



TO: Medical Care Advisory Committee

DATE: August 11, 2022

FROM: Dana Williamson, Director, Program Policy

SUBJECT: Individualized Skills and Socialization in the Home and Community-based Services Program and Texas Home Living Program

Agenda Item No.:

New: Chapter 262, Texas Home Living (TxHmL) Program and Community First Choice (CFC), Subchapter J, Individualized Skills and Socialization; and new Chapter 263, Home and Community-Based Services (HCS) Program and Community First Choice (CFC), Subchapter L, Individualized Skills and Socialization

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

The Texas Health and Human Services Commission proposes new Chapter 262, Texas Home Living (TxHmL) Program and Community First Choice (CFC), Subchapter J, Individualized Skills and Socialization; and new Chapter 263, Home and Community-Based Services (HCS) Program and Community First Choice (CFC), Subchapter L, Individualized Skills and Socialization, in the Texas Administrative Code (TAC).

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 and 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 the use of staffing ratios while providing off-site individualized skills and socialization to individuals to ensure that the individuals receive more personalized attention and more easily meet their personal goals and to ensure the health and safety of the individuals.

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 HCS Program and TxHmL 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 three types of individualized skills and socialization, on-site individualized skills and socialization, off-site individualized skills and socialization, and in-home individualized skills and socialization. The proposed rules require that on-site and off-site individualized skills and socialization 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 in Chapter 559 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 include requirements for an individualized skills and socialization provider to make available both on-site and off-site individualized skills and socialization to individuals and meet staffing ratios based on levels of need for off-site individualized skills and socialization.

The proposed rules also include requirements for the provision of in-home individualized skills and socialization including criteria that must be met for an individual to receive the service and that the service must be provided in the residence of the individual receiving the service.

The proposed rules discontinue day habilitation which includes in-home day habilitation effective March 1, 2023.

The proposed rules provide that HHSC may allow program providers to use one or more of the exceptions specified in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision is added to help ensure that providers are able to operate and provide services effectively during a disaster.

The rules implementing individualized skills and socialization in the DBMD Program are being proposed in 26 TAC Chapter 260, Subchapter I and published elsewhere in this issue of the *Texas Register*.

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 while providing off-site individualized skills and socialization to individuals to ensure that the individuals receive more personalized attention and more easily meet their personal goals and to ensure the health and safety of the individuals.

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 149 comments and questions from 17 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 and that HHSC allow a program provider to request an enhanced staffing rate for an individual with a level of need (LON) 6 or an LON 8. 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 reimbursement rate 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:

☐ None ☒ Yes

	SFY 23	SFY 24	SFY 25	SFY 26	SFY 27
State	\$26,600	0	0	0	0
Federal	\$239,400	0	0	0	0
Total	\$266,000	0	0	0	0

RULE DEVELOPMENT SCHEDULE:

August 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 262	TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)
SUBCHAPTER J	INDIVIDUALIZED SKILLS AND SOCIALIZATION

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§262.901, concerning Definitions; 262.903, concerning Types of Individualized Skills and Socialization; 262.905, concerning Description of On-Site and Off-Site Individualized Skills and Socialization; 262.907, concerning Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization; 262.909, concerning Exceptions to Certain Requirements During Declaration of Disaster; 262.911, concerning Provision of On-Site and Off-Site Individualized Skills and Socialization; 262.913, concerning Provision of In-Home Individualized Skills and Socialization; 262.915, concerning Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; 262.917, concerning Staffing Ratios for Off-Site Individualized Skills and Socialization; 262.919, concerning Discontinuation of Day Habilitation; 262.921, concerning Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC; 262.923, concerning Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; 262.925, concerning Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; and 262.927, concerning Enhanced Staffing Rate, in Texas Administrative Code (TAC), new Chapter 262, Subchapter J, 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 and 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 the use of staffing ratios

while providing off-site individualized skills and socialization to individuals to ensure that the individuals receive more personalized attention and more easily meet their personal goals and to ensure the health and safety of the individuals.

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 TxHmL 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 three types of individualized skills and socialization, on-site individualized skills and socialization, off-site individualized skills and socialization, and in-home individualized skills and socialization. The proposed rules require that on-site and off-site individualized skills and socialization 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 include requirements for an individualized skills and socialization provider to make available both on-site and off-site individualized skills and socialization to individuals and meet staffing ratios based on levels of need for off-site individualized skills and socialization.

