



TO: Medical Care Advisory Committee

DATE: August 11, 2022

FROM: Dana Williamson, Director, Program Policy

SUBJECT: Individualized Skills and Socialization in the Deaf Blind with Multiple Disabilities Program

Agenda Item No.:

New: §§260.501, Definitions; 260.503, Description of Individualized Skills and Socialization; 260.505, Provision of Individualized Skills and Socialization; 260.507, Staffing Ratios; 260.509, Discontinuation of Day Habilitation; 260.511, Including Individualized Skills and Socialization on an IPC; 260.513, Service Provider Qualifications; 260.515, Contracting to Provide Individualized Skills and Socialization; and 260.517, Program Provider Reimbursement for Individualized Skills and Socialization, in Texas Administrative Code (TAC) Title 26, new Chapter 260 Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC), Subchapter I, Individualized Skills and Socialization.

BACKGROUND: ☒ Federal Requirement ☒ Legislative Requirement ☐ Other: (e.g., Program Initiative)

Title 42, Code of Federal Regulations (CFR), §441.301(c)(4)(i) - (v), require home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated in and supporting full access of individuals to the greater community. The Centers for Medicare & Medicaid Services is requiring that states be in compliance with these regulations by March 17, 2023

The 2020-21 General Appropriations Act (GAA), House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21) required HHSC to develop a plan to replace day habilitation in its Medicaid §1915(c) waiver programs for individuals with intellectual and developmental disabilities with more integrated services that maximize participation and integration of the individuals in the community.

In accordance with Rider 21, HHSC developed a plan to replace day habilitation provided in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf Blind with Multiple Disabilities (DBMD) Programs with individualized skills and socialization. The plan included proposed ratios for service providers of individualized skills and socialization to individuals receiving individualized skills and socialization to help ensure that individuals receiving the service have adequate support to achieve their goals.

The 2022-2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the HCS, TxHmL, and DBMD Programs.

The proposed rules implement the plan required by Rider 21 to replace day habilitation with individualized skills and socialization in the DBMD Program and will ensure that HHSC is in compliance with 42 CFR §441.301(c)(4)(i) - (v) by March 17, 2023.

The proposed rules describe the two types of individualized skills and socialization, on-site individualized skills and socialization and off-site individualized skills and socialization and require that both types be provided by an individualized skills and socialization provider. The rules requiring a provider of individualized skills and socialization to be licensed in accordance with Texas Human Resources Code Chapter 103 are being proposed in 26 TAC Chapter 559 and published elsewhere in this issue of the *Texas Register*. The rules will require an individualized skills and socialization provider to be licensed as a day activity and health services facility with a special designation for individualized skills and socialization.

The proposed rules describe the requirements for an individualized skills and socialization provider including a requirement that both on-site and off-site individualized skills and socialization be made available to individuals and that staffing ratios are met.

The proposed rules also discontinue day habilitation effective March 1, 2023. The rules implementing individualized skills and socialization in the HCS and TxHmL Programs are being proposed in 26 TAC Chapter 263, Subchapter L and in 26 TAC Chapter 262, Subchapter J.

ISSUES AND ALTERNATIVES:

HHSC anticipates certain stakeholders may express concerns about the rate proposed for individualized skills and socialization. However, the rate methodology for individualized skills and socialization is being proposed in a separate rule project.

Stakeholders may express opposition to the staffing ratios. However, the proposed rules include a requirement for staffing ratios in the provision of individualized skills and socialization to allow staff to provide more individual attention to individuals both on-site and off-site.

Stakeholders may also express concerns about the timeline for individualized skills and socialization providers to become licensed to provide the new service. However, the rules governing the licensure process of individualized skills and socialization providers are being proposed in a separate rule project.

