR to use the protective device;

(3) 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

(4) 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 assessment.

(e) A pediatric enclosure bed used for an individual under the age of 21 is a protective device and must be used in accordance with this section. When an individual reaches the age of 21, the program provider must ensure that the individual is no longer using the protective device.

§565.80. Regulatory Certification Standard: Restraint.

(a) A program provider may only use restraint:

(1) as part of a behavior support plan developed in accordance with §565.160(p) of this chapter (relating to Regulatory Certification Standard: Quality Assurance) that addresses inappropriate behavior exhibited voluntarily by an individual;

(2) in a behavioral emergency; or

(3) subject to subsection (b) of this section, before or related to a medical or dental procedure, if necessary to protect the individual or others.

(b) A program provider may only use a chemical restraint before or related to a medical or dental procedure if the restraint is part of a behavior support plan developed in accordance with §565.160(p) of this chapter.

(c) A program provider must not use restraint:

(1) in a manner that:

(A) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

(B) impairs the individual's breathing by putting pressure on the individual's torso;

(C) interferes with the individual's ability to communicate;

(D) places the individual in a prone or supine position;

(E) extends muscle groups away from each other;

(F) uses hyperextension of joints; or

(G) uses pressure points or pain;

(2) for disciplinary purposes, retaliation, coercion, or retribution;

(3) for the convenience of a staff member, service provider, or other person; or

(4) as a substitute for an effective, less restrictive method.

(e) If a program provider restrains an individual as provided in subsection (a) of this section, the program provider must:

(1) take into account the information in the individual's restraint risk assessment, required by §565.90 of this chapter (relating to Regulatory Certification Standard: Restraint Risk Assessment);

(2) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others;

(3) safeguard the individual's dignity, privacy, and well-being; and

(4) not secure the individual to a stationary object.

(f) A pediatric enclosure bed must not be used as a restraint.

(g) In a circumstance described in subsection (a)(1) or (2) of this section, a program provider may only use 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 (a)(1) of this section.

(h) 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) if the individual is in a physical restraint described in subsection (e) of this section and moves toward the floor, as soon as the individual reaches the floor.

(i) 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) ensure that a nurse completes an assessment to determine the need for further medical intervention or services;

(4) 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

(5) notify the individual's service coordinator by the end of the first business day after the use of restraint.

(j) 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 (i)(4)(B) of this section must be to a person to whom the program provider is allowed to release information under 45 CFR §164.510.

§565.90. Regulatory Certification Standard: Restraint Risk Assessment.

(a) To minimize the risk of harm to an individual, a program provider must ensure that an RN or a physician conducts a restraint risk assessment for each individual to identify:

(1) known physical, emotional, psychological, or medical conditions that might constitute a risk to the individual during the use of restraint;

(2) the individual's:

(A) communication style;

(B) cognitive functioning level;

(C) height;

(D) weight;

(E) known history of having been physically or sexually abused; and

(F) age;

(3) limitations on specific restraint techniques or mechanical restraint devices; and

(4) any other relevant information.

(b) A program provider must ensure that a physician, RN, or LVN:

(1) reviews the restraint risk assessment at least annually or when a condition or factor documented in accordance with this subsection changes significantly; and

(2) revises the restraint risk assessment based on the review, as necessary.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES

SUBCHAPTER D GENERAL REQUIREMENTS

§565.100. HHSC Review of a Program Provider and Residential Visit.

(a) The program provider must be in continuous compliance with the HCS Program regulatory certification standards contained in:

(1) §565.30 of this chapter (relating to Regulatory Certification Standard: Residential Safety Operations and Emergency Preparedness);

(2) §565.40 of this chapter (relating to Regulatory Certification Standard: Requirements to Request Approval for a Four-Person Residence);

(3) §565.50 of this chapter (relating to Regulatory Certification Standard: Accessibility);

(4) §565.60 of this chapter (relating to Regulatory Certification Standard: Site and Grounds);

(5) §565.70 of this chapter (relating to Regulatory Certification Standard: Protective Device);

(6) §565.80 of this chapter (relating to Regulatory Certification Standard: Restraint);

(7) §565.90 of this chapter (relating to Regulatory Certification Standard: Restraint Risk Assessment);

(8) §565.110 of this subchapter (relating to Regulatory Certification Standard: Mission, Development, and Philosophy of Program Operations);

(9) §565.120 of this subchapter (relating to Regulatory Certification Standard: Rights of Individuals);

(10) §565.130 of this subchapter (relating to Regulatory Certification Standard: Service Delivery);

(11) §565.140 of this subchapter (relating to Regulatory Certification Standard: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual);

(12) §565.150 of this subchapter (relating to Regulatory Certification Standard: Staff Member and Service Provider Requirements);

(13) §565.160 of this subchapter (relating to Regulatory Certification Standard: Quality Assurance); and

(14) §565.170 of this subchapter (relating to Regulatory Certification Standard: Prohibitions).

(b) The program provider must be in compliance with all applicable provisions of federal, state, and local laws and regulations and codes pertaining to health, safety, and sanitation.

(c) A program provide must comply with all requirements in HHSC provider letters regarding the HCS Program.

(d) HHSC conducts the following surveys:

(1) an initial certification survey;

(2) a recertification survey;

(3) a follow-up survey; and

(4) an intermittent survey.

(e) 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.

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

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

(h) 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.

(i) 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.

(j) During a survey, HHSC may:

(1) review the HCS Program 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 §565.190 of this subchapter (relating to Amelioration).

(k) 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.

(l) 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.

(m) In addition to the surveys described in this section, HHSC conducts, at least annually, a visit of each residence in which host home/companion care, residential support, or supervised living is provided to determine if the residence provides a safe and comfortable environment that complies with the certification standards.

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

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

(n) Based on the information obtained from a visit described in subsection (m) 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.

(o) Based on a survey, HHSC acts as described in §565.200 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(p) HHSC may evaluate the health and safety of an individual at any time. If HHSC identifies a concern from the evaluation, HHSC may conduct an intermittent survey.

§565.110. Regulatory Certification Standard: Mission, Development, and Philosophy of Program Operations.

A program provider must:

(1) implement a teaching and training philosophy that emphasizes improved, independent functioning for each individual;

(2) ensure that each individual's humanity and dignity is respected;

(3) ensure that the rights of the individual, as exercised by the individual or the LAR for the individual, are protected;

(4) encourage the individual, the individual's LAR, and family members (with the consent of the individual or the individual's LAR) to participate in making choices about where the individual will live, attend school, work, and take part in leisure activities; and

(5) support the individual in person-directed planning and participate, upon request of the individual or LAR, in a meeting of the service planning team.