The proposed rules also include requirements for the provision of in-home individualized skills and socialization including criteria that must be met for an individual to receive the service and that the service must be provided in the residence of the individual receiving the service.

The proposed rules provide that HHSC may allow program providers to use one or more of the exceptions specified in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision is added to help ensure that providers are able to operate and provide services effectively during a disaster.

The proposed rules discontinue day habilitation which includes in-home day habilitation effective March 1, 2023.

The rules implementing individualized skills and socialization in the HCS and DBMD Programs are being proposed in TAC Title 26 Chapter 263 Subchapter L and in 26

TAC Chapter 260, Subchapter I, and published elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed new §262.901, 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 §262.903, Types of Individualize Skills and Socialization, identifies the three types of individualized skills and socialization.

Proposed new §262.905, Description of On-Site and Off-Site Individualized Skills and Socialization, provides a general description of on-site and off-site individualized skills and socialization. The proposed new rule also describes where on-site and off-site individualized skills and socialization are provided.

Proposed new §262.907, Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization, provides a general description of in-home individualized skills and socialization. The proposed new rule also describes the criteria that must be met for an individual to receive in-home individualized skills and socialization.

Proposed new §262.909, Exceptions to Certain Requirements During Declaration of Disaster, provides that HHSC may allow program providers and service coordinators to use one or more of the exceptions described in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. The rule provides that HHSC notifies program providers and local intellectual and developmental disability authorities if it allows an exception to be used and defines "disaster area."

Proposed new §262.911, Provision of On-Site and Off-Site Individualized Skills and Socialization, describes requirements for providing on-site and off-site 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. 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 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 §262.913, Provision of In-Home Individualized Skills and Socialization, describes requirements for providing in-home individualized skills and socialization. The proposed new rule also describes documentation that a program provider must obtain before providing in-home individualized skills and socialization to an individual.

Proposed new §262.915, Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, establishes a combined service limit for on-site, off-site, and in-home individualized skills and socialization.

Proposed new §262.917, Staffing Ratios for Off-Site Individualized Skills and Socialization, describes the required ratios for off-site individualized skills and socialization of service providers to individuals in the TxHmL Program and other persons receiving off-site 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 DBMD Program and the HCS Program, and other persons receiving a similar service, to ensure that the ratios of service providers to individuals in the TxHmL Program receiving off-site individualized skills and socialization are maintained. If a ratio described in this section includes individuals with different LONs or other persons receiving off-site individualized skills and socialization or a similar service, the proposed new rule requires that the ratio be the lowest staff ratio required by §262.917 or other waiver program rules. The proposed new rule requires a service provider of off-site 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 §262.919, Discontinuation of Day Habilitation, provides that day habilitation, which includes in-home day habilitation, is not a service in the TxHmL 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 §262.921, Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC, describes requirements for service coordinators and program providers if an applicant wants to receive on-site, off-site, or in-home individualized skills and socialization, such as including the service on the applicant's person-directed plan and initial individual plan of care (IPC) and developing an implementation plan for the service. The proposed new rule requires a service coordinator to ensure that an initial IPC effective on or after March 1, 2023 does not include day habilitation and requires a service coordinator to ensure that a renewal IPC effective on or after March 1, 2023, does not include day habilitation. The proposed new rule also requires a program provider or service coordinator to ensure 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.

Proposed new §262.923, Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, describes the qualifications for a

service provider of on-site, off-site, or in-home individualized skills and socialization.

Proposed new §262.925, Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, provides that HHSC pays for on-site, off-site, and in-home individualized skills and socialization in accordance with the reimbursement rates for on-site, off-site, and in-home individualized skills and socialization regardless of the individual's level of need. The proposed new rule provides that HHSC pays an approved enhanced staffing rate for off-site individualized skills and socialization for an individual. The proposed new rule prohibits a program provider from submitting a claim for on-site, off-site, or in-home 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 on-site, off-site, or in-home 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 provider fiscal compliance reviews to determine whether a program provider is in compliance with the new subchapter.