STAKEHOLDER INVOLVEMENT:

The draft rules were posted on HHSC's website for informal comment from December 22, 2021 – January 14, 2022. HHSC received approximately 61 comments and questions from 10 stakeholders. HHSC reviewed and considered the comments and questions. HHSC made changes to the draft rules in response to requests from commenters to enhance the description of individualized skills and socialization, clarify the language regarding staffing ratios, add terms to the definitions section, and clarify some definitions in that section.

One commenter requested that HHSC rename the new service as “meaningful day activities.” HHSC declined to make this change because the name “individualized skills and socialization” is derived from Rider 21. The same commenter requested that HHSC add an enhanced staffing rate that allows for a 1:1 staffing ratio. Other commenters requested an increase in the reimbursement rate proposed in the Rider 21 report. HHSC did not make changes in response to these comments because the rules establishing the methodology for individualized skills and socialization are being proposed in a separate rule project. Some commenters expressed concerns about implementing the new rules at this time because of staffing shortages related to the public health emergency, but these rules are necessary to ensure HHSC’s compliance with 42 CFR §441.301(c)(4) before the deadline of March 17, 2023 established by the Centers for Medicare & Medicaid Services.

FISCAL IMPACT:

☒ Yes

	SFY 2023	SFY 2024	SFY 2025	SFY 2026	SFY 2027
State	\$13,300	0	0	0	0
Federal	\$119,700	0	0	0	0
Total	\$133,000	0	0	0	0

RULE DEVELOPMENT SCHEDULE:

July 2022	Publish proposed rules in <i>Texas Register</i>
August 11, 2022	Present to the Medical Care Advisory Committee
August 18, 2022	Present to HHSC Executive Council
October 2022	Publish adopted rules in <i>Texas Register</i>
November 2022	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 260	DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)
SUBCHAPTER I	INDIVIDUALIZED SKILLS AND SOCIALIZATION

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§260.501, concerning Definitions; 260.503, concerning Description of Individualized Skills and Socialization; 260.505, concerning Provision of Individualized Skills and Socialization; 260.507, concerning Staffing Ratios; 260.509, concerning Discontinuation of Day Habilitation; 260.511, concerning Including Individualized Skills and Socialization on an IPC; 260.513, concerning Service Provider Qualifications; 260.515, concerning Contracting to Provide Individualized Skills and Socialization; and 260.517, concerning Program Provider Reimbursement for Individualized Skills and Socialization, in new Chapter 260, Subchapter I, Individualized Skills and Socialization.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations (CFR), §441.301(c)(4)(i) - (v), require home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated in and supporting full access of individuals to the greater community. The Centers for Medicare & Medicaid Services is requiring that states be in compliance with these regulations by March 17, 2023.

The 2020-21 General Appropriations Act (GAA), House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21) required HHSC to develop a plan to replace day habilitation in its Medicaid §1915(c) waiver programs for individuals with intellectual and developmental disabilities with more integrated services that maximize participation and integration of the individuals in the community.

In accordance with Rider 21, HHSC developed a plan to replace day habilitation provided in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf Blind with Multiple Disabilities (DBMD) Programs with individualized skills and socialization. The plan included proposed ratios for service providers of individualized skills and socialization to individuals receiving individualized skills and socialization to help ensure that individuals receiving the service have adequate support to achieve their goals.

The 2022-2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the HCS, TxHmL, and DBMD Programs.

The proposed rules implement the plan required by Rider 21 to replace day habilitation with individualized skills and socialization in the DBMD Program and will ensure that HHSC is in compliance with 42 CFR §441.301(c)(4)(i) - (v) by March 17, 2023.

The proposed rules describe the two types of individualized skills and socialization, on-site individualized skills and socialization and off-site individualized skills and socialization and require that both types be provided by an individualized skills and socialization provider.

The rules requiring a provider of individualized skills and socialization to be licensed in accordance with Texas Human Resources Code Chapter 103 are being proposed in 26 TAC Chapter 559 and published elsewhere in this issue of the *Texas Register*. The rules will require an individualized skills and socialization provider to be licensed as a day activity and health services facility with a special designation for individualized skills and socialization.