§565.120. Regulatory Certification Standard: Rights of Individuals.

(a) A program provider must assist the:

(1) individual, or the LAR for 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 protect and promote the following rights of the individual 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 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 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;

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

(13) attend religious activities of choice;

(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 in accordance with 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;

(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 encouragement from a staff member or service provider 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, comfortable, and safe environment;

(27) participate in decisions regarding the individual's living environment, including location, furnishings, 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 the husband and wife 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 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) be informed orally and in writing of any charges assessed by the program provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status;

(42) complain to HHSC when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR and be informed of the HHSC IDD Ombudsman telephone number to begin complaints (1-800-252-8154);

(43) be free from the use of seclusion; and

(44) have a lock on the inside of the individual's bedroom door, as described in §565.130(a)(23)(G) of this subchapter (relating to Regulatory Certification Standard: Service Delivery).

§565.130. Regulatory Certification Standard: Service Delivery.

(a) A 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 HHSC 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;

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

(5) encourage involvement of the LAR, or family members and friends, in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request 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) obtain the 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, 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;

(7) inform the parent or LAR that HHSC refers the case to DFPS, if the information described in paragraph (6) 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);

(8) 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 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 cannot locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions, unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual:

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

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

(13) 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;

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

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support, if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid based on 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;

(17) 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;

(18) 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;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

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

(C) there is a sufficient supply of hot water at sinks and in bathing facilities to meet the needs of individuals;

(D) 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 (i) 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;

(E) unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(F) the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

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

(H) the door lock installed in accordance with subparagraph (G) of this paragraph:

(i) is a single-action lock;

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

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

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at [hhs.texas.gov](https://www.hhs.texas.gov), 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;

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

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

(27) ensure that:

(A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at [hhs.texas.gov](https://www.hhs.texas.gov):

(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) has a qualified professional, as described in §565.150(q) of this subchapter (relating to Regulatory Certification Standard: Staff Member and Service Provider Requirements), 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;

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov, including:

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

(B) 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) providing 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;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov, including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that nursing is provided in accordance with the individual's PDP, IPC, and 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 at hhs.texas.gov 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;

(31) 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;

(32) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, and transportation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov and includes the following elements:

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

(B) assistance with meal planning and preparation;

(C) providing transportation;

(D) securing transportation;

(E) assistance with housekeeping;

(F) assistance with ambulation and mobility;

(G) reinforcement of professional therapy activities;

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

(I) supervision 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;

(33) 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, except when the host home provider and individuals are related by a second degree of affinity or fourth degree of consanguinity; and

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

(34) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov, and includes the following elements:

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

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

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

(H) supervision 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;

(35) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §565.40 of this subchapter (relating to Regulatory Certification Standard: Requirements Specific to Four Person Residences) 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;

(36) ensure that supervised living is provided in accordance with the individual's PDP, IPC, and implementation plan, and Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov and includes the following elements:

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

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

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

(H) supervision 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;

(37) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §565.40 of this subchapter, or 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 Executive 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;

(38) ensure that residential support is provided in accordance with the individual's PDP, IPC, and implementation plan and Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov, and includes the following elements:

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

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

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

(H) supervision 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;

(39) 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;

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

(41) ensure that respite is provided in accordance with the individual's PDP, IPC, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov 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; and

(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;

(42) 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 meets HCS Program requirements and affords an environment that ensures the health, safety, comfort, and welfare of the individual; and

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

(B) if respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services or CFC services and persons receiving similar services, for which the program provider is reimbursed, are served in a residence in which host home/companion care is provided;

(ii) no more than three individuals receiving HCS Program services or CFC services and persons receiving similar services, for which the program provider is reimbursed, are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services or CFC services and persons receiving similar services, for which the program provider is reimbursed, are served in a residence in which residential support is provided;

(C) if respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) 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; and

(D) if respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association; and

(E) the program provider must not provide respite in an institution such as an ICF/IID, nursing facility, or hospital;

(43) ensure that employment assistance:

(A) is assistance 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 for 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, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov;

(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;

(44) 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, and implementation plan and with Appendix C of the HCS Program waiver application approved by CMS and found at hhs.texas.gov;

(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;

(45) ensure that CFC PAS/HAB is available only to an individual who is not receiving host home/companion care, supervised living, or residential support;

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

(47) 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;

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

(49) 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;

(50) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(51) 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;

(52) 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 §565.90(a)(1) and (2) of this subchapter (relating to Regulatory Certification Standard: 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 (g)(2)(A) and (h)(2)(A) of this section;

(53) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (52) 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;

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

(A) an individual's IPC; and

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

(55) 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;

(56) 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;

(57) 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 time period 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, describes 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 the plan was effective;

(ii) document whether the plan was effective; and

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

(58) for an applicant at least 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 assists the service coordinator during the review as requested; and

(59) for 365 calendar days after an individual at least 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 assists 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).

(c) 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.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(30)(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.

(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), the program provider must immediately send the written notification described in subsection (e) of this section to HHSC.

(g) The program provider must provide TAS in accordance with this subsection.

(1) The program provider must:

(A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed Transition Assistance Services (TAS) Assessment and Authorization Form 8604 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 at hhs.texas.gov; 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 subsection, 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.

(h) If the program provider conducts the competency-based skills assessment described in subsection (a)(23)(D) 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.

(i) CFC ERS must be provided in accordance with this subsection.

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

(ii) is 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 cannot successfully activate an alarm call, the program provider must ensure that a request is made to 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 subsection, 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 cannot 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 subparagraph (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 subsection:

(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 subsection, 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 subsection:

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

(B) as soon as possible, a system check is done, and battery replacement is made.

(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 subsection.

§565.140. Regulatory Certification Standard: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.

(a) A program provider must:

(1) ensure that an individual and LAR are, before or 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 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; and

(3) conduct the activities described in paragraph (2)(A) - (C) 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) as necessary:

(A) obtain immediate 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 alternative residential settings and additional services 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) as necessary:

(A) obtain immediate 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) records 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, 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.