Proposed new §262.927, Enhanced Staffing Rate, allows a program provider to request the enhanced staffing rate for off-site individualized skills and socialization for an individual. The proposed rule requires a service coordinator to request the enhanced staffing rate for off-site individualized skills and socialization for an individual who receives off-site individualized skills and socialization through the consumer directed services (CDS) option if the CDS employer asks the service coordinator to request the enhanced staffing rate. The proposed rule also describes how a program provider and service coordinator make such a request. The proposed new rule provides that HHSC approves a request for the enhanced staffing rate if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual would typically receive. The proposed new rule provides that HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate and notifies a program provider or service coordinator through the HHSC data system when an enhanced staffing rate is approved or denied. The proposed new rule requires a service coordinator to notify the CDS employer and financial management services agency of HHSC's approval or denial of the enhanced staffing rate. The proposed new rule provides that a program provider may request an administrative hearing if HHSC denies a request for the enhanced staffing rate.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that the cost to state government to pay for the automation changes needed in the Texas Medicaid and Healthcare Partnership (TMHP) automated system to add new service codes to

allow program providers to submit claims for individualized skills and socialization is \$13,300 General Revenue (GR) funds, (\$119,700 Federal Funds (FF)), \$133,000 All Funds (AF)) for the State Fiscal Year (SFY) 2023 and \$0 GR, (\$0 FF, 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 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 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.

HHSC does not have the data to estimate the number of small businesses or micro-businesses subject to the rule, however as of January 24, 2022, there are 311 TxHmL program providers. As of January 24, 2022, there are 610 HCS and TxHmL legal entities. Legal entities include program providers that may be contracted to be both HCS program providers and TxHmL program providers and program providers that are only contracted to be HCS program providers or TxHmL 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 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 or 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 TxHmL 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 program providers may incur costs 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 this proposal will be held via GoToWebinar on September 7, 2022 from 8:00 a.m. to 12:00 p.m. (central time). The link to register for the GoToWebinar meeting is <https://register.gotowebinar.com/register/927810115195515152>.

The meeting date and time will be posted on the HHSC website at <https://www.hhs.texas.gov/providers/long-term-care-providers/home-community-based-services-hcs> or <https://www.hhs.texas.gov/providers/long-term-care-providers/texas-home-living-txhtml>.

Persons requiring further information, special assistance, or accommodations should contact McKenzie Sanchez at TxHmLPolicy@hhs.texas.gov.

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 22R037" 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) 438-4639.

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 262	<u>TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)</u>
SUBCHAPTER J	<u>INDIVIDUALIZED SKILLS AND SOCIALIZATION</u>

§262.901. 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) Applicant--A Texas resident seeking services in the Texas Home Living Program (TxHmL).

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

(4) CDS employer--Consumer directed services employer. This term has the same meaning as the term "employer" set forth in 40 TAC §41.103 (relating to Definitions).

(5) CDS option--Consumer directed services option. This term has the meaning set forth in 40 TAC §41.103.

(6) 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).

(7) CFC PAS/HAB--CFC personal assistance services/habilitation.

(8) 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.

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

(10) Day habilitation--A TxHmL Program service that provides assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual.

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

(12) 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.

(13) FMSA--Financial management services agency. This term has the meaning set forth in 40 TAC §41.103.

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

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

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

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

(A) a list of outcomes identified in the person-directed plan 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, legally authorized representative, and the program provider.

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

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

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

(21) 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.

(22) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(23) 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, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the

Social Security Administration, may have limited authority to act on behalf of a person.

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

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

(26) 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.

(27) PDP--Person-directed plan. A plan developed using an HHSC form that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety.

(28) 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.

(29) 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 a financial management services agency.

(30) Renewal IPC--An IPC required to be developed for an individual at least 30 but not more than 90 calendar days before the expiration of the individual's IPC in accordance with rules governing the TxHmL Program.

(31) Revised IPC--An initial IPC or renewal IPC that is revised during the IPC year in accordance with rules governing the TxHmL Program to add a new TxHmL Program service or CFC service or change the amount of an existing service.

(32) Service coordinator--An employee of a local intellectual and developmental disability authority who provides service coordination to an individual.

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

(34) 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.