The proposed rules describe the requirements for an individualized skills and socialization provider including a requirement that both on-site and off-site individualized skills and socialization be made available to individuals and that staffing ratios are met.

The proposed rules also discontinue day habilitation effective March 1, 2023.

The rules implementing individualized skills and socialization in the HCS and TxHmL Programs are being proposed in Texas Administrative Code (TAC) Title 26, Chapter 263, Subchapter L and in 26 TAC Chapter 262, Subchapter J, and published elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed new §260.501, Definitions, defines the terms used in the new subchapter including "individualized skills and socialization provider" which is defined as a legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

Proposed new §260.503, Description of Individualized Skills and Socialization, provides a description of on-site and off-site individualized skills and socialization, the two types of individualized skills and socialization. The proposed new rule requires individualized skills and socialization to be provided by an individualized skills and socialization provider and that such provider be the program provider or a contractor of the program provider. The proposed new rule also describes where on-site and off-site individualized skills and socialization are provided.

Proposed new §260.505, Provision of Individualized Skills and Socialization, describes requirements for providing individualized skills and socialization, including that an individualized skills and socialization provider make both on-site and off-site individualized skills and socialization available to an individual and that such provider allow an individual to receive off-site individualized skills and socialization without requiring the individual to take a skills test or meet other requirements to receive off-

site individualized skills and socialization. The proposed new rule also requires an individualized skills and socialization provider to document an individual's or legally authorized representative's decision for the individual not to participate in an activity the individual scheduled for on-site or off-site individualized skills and socialization.

Proposed new §260.507, Staffing Ratios, describes the required ratios for on-site and off-site individualized skills and socialization of service providers to individuals in the DBMD Program, and other persons receiving individualized skills and socialization or a similar service. The ratios in the proposed new rule include other persons receiving individualized skills and socialization in the HCS Program and the TxHmL Program, and other persons receiving a similar service, to ensure that the ratios of service providers to individuals in the DBMD Program receiving on-site and off-site individualized skills and socialization are maintained. If a ratio described in this section includes individuals enrolled in other waiver programs receiving individualized skills and socialization or persons receiving a similar service, the proposed new rule requires that the ratio be the ratio required by §260.507(a). The proposed new rule requires a service provider of individualized skills and socialization assigned to the individuals and other persons described in a ratio to provide services only to the individuals and other persons represented in the ratio.

Proposed new §260.509, Discontinuation of Day Habilitation, provides that day habilitation is not a service in the DBMD Program effective March 1, 2023 to ensure HHSC's compliance with 42 CFR §441.301(c)(4) before the deadline established by the Centers for Medicare & Medicaid Services.

Proposed new §260.511, Including Individualized Skills and Socialization on an IPC, requires a program provider to ensure a case manager includes individualized skills and socialization on an individual plan of care (IPC) in accordance with the rules governing the DBMD Program. The proposed new rule requires a case manager to ensure that an enrollment IPC or renewal IPC effective on or after March 1, 2023 does not include day habilitation and that a revised IPC with an effective date during the period of March 1, 2023, and February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023. The proposed new rule also requires that if an individual or the individual's LAR wants the individual to receive on-site or off-site individualized skills and socialization, but not both, the case manager documents the decision in the individual's individual program plan.

Proposed new §260.513, Service Provider Qualifications, describes the qualifications for a service provider of individualized skills and socialization.

Proposed new §260.515, Contracting to Provide Individualized Skills and Socialization, requires a program provider to ensure that an individualized skills and socialization provider with which it contracts complies with certain sections of the subchapter.