§565.150. Regulatory Certification Standard: Staff Member and Service 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.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice, in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, 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 if that person or entity:

(A) is qualified to provide the service;

(B) unless the program provider agrees to pay a higher amount, provides the service at or below:

(i) for any service except CFC ERS, the direct services portion of the applicable HCS Program rate; and

(ii) for CFC ERS, the reimbursement rate; and

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

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) 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).

(c) A program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program, including 40 TAC Chapter 49.

(d) A program provider must:

(1) conduct initial and periodic training that ensures staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §565.80 of this subchapter (relating to Regulatory Certification Standard: Restraint); and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(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 from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

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

(B) the purchase of goods that an individual cannot use with the individual's funds;

(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.

(g) 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; or

(2) have both of the following:

(A) 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; and

(B) participation as a member of a microboard, as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates, filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite is at least 18 years of age; and

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

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

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

(B) 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.

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas, certified in the specific area for which services are delivered, or providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) meets one of the following:

(A) is a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(B) is a psychological associate licensed in accordance with Texas Occupations Code, Chapter 501;

(C) has been issued a provisional license to practice psychology, in accordance with Texas Occupations Code, Chapter 501;

(D) is certified by HHSC, as described in 40 TAC §5.161 (relating to Certified Authorized Provider);

(E) is a clinical social worker licensed in accordance with Texas Occupations Code, Chapter 505;

(F) is a professional counselor licensed in accordance with Texas Occupations Code, Chapter 503; or

(G) is a behavior analyst licensed in accordance with Texas Occupations Code, Chapter 506; and

(2) completes the web-based HHSC HCS and TxHmL Behavioral Support Services Provider Policy Training available at hhs.texas.gov:

(A) before providing behavioral support services;

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

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

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed by the Texas State Board of Dental Examiners, in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(n) The program provider must comply with 40 TAC §49.304 (relating to Background Checks).

(o) A program provider must comply with 40 TAC §49.312(a) (relating to Personal Attendants).

(p) 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 (o) of this section, as if the contractor were the program provider.

(q) The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

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

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma, or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(t) 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 §565.130(g)(2)(A) of this subchapter (relating to Regulatory Certification Standard: Service Delivery).

(u) 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, so the service provider meets any additional qualifications desired by the individual or LAR.

§565.160. Regulatory Certification Standard: Quality Assurance.

(a) In the provision of HCS Program services and CFC services to an individual, the program provider must promote the active and maximum cooperation with:

(1) providers of services other than HCS Program services or CFC services; and

(2) advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability.

(c) Before providing services to an individual in a residence in which host home/companion care, 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 healthy, comfortable, safe, appropriate, and typical of other residences in the community, 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) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure 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.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which host home/companion care, supervised living, or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies is maintained in each residence.

(e) 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 (j)(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.

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

(g) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(h) The program provider must comply with §49.309 of this title (relating to Complaint Process).

(i) 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.

(j) 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 §49.309 of this title, and identify program process improvements to reduce the filing of 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 (s) 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 (e) 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 (e)(2) of this section and implement the recommendations approved by the program provider.

(k) 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, and 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 his or her LAR is obtained beforehand.

(l) 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) divide the room cost described in paragraph (1) of this subsection by 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;

(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.

(m) 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.

(n) 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.

(o) 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 that includes:

(i) the amount of the expenditure;

(ii) the date of the expenditure;

(iii) the person to whom the expenditure was made;

(iv) except as described in clause (vi) of this subparagraph, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for;

(v) if the statement described in clause (iv) of this subparagraph documents an expenditure for more than one individual, the amount allocated to each individual identified on the statement; and

(vi) if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received.

(3) 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.

(4) 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.

(p) 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 subsection.

(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.

(q) 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.

(r) 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.

(s) 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.

(t) 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) if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual, acts as the contact person in an HHSC investigation and complies with §565.140(d)-(f) of this subchapter (relating to Certification Standards: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual).

§565.170. Regulatory Certification Standard: Prohibitions.

(a) A program provider must not use seclusion.

(b) A pediatric enclosure bed must not be used for an individual over the age of 21.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 565 HOME AND COMMUNITY-BASED SERVICES

SUBCHAPTER E ENFORCEMENT

§565.180. Administrative Penalties.

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

(1) a violation of a certification standard that applies to a program provider; and

(2) any of the following:

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

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

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

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

(b) The range of the administrative penalty that may be imposed against a program provider each day for a violation, described in subsection (a)(1) of this section, is based on the scope and severity of the violation and whether it is an initial or repeated violation, as set forth in the following figure:

<u>Figure 26</u> <u>TAC</u> <u>§565.180(b)</u>		<u>Scope of Violation</u>		
		<u>Isolated</u>	<u>Pattern</u>	<u>Widespread</u>
<u>Severity of Violation</u>				
<u>Immediate threat</u>	<u>Initial violation</u>	<u>\$400-1000</u>	<u>\$1000-2000</u>	<u>\$2000-3000</u>
	<u>Repeated violation</u>	<u>\$500-1000</u>	<u>\$2000-\$4000</u>	<u>\$3000-\$5000</u>
	<u>Critical or not critical</u>	<u>CRITICAL</u>	<u>CRITICAL</u>	<u>CRITICAL</u>

<u>ACTUAL HARM</u>	<u>Initial violation</u>	<u>\$100-\$200</u>	<u>\$200-\$1000</u>	<u>\$300-\$1500</u>
	<u>Repeated violation</u>	<u>\$200-\$1000</u>	<u>\$300-\$2000</u>	<u>\$400-\$3000</u>
	<u>Critical or not critical</u>	<u>NOT CRITICAL</u>	<u>CRITICAL</u>	<u>CRITICAL</u>
<u>POTENTIAL FOR ACTUAL HARM</u>	<u>Initial violation</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Repeated violation</u>	<u>\$0-300</u>	<u>\$0-\$500</u>	<u>\$0-\$1000</u>
	<u>Critical or not critical</u>	<u>NOT CRITICAL</u>	<u>NOT CRITICAL</u>	<u>CRITICAL</u>
<u>NO POTENTIAL FOR ACTUAL HARM</u>	<u>Initial violation</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Repeated violation</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Critical or not critical</u>	<u>NOT CRITICAL</u>	<u>NOT CRITICAL</u>	<u>NOT CRITICAL</u>

(c) In determining the amount of an administrative penalty within a range, HHSC considers:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of individuals resulting from the violation;

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

(3) whether the program provider:

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

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

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

(5) any other matter that justice may require.