(35) 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.

(36) TxHmL Program--The Texas Home Living Program.

(37) 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.

§262.903. Types of Individualized Skills and Socialization.

The following are the three types of individualized skills and socialization:

(1) on-site individualized skills and socialization;

(2) off-site individualized skills and socialization; and

(3) in-home individualized skills and socialization.

§262.905. Description of On-Site and Off-Site Individualized Skills and Socialization.

(a) Individualized skills and socialization is a TxHmL Program service described in this section and in Appendix C of the TxHmL Program waiver application approved by CMS.

(b) On-site and off-site individualized skills and socialization:

(1) provide 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 PDP;

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

(c) 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 TxHmL Program, unless provided in an event open to the public; or

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

(d) 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 TxHmL Program, unless provided in an event open to the public; or

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

§262.907. Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization.

(a) In-home individualized skills and socialization is:

(1) assistance with acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside and participate successfully in the community;

(2) the provision of age-appropriate activities that enhance self-esteem and maximize functional level;

(3) reinforcement of skills or lessons taught:

(A) in school or other settings; or

(B) during the provision of any TxHmL Program service or non-waiver service;

(4) the provision of personal assistance for an individual who cannot manage personal care needs during the provision of in-home individualized skills and socialization; and

(5) as determined by an assessment conducted by a registered nurse, 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.

(b) One of the following criteria must be met for an individual to receive in-home individualized skills and socialization:

(1) a physician must document that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) a licensed professional or behavioral supports service provider must document that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) the individual must be 55 years of age or older and request to receive in-home individualized skills and socialization.

§262.909. Exceptions to Certain Requirements During Declaration of Disaster

(a) HHSC may allow program providers to use one or both of the exceptions in subsections (c) and (d) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC notifies program providers:

(1) if it allows an exception to be used; and

(2) if an exception is allowed to be used, the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) In this section "disaster area" means the area of the state specified in an executive order or proclamation described in subsection (a) of this section.

(c) Notwithstanding §262.907 of this subchapter (relating to Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization), an individual who resides in the disaster area is not required to meet any of the criteria described in §262.907(b) of this subchapter to receive in-home individualized skills and socialization.

(d) Notwithstanding §262.913 of this subchapter (relating to Provision of In-Home Individualized Skills and Socialization), if an individual who resides in the disaster area does not meet any of the criteria described in §262.907(b) of this subchapter to receive in-home individualized skills and socialization, a program provider is not required to obtain the documentation described in §262.913(b) of this subchapter.

§262.911. Provision of On-Site and Off-Site Individualized Skills and Socialization.

(a) On-site and off-site individualized skills and socialization must be 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.

(b) 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.

(c) 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 PDP, IPC, and implementation plan.

(d) 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.

(e) 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.

§262.913. Provision of In-Home Individualized Skills and Socialization.

(a) A program provider must ensure that in-home individualized skills and socialization is provided in the residence of the individual receiving the service.

(b) In-home individualized skills and socialization is not required to be provided by an individualized skills and socialization provider.

(c) Before providing in-home individualized skills and socialization to an individual, a program provider must obtain documentation:

(1) from a physician that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) from a licensed professional or behavioral supports service provider that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) that the individual is 55 years of age or older and requests to receive in-home individualized skills and socialization.

§262.915. Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

The service limit for the combined total of on-site, off-site, and in-home individualized skills and socialization is:

(1) 1560 hours during an IPC year;

(2) six hours per calendar day; and

(3) five days per calendar week.

§262.917. Staffing Ratios for Off-Site Individualized Skills and Socialization.

(a) The ratio of service providers of off-site individualized skills and socialization to persons receiving services off-site must be:

(1) no higher than one service provider of off-site individualized skills and socialization to four individuals without an enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:4); and

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

(b) A ratio described in subsection (a)(1) and (2) of this section may include individuals with different LONs and other persons receiving off-site individualized skills and socialization or a similar service. If the ratio includes individuals with different LONs or other persons receiving off-site individualized skills and

socialization or a similar service, the ratio must be one of the following, whichever is the lowest staffing ratio:

(1) the staffing ratio required by subsection (a) of this section;

(2) the staffing ratio required by §263.2017(a) of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), if a person in the HCS Program is one of the persons represented in the ratio; or

(3) the staffing ratio required by §260.507 of this title (relating to Staffing Ratios), if a person in the DBMD Program is one of the persons represented in the ratio.