Proposed new §260.517, Program Provider Reimbursement for Individualized Skills and Socialization, provides that HHSC pays a program provider for on-site and off-site individualized skills and socialization in accordance with the reimbursement

rate. The proposed new rule prohibits a program provider from submitting a claim for individualized skills and socialization provided during the time an individual's services are suspended or after services are terminated, except that the program provider may submit a claim for the first day of the individual's suspension or termination. The proposed new rule describes the circumstances under which HHSC does not pay or recoups payment from a program provider for individualized skills and socialization. The proposed new rule provides that HHSC does not pay or recoups payment from a program provider for day habilitation provided on or after March 1, 2023. The proposed new rule provides that HHSC conducts contracts and fiscal monitoring in accordance with rules governing the DBMD Program to determine whether a program provider is in compliance with the new subchapter.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that the cost to state government to adopt and implement the rules is \$13,300 General Revenue (GR) funds, \$119,700 Federal Funds (FF), and \$133,000 All Funds (AF) for the State Fiscal Year (SFY) 2023 and \$0 GR, \$0 FF, and \$0 AF for SFYs 2024 - 2027.

During the years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of 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 HHS system 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 new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that the rules could have an adverse economic effect on small businesses and micro-businesses due to the cost to comply. No rural communities contract with HHSC to provide services in the DBMD Program so they will not experience an adverse effect.

HHSC does not have the data to estimate the number of small businesses or micro-businesses subject to the rules, however, as of December 19, 2021, there are 25 DBMD program providers.

HHSC did not consider alternative methods to achieve the purpose of the proposed rules for small businesses or micro-businesses because implementing the new rules is necessary for the state's economic health, to comply with the federal regulations for home and community-based settings in 42 CFR §441.301(c)(4)(i) - (v).

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 receive a source of federal funds and comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, individuals in the DBMD Program will have the opportunity to receive individualized skills and socialization, a new service that provides increased community integration, additional opportunities and supports to be competitively employed, and choice of the settings in which individualized skills and socialization is provided.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because DBMD program providers will need to update their policies and provide staff training to implement the new rules. However, HHSC lacks sufficient data to determine an estimate of these costs.

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 HEARING

A public hearing to receive comments on the proposal will be held virtually on September 7, 2022 from 8:00 a.m - 12:00 p.m. via GoToWebinar. Participants may register for the public hearing at:
<https://register.gotowebinar.com/register/927810115195515152>.

Persons requiring further information, special assistance, or accommodations should contact Kayatta Thomas at (737) 256-8490.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

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 emailing comments, please indicate "Comments on Proposed Rule 22R036" 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 Human Resources Code §32.021, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code §531.0055 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) 256-8490.

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 260	<u>DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM</u>
	<u>AND COMMUNITY FIRST CHOICE (CFC)</u>
SUBCHAPTER I	<u>INDIVIDUALIZED SKILLS AND SOCIALIZATION</u>

§260.501. 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) Calendar day--Any day, including weekends and holidays.

(3) Case manager--A service provider of case management.

(4) CFC--Community First Choice. A state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subpart K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice).

(5) Community setting--A setting accessible to the general public within an individual's community.

(6) Day habilitation--A DBMD Program service.

(7) DBMD Program--The Deaf Blind with Multiple Disabilities Program.

(8) DFPS--Texas Department of Family and Protective Services.

(9) 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.

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

(11) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form HHSC uses to determine the LOC for an individual.

(12) Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(13) Individualized skills and socialization. A DBMD Program service described in this subchapter. The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(14) Individualized skills and socialization provider--A legal entity licensed in accordance with Texas Human Resources Code, Chapter 103.

(15) IPC--Individual Plan of Care. A written plan developed by an individual's service planning team and documented on the HHSC Individual Plan of Care form. An IPC:

(A) documents:

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

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

(B) is authorized by HHSC.

(16) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of the enrollment IPC, as described in the rules governing the DBMD Program, through the last calendar day of the 11th month after the month in which enrollment occurred; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in the rules governing the DBMD Program.

(17) IPP--Individual Program Plan. A written plan developed in accordance with the rules governing the DBMD Program and documented on an HHSC Individual Program Plan form.

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

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

(20) 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.

(21) 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.

(22) Program provider--A person that has a contract with HHSC to provide DBMD Program services, excluding a financial management services agency.