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

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

(1) for a critical violation, on the date HHSC identifies the violation; or

(2) for a violation that is not critical, on the date of the exit conference of the post 45-day follow-up survey.

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

(1) the program provider completes corrective action for that violation, as determined by HHSC;

(2) HHS imposes a vendor hold for that violation; or

(3) HHSC withholds payments as the result of a proposed contract termination.

(g) If the program provider demonstrates that corrective action is complete on the same day an administrative penalty begins accruing, HHSC imposes an administrative penalty for one day.

(h) For an administrative penalty imposed in accordance with subsection (a)(2) of this section:

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

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

(3) the amount of the penalty is \$1,000.

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

§565.190. Amelioration.

(a) In lieu of requiring payment for an administrative penalty imposed against a program provider in accordance with §565.180 of this subchapter (relating to Administrative Penalties), HHSC may give the program provider the opportunity for amelioration in accordance with this subsection.

(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 §565.180(a)(2) of this subchapter.

(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 §565.100 of this subchapter (relating to HHSC Review of a Program Provider and Residential Visit) 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 (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.

§565.200. 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 §565.100(h) of this subchapter (relating to HHSC Review of a Program Provider and Residential Visit).

(b) If HHSC determines from a survey that a program provider is not in compliance with 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 LIDDA 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 14 calendar 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 §565.180 of this subchapter (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 non-critical violation, 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 non-critical violation, HHSC:

(1) imposes an administrative penalty for the non-critical violation in accordance with §565.180 of this subchapter (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 §565.180(a)(2) of this subchapter (relating to Administrative Penalties), HHSC takes one of the following actions:

(1) imposes an administrative penalty against the program provider as described in §565.180 of this subchapter;

(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 begins termination of the program provider's contract in accordance with 40 TAC §49.534; 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 §565.150(o) or (p) of this subchapter (relating to Regulatory Certification Standard: Staff Member and Service Provider Requirements), corrective action required by HHSC may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §565.150(o) of this subchapter, 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 certification standards based on the program provider's response to the action or inaction of such a person.

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

(a) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC:

(1) proposes or imposes a sanction described in 40 TAC §49.531(a) (relating to Request for a Hearing); or

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

(b) If the basis of an administrative hearing requested in accordance with subsection (a)(2) of this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with 40 TAC §9.165 (relating to Reconsideration of LON Assignment).

PROPOSED PREAMBLE

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes new Chapter 566, Texas Home Living, in title 26 of the Texas Administrative Code (TAC). The new chapter is comprised of §§566.10, 566.20, 566.30, 566.40, 566.50, 566.60, 566.70, 566.80, 566.90, 566.100, 566.110, 566.120, 566.130, 566.140, and 566.150.

BACKGROUND AND PURPOSE

The purpose of the proposal is to draft new rules that describe the regulatory certification principles for Texas Home Living (TxHmL) Medicaid waiver program providers.

Currently, rules describing TxHmL certification principles and rules regarding regulatory processes for TxHmL waiver programs are in Title 40, Chapter 9, Subchapter N. The rules in those chapters will be administratively transferred to Title 26. The date of that transfer has not been determined.

The proposed rules describe certification principles regarding service delivery, rights of individuals, requirements related to abuse, neglect, and exploitation, staff member and service provider requirements, and quality assurance. The proposed rules also outline recommendations for auditing critical incidents; and clarify restraint and seclusion requirements and rights restrictions.

SECTION-BY-SECTION SUMMARY

Proposed new §566.10, Purpose and Scope, describes the purpose and scope of the Texas Home Living program.

Proposed new §566.20, Definitions, describes terms used in the Texas Home Living program.

Proposed new §566.30, Regulatory Certification Standard: Protective Device, describes the program provider's responsibilities when implementing the use of protective devices, including required documentation and assessments.

Proposed new §566.40, Regulatory Certification Standard: Restraint, describes when a program provider may use restraint and when they must not use restraint, including required assessments, documentation, and notifications when restraint is used.

Proposed new §566.50, Regulatory Certification Standard: Restraint Risk Assessment, describes the purpose and requirements of the Restraint Risk Assessment.

Proposed new §566.60, HHSC Review of a Program Provider, lists the types of surveys conducted by HHSC and uses the term "recertification survey" instead of "annual certification survey" because this type of survey may not always occur annually.

Proposed new §566.70, Regulatory Certification Standard: Service Delivery, describes the program provider's responsibility for each service provided in the HCS program.

Proposed new §566.80, Regulatory Certification Standard: Staff Member and service Provider Requirements, outlines provider responsibilities for employing, training, and contracting with service providers, including service provider minimum qualifications.

Proposed new §566.90, Regulatory Certification Standard: Quality Assurance, describes a program provider's responsibility to ensure the quality of services provided to the individual.

Proposed new §566.100, Regulatory Certification Standard: Prohibitions, states that a program provider must not use seclusion.

Proposed new §566.110, Regulatory Certification Standard: Requirements Related to Abuse, Neglect and Exploitation of an Individual, outlines program provider responsibilities for documenting, reporting, and ensuring safety of the individual when incidents of abuse, neglect, and exploitation occur.

Proposed new §566.120, Administrative Penalties, allows HHSC to impose and collect an administrative penalty against an TxHmL program provider for a violation of a certification principle and contains a table that sets forth the ranges of an administrative penalty imposed for a violation of a certification principle, based on the severity and scope of the violation and whether the violation is repeated non-compliance. The proposed rule describes the factors HHSC considers in determining the amount of the administrative penalty to impose for the violation and requires HHSC to give the program provider one opportunity to correct violations.

Proposed new §566.130, Amelioration, allows HHSC to give a program provider the opportunity for amelioration in lieu of an administrative penalty for a violation. The proposed rule describes the circumstances under which a program provider is, and is not, allowed the opportunity for amelioration and requirements for program providers seeking amelioration. The proposed rule requires HHSC to notify a program provider regarding plan approval, or payment if a plan is denied, and it

allows the program provider to appeal the administrative penalty in accordance with 50 TAC §49.541 (relating to Contractor's Right to Appeal).

Proposed new §566.140, Program Provider Compliance and Corrective Action, outlines what is required of HHSC if it determines that a program provider is, or is not, in compliance with the certification principles. The proposed rule requires a program provider to submit a plan of correction for each concern identified by HHSC and outlines what happens if the plan needs to be revised, or if it is approved or not approved, and it details follow-up steps. The proposed rule outlines when HHSC may or may not cite a program provider for violation of a certification principle based on the program provider's response to the action or inaction of a person who is not a service provider or staff member.