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

§262.919. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the TxHmL Program, effective March 1, 2023, day habilitation, which includes in-home day habilitation, is not a service in the TxHmL Program.

§262.921. Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC.

(a) If an applicant wants to receive on-site or off-site individualized skills and socialization, or wants to receive and meets the criteria for in-home individualized skills and socialization:

(1) a service coordinator must include the type of individualized skills and socialization on the applicant's PDP and the type and amount of individualized skills and socialization on the initial IPC in accordance with the rules governing the TxHmL Program; and

(2) a program provider must develop an implementation plan for on-site, off-site, and in-home individualized skills and socialization.

(b) To renew or revise an IPC to include on-site, off-site, or in-home individualized skills and socialization, a service coordinator and program provider must comply with rules governing the TxHmL Program, which include developing an implementation plan that describes on-site, off-site, and in-home individualized skills and socialization.

(c) 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 service coordinator must document the decision in the individual's PDP.

(d) A service coordinator must ensure that an initial IPC that is effective on or after March 1, 2023, does not include day habilitation.

(e) A service coordinator must ensure that a renewal IPC that is effective on or after March 1, 2023, does not include day habilitation.

(f) A program provider or service coordinator must ensure that a revised IPC with an effective date that is 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.

§262.923. Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) A service provider of on-site, off-site, or in-home individualized skills and socialization must be at least 18 years of age and:

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

(2) have 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) A service provider of on-site or off-site individualized skills and socialization who provides transportation must:

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

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

(c) A service provider of on-site, off-site, or in-home individualized skills and socialization must complete training as required by the rules governing the TxHmL Program.

§262.925. Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) Except as provided in subsection (b) of this section, HHSC pays for on-site, off-site, and in-home individualized skills and socialization provided to an individual at the reimbursement rates for on-site, off-site and in-home individualized skills and socialization regardless of the individual's LON.

(b) If approved in accordance with §262.927 of this subchapter (relating to Enhanced Staffing Rate) HHSC pays an enhanced staffing rate for off-site individualized skills and socialization for an individual.

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

(d) HHSC does not pay a program provider for on-site, off-site, or in-home individualized skills and socialization, or recoups any payments made to the program provider for on-site, off-site, or in-home individualized skills and socialization if:

(1) the individual receiving on-site, off-site, or in-home individualized skills and socialization was, at the time on-site, off-site, or in-home individualized skills and socialization was provided, ineligible for the TxHmL Program;

(2) on-site, off-site, or in-home individualized skills and socialization is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(3) on-site, off-site, or in-home 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) on-site, off-site, or in-home individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with a signed, dated, and authorized IPC that includes on-site, off-site, or in-home individualized skills and socialization;

(6) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the individual's PDP or implementation plan;

(7) on-site, off-site, or in-home individualized skills and socialization is provided before the individual's enrollment date into the TxHmL Program;

(8) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with this subchapter;

(9) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the TxHmL Program Billing Requirements;

(10) on-site, off-site, or in-home individualized skills and socialization is not documented in accordance with the TxHmL Program Billing Requirements;

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

(12) the claim for on-site, off-site, or in-home individualized skills and socialization does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the TxHmL Program Billing Requirements;

(13) HHSC determines that on-site, off-site, or in-home individualized skills and socialization would have been paid for by a source other than the TxHmL Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for on-site, off-site, or in-home individualized skills and socialization;

(14) on-site, off-site, or in-home individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide on-site, off-site, or in-home individualized skills and socialization as described in §262.923 of this subchapter (relating to Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization) and in the TxHmL Program Billing Requirements;

(15) on-site, off-site, or in-home individualized skills and socialization was not provided;

(16) on-site or off-site 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;

(17) in-home individualized skills and socialization is not provided in the residence of the individual as required by §262.913(a) of this subchapter (relating to Provision of In-Home Individualized Skills and Socialization); or

(18) in-home individualized skills and socialization is provided to an individual without the documentation required by §262.913(c) of this subchapter.