(23) Service provider--A person who directly provides a DBMD Program service or a CFC service to an individual.

(24) 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.

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

(26) 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.

§260.503. Description of Individualized Skills and Socialization.

(a) The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(b) A program provider must ensure that individualized skills and socialization is provided by an individualized skills and socialization provider. An individualized skills and socialization provider must be the program provider or a contractor of the program provider.

(c) An individualized skills and socialization provider must ensure that individualized skills and socialization:

(1) provides person-centered activities related to:

(A) acquiring, retaining, or improving self-help skills and adaptive skills necessary to live successfully in the community and participate in home and community life; and

(B) gaining or maintaining independence, socialization, community participation, current or future volunteer goals, or employment goals consistent with achieving the outcomes identified in an individual's IPP;

(2) supports the individual's pursuit and achievement of employment through school, vocational rehabilitation, the DBMD Program service of employment assistance, or the DBMD Program service of supported employment;

(3) provides personal assistance for an individual who cannot manage personal care needs during an individualized skills and socialization activity;

(4) as determined by an assessment conducted by a registered nurse, provides assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(5) does not include activities in which an individual:

(A) produces marketable goods; and

(B) is paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act.

(d) An individualized skills and socialization provider must ensure that on-site individualized skills and socialization:

(1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider;

(2) includes transportation of an individual from one on-site individualized skills and socialization location to another on-site individualized skills and socialization location;

(3) promotes an individual's development of skills and behavior that support independence and personal choice; and

(4) is not provided in:

(A) a setting in which an individual must not reside, as set forth in the rules governing the DBMD Program, unless provided in an event open to the public; or

(B) the residence of an individual or another person.

(e) An individualized skills and socialization provider must ensure that off-site individualized skills and socialization:

(1) provides activities that:

(A) integrate an individual into the community; and

(B) promote the individual's development of skills and behavior that support independence and personal choice;

(2) is provided in a community setting chosen by the individual from among available community setting options;

(3) includes transportation of an individual from an on-site individualized skills and socialization location to an off-site individualized skills and socialization location and between off-site individualized skills and socialization locations; and

(4) is not provided in:

(A) a building in which on-site individualized skills and socialization is provided;

(B) a setting in which an individual must not reside, as set forth in the rules governing the DBMD Program, unless provided in an event open to the public; or

(C) the residence of an individual or another person.

§260.505. Provision of Individualized Skills and Socialization.

(a) An individualized skills and socialization provider must make both on-site individualized skills and socialization and off-site individualized skills and socialization available to an individual.

(b) An individualized skills and socialization provider must provide on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with an individual's IPC and IPP.

(c) An individualized skills and socialization provider must not require an individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization.

(d) If an individual does not want to participate in an activity the individual scheduled for on-site individualized skills and socialization or off-site individualized skills and socialization, or the LAR does not want the individual to participate in such activity, the individualized skills and socialization provider must document the decision not to participate in the individual's record.

§260.507. Staffing Ratios.

(a) The ratio of service providers of individualized skills and socialization to persons receiving services:

(1) on-site must be no higher than one service provider of individualized skills and socialization to three individuals and other persons receiving individualized skills and socialization or a similar service (1:3); and

(2) off-site must be no higher than one service provider of individualized skills and socialization to two individuals and other persons receiving individualized skills and socialization or a similar service (1:2).

(b) A ratio described in subsection (a) of this section may include persons enrolled in other waiver programs receiving individualized skills and socialization or persons receiving a similar service, however, the ratio must be the ratio required by subsection (a) of this section.

(c) A service provider of individualized skills and socialization assigned to the individuals represented in a ratio described in subsection (a) of this section must provide services only to the individuals and other persons represented in the ratio.

§260.509. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the DBMD Program, effective March 1, 2023, day habilitation is not a service in the DBMD Program.

§260.511. Including Individualized Skills and Socialization on an IPC.