Proposed new §566.150, Program Provider's Right to Administrative Hearing, allows a program provider to request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing).

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules update, clarify, and codify existing HHSC agency practices and requirements.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be the health and safety of the individuals in the TxHmL program. TxHmL program providers, HHSC staff, and the public will benefit from the proposed rules because rules will clarify provider requirements, which are intended to ensure health and safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules update, clarify, and codify existing HHSC agency practices and requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristin Priddy at (512) 438-3161 in the HHSC Regulatory Services Division.

Written comments on the proposal may be submitted to Kristin Priddy, Senior Policy Specialist, P.O. Box 149030 Austin, Texas 78714-9030; or by email to PolicyRulesTraining@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R040" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency

that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

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

ADDITIONAL INFORMATION

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

Legend:

Single Underline = Proposed new language

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

Regular print = Current language

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

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 566 TEXAS HOME LIVING

SUBCHAPTER A GENERAL PROVISIONS

§566.10. Purpose and Scope.

(a) The purpose of this chapter is to promote health, safety, and welfare by establishing the minimum standards and responsibilities of a Texas Home Living services program provider.

(b) This chapter applies to program providers.

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

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

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

(4) Alleged perpetrator--A person alleged to have committed an act of abuse,

neglect, or exploitation of an individual.

(5) Applicant--A Texas resident seeking services in the TxHmL Program.

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

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

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

(9) CFC--Community First Choice.

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

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

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

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

(A) that consists of:

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

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

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

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

(IV) assistance with health-related tasks; and

(ii) habilitation that assists 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) that does not include transporting the individual, which means driving the individual from one location to another.

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

(15) 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.

(16) 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.

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

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

(19) 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.

(20) Critical incident--An event listed in the TxHmL Provider User Guide found at hhs.texas.gov.

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

(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.

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

(23) Enclosure bed--A bed that is designed to prevent, and does prevent, an individual from exiting the bed without assistance from another person.

(24) 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.

(25) 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.

(26) Good cause--A reason outside the control of the CFC ERS provider, as determined by HHSC.

(27) 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.

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

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

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

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

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

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

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

(33) 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.

(34) ID/RC Assessment-- Intellectual Disability/Related Conditions Assessment. A form used by HHSC for LOC determination and LON assignment.

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

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

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

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

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

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

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

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

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

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

(37) Individual--A person enrolled in the TxHmL Program.

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

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

(A) states:

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

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

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

(B) is authorized by HHSC.

(40) IPC cost--Estimated annual cost of program services included on an IPC.

(41) IPC year--A 12-month time period starting on the date an authorized initial or renewal IPC begins.

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

(43) 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.

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

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

(46) LON--Level of need. An assignment given by HHSC for an applicant or individual that is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the ID/RC Assessment.

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

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

(49) 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.

(50) Microboard--A program provider:

(A) that is a non-profit corporation;

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

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

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

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

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

(52) 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.

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

(54) Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

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

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

(F) a residential facility operated by the Texas Workforce Commission;

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

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

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

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

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

(55) Pattern--The scope of a violation that is not widespread but represents repeated failures by the program provider to comply with a certification standard 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.

(56) 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, individual, or LAR and ensure the applicant's or individual's health and safety.

(57) Pediatric enclosure bed--As defined and approved by Texas Medicaid Provider Procedures Manual, a bed with four side enclosures and a top cover for individuals under the age of 21.

(58) 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 not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(59) 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.

(60) Post-move monitoring visit--As described in §303.701 of this title (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

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

(B) identify gaps in care; and

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

(61) Pre-move site review--As described in §303.701 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

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

(63) Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if it is only used to protect an individual from injury, or for body positioning of the individual to ensure health and safety, and it is not used to modify or control behavior. The device or item is considered a protective device only when used in accordance with the prescribed order of a licensed professional or a physician.

(64) Provisional contract--A contract that HHSC enters into 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 40 TAC §49.208(e).

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

(66) 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.

(67) Repeated violation--A violation that is:

(A) based on the same certification standard; and

(B) involves the same TxHmL Program service.

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

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

(70) Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a chemical restraint.

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

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

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

(74) Service coordination--A service as defined in 40 TAC §2.553(36) (relating to Definitions).

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

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

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

(i) an applicant or individual and LAR;

(ii) service coordinator; and

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

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

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

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

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

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

(C) for an individual at least 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 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) 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.

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

(78) 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.

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

(80) 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.

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

(82) Staff member--An employee or contractor of a TxHmL Program provider.

(83) Standard contract--A contract that HHSC enters into 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).

(84) 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.

(85) 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.

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

(87) Transition plan--As described in §303.701 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(88) 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 community support activity will be delivered to support an individual's desired outcomes and purposes for transportation as identified in the PDP.

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

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

(91) 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.

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

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

(94) 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.

(95) 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 566 TEXAS HOME LIVING
SUBCHAPTER B PROTECTIVE DEVICES AND RESTRAINTS

§566.30. Regulatory Certification Standard: Protective Device.

(a) A protective device is a restrictive intervention used during the provision of services that a program provider may use in accordance with this section.

(b) A program provider must not use a protective device to modify or control an individual's behavior, for disciplinary purposes, for convenience, or 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 or an RN conducts an assessment at least annually and after any significant change in the individual's condition to determine:

(1) if the individual has a medical need for a protective device; and

(2) if the physician or RN determines that an individual has a medical need for a protective device:

(A) that less restrictive methods would be ineffective in protecting the individual and the reasons for that determination;

(B) the type of protective device to be used, which must be the least restrictive protective device that will protect the individual;

(C) the circumstances under which the protective device may be used;

(D) how to use the protective device and any contraindications specific to the individual;

(E) how and when to document the use of the protective device; and

(F) how to monitor the use of the protective device to ensure it is being used in accordance with the assessment.

(d) Before a program provider uses a protective device in the assessment required by subsection (c) of this section, the program provider must:

(1) obtain and retain in the individual's record a physician's order for the use of the protective device identified in the assessment;

(2) obtain and retain in the individual's record the consent of the individual or LAR to use the protective device;

(3) 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

(4) 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 assessment.

(e) A pediatric enclosure bed used for an individual under the age of 21 is a protective device and must be used in accordance with this section. When an individual reaches the age of 21, the program provider must ensure that the individual is no longer using the protective device.

§566.40. Regulatory Certification Standard: Restraint.

(a) A program provider may only use restraint:

(1) as part of a behavior support plan developed in accordance with §566.90(k) of this chapter (relating to Regulatory Certification Standard: Quality Assurance) that addresses inappropriate behavior exhibited voluntarily by an individual;

(2) in a behavioral emergency; or

(3) subject to subsection (b) of this section, prior to or related to a medical or dental procedure if necessary to protect the individual or others.

(b) A program provider may only use a chemical restraint before or related to a medical or dental procedure if the restraint is part of a behavior support plan developed in accordance with §566.90(k) of this chapter.

(c) A program provider must not use restraint:

(1) in a manner that:

(A) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

(B) impairs the individual's breathing by putting pressure on the individual's torso;

(C) interferes with the individual's ability to communicate;

(D) places the individual in a prone or supine position;

(E) extends muscle groups away from each other;

(F) uses hyperextension of joints; or

(G) uses pressure points or pain;

(2) for disciplinary purposes, retaliation, coercion, or retribution;

(3) for the convenience of a staff member, service provider, or other person;

(4) due to inadequate staff members; or

(5) as a substitute for an effective, less restrictive method.

(d) If a program provider restrains an individual as provided in subsection (a) of this section, the program provider must:

(1) take into account the information in the individual's restraint risk assessment, required by §566.50 of this title (related to Regulatory Certification Standard: Restraint Risk Assessment);

(2) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others;

(3) safeguard the individual's dignity, privacy, and well-being; and

(4) not secure the individual to a stationary object.

(e) A pediatric enclosure bed must not be used as a restraint.

(f) In a circumstance described in subsection (a)(1) or (2) of this section, a program provider may only use 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 (a)(1) of this section.

(g) 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) as soon as possible as indicated by a medical emergency, if the individual in a restraint experiences a medical emergency; or

(3) as soon as the individual reaches the floor, if the individual is in a physical restraint described in subsection (d) of this section and moves toward the floor.

(h) 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 a nurse completes an assessment to determine the need for further medical intervention or services;

(3) ensure that medical services are obtained for the individual, as necessary;

(4) 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

(5) notify the individual's service coordinator by the end of the first business day after the use of restraint.

(i) 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.

§566.50. Regulatory Certification Standard: Restraint Risk Assessment.

(a) To minimize the risk of harm to an individual, a program provider must ensure that an RN or a physician conducts a restraint risk assessment for each individual to identify:

(1) known physical, emotional, psychological or medical conditions that might constitute a risk to the individual during the use of restraint;

(2) the individual's:

(A) communication style;

(B) cognitive functioning level;

(C) height;

(D) weight;

(E) known history of having been physically or sexually abused; and

(F) age;

(3) limitations on specific restraint techniques or mechanical restraint devices; and

(4) any other relevant information.

(b) A program provider must ensure that a physician, RN, or LVN:

(1) reviews the restraint risk assessment at least annually, or when a condition or factor documented in accordance with this subsection changes significantly; and

(2) revises the restraint risk assessment based on the review as necessary.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 566 TEXAS HOME LIVING

SUBCHAPTER C REGULATORY STANDARDS

§566.60. HHSC Review of a Program Provider.

(a) The program provider must be in continuous compliance with the TxHmL Program regulatory certification standards contained in

(1) §566.30 of this chapter (relating to Regulatory Certification Standard: Protective Device);

(2) §566.40 of this chapter (relating to Regulatory Certification Standard: Restraint);

(3) §566.50 of this chapter (relating to Regulatory Certification Standard: Restraint Risk Assessment);

(4) §566.70 of this subchapter (relating to Regulatory Certification Standard: Service Delivery);

(5) §566.80 of this subchapter (relating to Regulatory Certification Standard: Staff Member and Service Provider Requirements);

(6) §566.90 of this subchapter (relating to Regulatory Certification Standard: Quality Assurance);

(7) §566.100 of this subchapter (relating to Regulatory Certification Standard: Prohibitions); and

(8) §566.110 of this subchapter (relating to Regulatory Certification Standard: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual).

(b) The program provider must be in compliance with all applicable provisions of federal, state, and local laws, regulations, and codes pertaining to health, safety, and sanitation.

(c) A program provider must comply with all requirements in HHSC Provider Letters regarding the TxHmL Program.

(d) 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 TxHmL Program services from the program provider.

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

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

(g) 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.

(h) 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.

(i) During a survey, HHSC may:

(1) review the TxHmL 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 §566.130 of this subchapter (relating to Amelioration).

(j) 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.

(k) 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.

(l) Based on a survey, HHSC takes action as described in §566.140 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(m) HHSC may evaluate the health and safety of an individual at any time. If HHSC identifies a concern from the evaluation, HHSC may conduct an intermittent survey.

§566.70. Regulatory Certification Standard: Service Delivery.

(a) A program provider must serve an eligible applicant or individual who selects the program provider, unless the program provider's enrollment has reached its service capacity as identified in the HHSC data system.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP and, if CFC PAS/HAB is included on the PDP, a copy of the completed HHSC HCS/TxHmL CFC PAS/HAB Assessment form as provided by the LIDDA;

(2) a copy of the individual's current IPC as provided by the LIDDA; and

(3) a copy of the individual's current ID/RC Assessment as provided by the LIDDA.

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR;

(2) develop:

(A) in conjunction with the individual, the individual's family, or LAR, an implementation plan for:

(i) TxHmL Program services, except for transportation as a community support activity; and

(ii) CFC services, except for CFC support management; and

(B) a transportation plan, if transportation as a community support activity is included on the PDP.

(d) The program provider must provide:

(1) TxHmL Program services in accordance with an individual's PDP, IPC, implementation plan, and transportation plan, 40 TAC §9.555 (relating to Description of TxHmL Program Services), and Appendix C of the TxHmL Program waiver application approved by CMS and found at hhs.texas.gov; and

(2) CFC services in accordance with an individual's PDP, IPC, and implementation plan.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC, as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual, unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities, including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) A program provider must develop a written service backup plan for a TxHmL Program service or a CFC service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:

(A) contain the name of the service;

(B) specify the time period in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

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

(2) A program provider must ensure that:

(A) if the action in the service backup plan required by paragraph (1) of this subsection 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

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

(3) If a service backup plan is implemented, a program provider must:

(A) 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 the plan was effective;

(B) document whether the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(o) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services, or similar services, if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program or CFC services, and other persons receiving similar services, are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program or CFC services, and other persons receiving similar services, are provided services in the residence at any one time and the residence is approved in accordance with 40 TAC §565.40 (relating to HHSC Requirements to Request Approval for a Four-Person Residence).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program or CFC services, or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction, stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) Respite must not be provided in an institution such as an ICF/IID, nursing facility, or hospital.