A program provider must ensure that:

(1) a case manager includes individualized skills and socialization on an individual's enrollment IPC in accordance with the rules governing the DBMD Program;

(2) a case manager renews or revises an IPC to include individualized skills and socialization in accordance with the rules governing the DBMD Program;

(3) a case manager ensures that:

(A) an enrollment IPC or renewal IPC with an effective date on or after March 1, 2023 does not include day habilitation; and

(B) an IPC that is revised during the period of March 1, 2023 through February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023; and

(4) if an individual or the individual's LAR wants the individual to receive on-site or off-site individualized skills and socialization, but not both, the case manager documents the decision in the individual's IPP.

§260.513. Service Provider Qualifications.

(a) An individualized skills and socialization provider must ensure that a service provider of individualized skills and socialization 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.

(b) An individualized skills and socialization provider must ensure that a service provider of individualized skills and socialization who provides transportation:

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

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

(c) An individualized skills and socialization provider must ensure that a service provider of individualized skills and socialization completes the following training in accordance with rules governing the DBMD Program:

(1) general orientation training;

(2) abuse, neglect, and exploitation training;

(3) cardiopulmonary resuscitation, first aid, and choking prevention training;

(4) DBMD Program Service Provider Training;

(5) training on needs of an individual to whom the service provider is providing individualized skills and socialization; and

(6) training on delegated tasks, if the service provider is performing delegated tasks for an individual receiving individualized skills and socialization.

§260.515. Contracting to Provide Individualized Skills and Socialization.

If a program provider contracts with an individualized skills and socialization provider to provide individualized skills and socialization to an individual, the program provider must:

(1) comply with 40 TAC §49.308 (relating to Subcontractors); and

(2) ensure the individualized skills and socialization provider complies with:

(A) §260.503(c) - (e) of this subchapter (relating to Description of Individualized Skills and Socialization);

(B) §260.505 of this subchapter (relating to Provision of Individualized Skills and Socialization): and

(C) §260.513 of this subchapter (relating to Service Provider Qualifications).

§260.517. Program Provider Reimbursement for Individualized Skills and Socialization.

(a) HHSC pays a program provider for on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with the reimbursement rates.

(b) If an individual's DBMD Program services and CFC services are suspended or terminated, a program provider must not submit a claim for on-site individualized skills and socialization or off-site individualized skills and socialization provided during the period of the individual's suspension or after the termination, except the program provider may submit a claim for the first calendar day of the individual's suspension or termination.

(c) A program provider must not bill for and HHSC does not pay a program provider for on-site individualized skills and socialization or off-site individualized skills and socialization, or recoups any payments made to the program provider for on-site individualized skills and socialization or off-site individualized skills and socialization:

(1) if individualized skills and socialization is not provided in accordance with this subchapter;

(2) if the individual receiving individualized skills and socialization is, at the time individualized skills and socialization was provided, ineligible for the DBMD Program;

(3) if individualized skills and socialization is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(4) if individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) if individualized skills and socialization is not provided in accordance with the individual's IPP;

(6) if the program provider does not comply with 40 TAC §49.305 (relating to Records);

(7) if the claim for the service does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment);

(8) if individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide individualized skills and socialization as described in §260.513 (relating to Service Provider Qualifications);

(9) if the program provider does not comply with the DBMD Program Manual;

(10) if HHSC determines that individualized skills and socialization would have been paid for by a source other than the DBMD Program if the program provider

had submitted to the other source a proper, complete, and timely request for payment for individualized skills and socialization;

(11) if individualized skills and socialization was not provided; or

(12) if individualized skills and socialization is provided during a period of time that the individual produced marketable goods and was paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act.

(d) HHSC does not pay a program provider for day habilitation or recoups any payments made to the program provider for day habilitation provided on or after March 1, 2023, even if an individual's IPC includes day habilitation on or after March 1, 2023.

(e) HHSC conducts contract and fiscal monitoring in accordance with rules governing the DBMD Program to determine whether a program provider is in compliance with this subchapter.