(p) The program provider must ensure that nursing is provided in accordance with:

(1) Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(2) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(3) 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); and

(4) 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).

(q) 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 the program provider's unlicensed service provider, as documented on HHSC Form 1572 Nursing Task Screening Tool; or

(2) a nursing task will be performed by the program provider's 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.

(r) If an individual or LAR refuses a nursing assessment described in 40 TAC §9.555(c)(10)(A) (relating to Description of TxHmL Program Services), the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported employment, respite, 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.

(s) 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 (r) 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.

(t) 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 §9.583(j)(6) (relating to TxHmL Program Principles for LIDDAs), the program provider must immediately send the written notification described in subsection (s) of this section to HHSC.

(u) The program provider must, 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.

(v) The program provider must:

(1) for an applicant at least 21 years of age or older residing in a nursing facility who is enrolling in the TxHmL 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

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

(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.

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

(x) CFC ERS must be provided in accordance with this subsection.

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

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

(B) 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 (4) and (5) of this subsection 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) is designated as a second responder if the individual provides the name of only one responder; or

(ii) is 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 subsection, 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) written notices required by subparagraphs (A) and (B) of this paragraph is 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 subsection:

(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 subsection, 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 subsection:

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

(B) as soon as possible, a system check and battery replacement are made.

(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 subsection.

(y) A program provider must ensure that CFC support management is provided to an individual or LAR if:

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

(2) the individual or LAR requests to receive CFC support management.

§566.80. Regulatory Certification Standard: Staff Member and Service Provider Requirements.

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service or a CFC service, if that service provider:

(1) is qualified to provide the service;

(2) unless the program provider agrees to pay a higher amount and provides the service at or below:

(A) for any service except CFC ERS, the direct services portion of the applicable TxHmL Program rate; and

(B) for CFC ERS, the reimbursement rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must:

(1) conduct initial and periodic training that ensures staff members and service providers are trained and qualified to deliver services as required by the current

needs and characteristics of the individual to whom they deliver services; and

(2) ensure that a staff member who participates in developing an implementation plan for CFC PAS/HAB completes person-centered service planning training approved by HHSC:

(A) by June 1, 2017, if the staff member was hired on or before June 1, 2015; or

(B) within two years after hire, if the staff member was hired after June 1, 2015.

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

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

(4) threats of harm or danger toward an individual's possessions.

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

(1) have at least three years paid work experience in planning and providing TxHmL 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; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program 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; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation, under which the microboard operates, filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age; and

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

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

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

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

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment:

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

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

(3) has:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma, or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that a service provider of behavioral support:

(1) is a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) is a psychological associate licensed in accordance with Texas Occupations Code, Chapter 501;

(3) is certified by HHSC as described in 40 TAC §5.161 (relating to Certified Authorized Provider);

(4) is a behavior analyst licensed in accordance with Texas Occupations Code, Chapter 506;

(5) is provisionally licensed to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(6) is a clinical social worker licensed in accordance with Texas Occupations Code, Chapter 505; or

(7) is a professional counselor licensed in accordance with Texas Occupations Code, Chapter 503; and

(8) completes the web-based HHSC HCS and TxHmL Behavioral Support Services Provider Policy Training available on the HHSC website:

(A) before providing behavioral support services;

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

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

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a service provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453; and

(5) for dietary services, a dietitian licensed in accordance with Texas Occupations Code, Chapter 701.

(r) The program provider must comply with 40 TAC §49.304 (relating to Background Checks).

(s) A program provider must comply with 40 TAC §49.312(a) (relating to Personal Attendants).

(t) If the service provider of community support 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 (s) of this section as if the contractor were the program provider.

(u) 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 train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to 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, so the service provider meets any additional qualifications desired by the individual or LAR.

§566.90. Regulatory Certification Standard: Quality Assurance.

(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

- (6) inform the individual or LAR about the individual's health, mental condition, and related progress;
- (7) inform the individual or LAR of the name and qualifications of any person serving the individual and the option to choose among various available service providers;
- (8) provide the individual or LAR access to TxHmL Program and CFC records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;
- (9) assist the individual to communicate by phone or by mail during the provision of TxHmL Program or CFC services, unless the service planning team has agreed to limit the individual's access to communicating by phone or by mail;
- (10) assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;
- (11) ensure the individual is free from unnecessary restraints during the provision of TxHmL Program services or CFC services;
- (12) regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;
- (13) receive and act on complaints about the TxHmL Program services or CFC services provided by the program provider;
- (14) ensure that the individual is free from abuse, neglect, or exploitation by program provider staff members, service providers, and volunteers;
- (15) provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy, including:
- (A) making complaints;
 - (B) registering to vote;
 - (C) obtaining citizenship information and education;
 - (D) obtaining advocacy services; and
 - (E) obtaining information regarding legal guardianship;
- (16) provide the individual privacy during treatment and care of personal needs;
- (17) include the individual's LAR in decisions involving the planning and provision of TxHmL Program services and CFC services;

(18) inform the individual or LAR of the process for reporting a complaint to HHSC or the LIDDA when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the IDD Ombudsman telephone number to initiate complaints (1-800-252-8154), and the LIDDA telephone number to initiate complaints;

(19) ensure the individual is free from seclusion;

(20) inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1) - (19) of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1) - (19) of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(21) obtain an acknowledgement stating that the information described in paragraph (20) of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(22) notify the individual's service coordinator of an individual's or LAR's expressed interest in the CDS option and document such notification.

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

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

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

(e) In all respite facilities, 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.

(f) At least annually, the program provider must review:

(1) 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;

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

(3) the reasons for suspensions, terminations, and transfers and identify any related need for program process improvements; and

(4) critical incident data reported in accordance with subsection (n) of this section and identify program process improvements that help prevent the reoccurrence of critical incidents and improve the delivery of services.

(g) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, and that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program or provision of CFC services, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or the individual's LAR is obtained before the use or disclosure.

(h) The program provider must ensure that:

(1) 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; and

(2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(i) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program or through CFC.

(j) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(k) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the plan;

(6) a written behavioral support plan developed by a service provider of behavioral support with input from the individual, LAR, service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed, or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(l) 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.

(m) 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.

(n) 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 TxHmL Provider User Guide.

(o) 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) if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual, acts as the contact person in an HHSC investigation and complies with §566.110(d) - (f) of this subchapter (relating to Regulatory Certification Standard: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual).

§566.100. Regulatory Certification Standard: Prohibitions.

(a) A program provider must not use seclusion.

(b) A pediatric enclosure bed must not be used for an individual over the age of 21.

§566.110. Regulatory Certification Standard: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.

(a) A program provider must:

(1) ensure that an individual and LAR are, before or at the time the individual begins receiving a TxHmL 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 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; and

(3) conduct the activities described in paragraph (2)(A) - (C) 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) as necessary:

(A) obtain immediate medical or psychological services for the individual; and

(B) assist in obtaining ongoing medical or psychological services for the individual; and

(2) discuss with the individual or LAR alternative residential settings and additional services that may help ensure the individual's safety;

(3) avoid compromising the investigation or further traumatizing the individual, when taking the actions described in paragraphs (1) and (2) of this subsection; 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) as necessary:

(A) obtain immediate 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 an 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) records 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, 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 Chapter 711, Subchapter J of this title (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.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 566 TEXAS HOME LIVING

SUBCHAPTER D ENFORCEMENT

§566.120. Administrative Penalties.

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

(1) a violation of a certification standard that applies to a program provider; and

(2) any of the following:

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

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

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

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

(b) The range of the administrative penalty that may be imposed against a program provider each day for a violation described in subsection (a)(1) of this section is based on the scope and severity of the violation and whether it is an initial or repeated violation, as set forth in the following figure:

Figure: 26 TAC §566.120(b) Severity of Violation		Scope of Violation		
		Isolated	Pattern	Widespread
Immediate threat	Initial violation	\$400-1000	\$1000-2000	\$2000-3000
	Repeated violation	\$500-1000	\$2000-\$4000	\$3000-\$5000
	Critical or not critical	CRITICAL	CRITICAL	CRITICAL

<u>ACTUAL HARM</u>	<u>Initial violation</u>	<u>\$100-\$200</u>	<u>\$200-\$1000</u>	<u>\$300-\$1500</u>
	<u>Repeated violation</u>	<u>\$200-\$1000</u>	<u>\$300-\$2000</u>	<u>\$400-\$3000</u>
	<u>Critical or not critical</u>	<u>NOT CRITICAL</u>	<u>CRITICAL</u>	<u>CRITICAL</u>
<u>POTENTIAL FOR ACTUAL HARM</u>	<u>Initial violation</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Repeated violation</u>	<u>\$0-300</u>	<u>\$0-\$500</u>	<u>\$0-\$1000</u>
	<u>Critical or not critical</u>	<u>NOT CRITICAL</u>	<u>NOT CRITICAL</u>	<u>CRITICAL</u>
<u>NO POTENTIAL FOR ACTUAL HARM</u>	<u>Initial violation</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Repeated violation</u>	<u>\$0-\$200</u>	<u>\$0-\$350</u>	<u>\$0-\$500</u>
	<u>Critical or not critical</u>	<u>NOT CRITICAL</u>	<u>NOT CRITICAL</u>	<u>NOT CRITICAL</u>

(c) In determining the amount of an administrative penalty within a range, HHSC considers:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of individuals resulting from the violation;

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

(3) whether the program provider:

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

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

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

(5) any other matter that justice may require.

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

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

(1) for a critical violation, on the date HHSC identifies the violation; or

(2) for a violation that is not critical, on the date of the exit conference of the post 45-day follow-up survey.

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

(1) the program provider completes corrective action for that violation, as determined by HHSC;

(2) HHSC imposes a vendor hold for that violation; or

(3) HHSC withholds payments as the result of a proposed contract termination.

(g) If the program provider demonstrates that corrective action is complete on the same day an administrative penalty begins accruing, HHSC imposes an administrative penalty for one day.

(h) For an administrative penalty imposed in accordance with subsection (a)(2) of this section:

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

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

(3) the amount of the penalty is \$1,000.

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

§566.130. Amelioration.

(a) In lieu of requiring payment for an administrative penalty imposed against a program provider in accordance with §566.120 of this subchapter (relating to Administrative Penalties), HHSC may give the program provider the opportunity for amelioration in accordance with this subsection.

(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 §566.120(a)(2) of this subchapter.

(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.

(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 §566.60 of this subchapter (relating to HHSC Review 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 §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.

§566.140. Program Provider Compliance and Corrective Action.

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

(1) sends the program provider a final survey report stating that the program provider is in compliance with all 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 §566.60(g) of this subchapter (HHSC Review of a Program Provider).

(b) If HHSC determines from a survey that a program provider is not in compliance with a certification standard 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 14 calendar 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 §566.120 of this subchapter (relating to Administrative Penalties), a written notice of the administrative penalty, as described in §49.535(b) of this title (relating to Administrative Penalties in the HCS and TxHmL Programs).

(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 of 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 (i) 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 (l) 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 §49.535(c) of this title.

(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 §49.535(c) of this title.

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

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

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

(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 §566.120 of this subchapter;

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

(3) conducts a survey:

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

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

(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 §49.535(c) of this title.

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

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

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

(s) If HHSC determines that a program provider committed any of the actions described in §566.120(a)(2) of this subchapter, HHSC takes one of the following actions:

(1) imposes an administrative penalty against the program provider as described in §566.120 of this subchapter;

(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 §49.534 of this title (relating to Termination of Contract by HHSC); or

(2) for a program provider with a standard contract, HHSC conducts a survey at least 31 calendar days after the effective date of the vendor hold to determine if the program provider completed the corrective action required to release the vendor hold and:

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

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

(u) If HHSC determines that a program provider is out of compliance with §566.80 (s) or (t) of this subchapter (relating to Certification Standards: Qualified Personnel), corrective action required by HHSC may include the program provider paying or ensuring payment to a service provider of supported home living or CFC PAS/HAB who was not paid the wages required by §566.80 (s) of this subchapter, 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.

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

(a) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC:

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

(2) denies a program provider's request for payment.

(b) If the basis of an administrative hearing requested in accordance with subsection (a)(2) of this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with 40 TAC §9.568 (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.