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

(f) HHSC conducts provider fiscal compliance reviews, also known as billing and payment reviews, in accordance with rules governing the TxHmL Program and the TxHmL Program Billing Requirements to determine whether a program provider is in compliance with this subchapter.

§262.927. Enhanced Staffing Rate.

(a) A program provider may request the enhanced staffing rate for off-site individualized skills and socialization described in §262.925(b) of this subchapter (relating to Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization) for an individual who receives off-site individualized skills and socialization from the program provider.

(b) A service coordinator must request the enhanced staffing rate for off-site individualized skills and socialization described in §262.925(b) of this subchapter for an individual who receives off-site individualized skills and socialization through the CDS option if the CDS employer asks the service coordinator to request the enhanced staffing rate.

(c) A program provider or service coordinator makes the request described in subsection (a) or (b) of this section by submitting the following documentation to HHSC:

(1) a completed HHSC Enhanced Staffing Rate Request Form;

(2) the most recent ICAP scoring booklet;

(3) the most recent ID/RC Assessment;

(4) the most recent PDP;

(5) the most recent implementation plan for individualized skills and socialization; and

(6) other documentation that supports the individual's request for an enhanced staffing rate, which may include:

(A) the behavior support plan;

(B) a physician's order;

(C) an assessment completed by a service provider of a professional therapy;

(D) the nursing assessment; and

(E) the CFC PAS/HAB assessment.

(d) HHSC approves a request made in accordance with subsections (a) - (c) of this section if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual typically receives. The requirement for additional support may be because of the individual's mobility, medical, or behavioral needs.

(e) HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate. If HHSC reviews an enhanced staffing rate, a program provider or service coordinator must submit documentation supporting the enhanced staffing rate to HHSC in accordance with HHSC's request.

(f) HHSC notifies a program provider or service coordinator that an enhanced staffing rate is approved or denied through the HHSC data system.

(g) A service coordinator must notify the CDS employer and FMSA of HHSC's approval or denial described in subsection (d) of this section.

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

(1) denies a request made in accordance with subsection (a) of this section; or

(2) denies an enhanced staffing rate based on a review described in subsection (c) of this section.

TITLE 26	HEALTH AND HUMAN SERVICES
PART 1	HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 263	HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)
SUBCHAPTER L	INDIVIDUALIZED SKILLS AND SOCIALIZATION

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§263.2001, concerning Definitions; 263.2003, concerning Types of Individualized Skills and Socialization; 263.2005, concerning Description of On-Site and Off-Site Individualized Skills and Socialization; 263.2007, concerning Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization; 263.2009, concerning Exceptions to Certain Requirements During Declaration of Disaster; 263.2011, concerning Provision of On-Site and Off-Site Individualized Skills and Socialization; 263.2013, concerning Provision of In-Home Individualized Skills and Socialization; 263.2015, concerning Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; 263.2017, concerning Staffing Ratios for Off-Site Individualized Skills and Socialization; 263.2019, concerning Discontinuation of Day Habilitation; 263.2021, concerning Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC; 263.2023, concerning Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; 263.2025, concerning Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; and 263.2027, concerning Enhanced Staffing Rate, in Texas Administrative Code (TAC), new Chapter 263, Subchapter L, 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 and 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 the use of staffing ratios

while providing off-site individualized skills and socialization to individuals to ensure that the individuals receive more personalized attention and more easily meet their personal goals and to ensure the health and safety of the individuals.

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 HCS 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 three types of individualized skills and socialization, on-site individualized skills and socialization, off-site individualized skills and socialization, and in-home individualized skills and socialization. The proposed rules require that on-site and off-site individualized skills and socialization 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 in Chapter 559 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 include requirements for an individualized skills and socialization provider to make available both on-site and off-site individualized skills and socialization to individuals and meet staffing ratios based on levels of need for off-site individualized skills and socialization.

The proposed rules also include requirements for the provision of in-home individualized skills and socialization including criteria that must be met for an individual to receive the service and that the service must be provided in the residence of the individual receiving the service.

The proposed rules discontinue day habilitation which includes in-home day habilitation effective March 1, 2023.

The proposed rules provide that HHSC may allow program providers to use one or more of the exceptions specified in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision is added to help ensure that providers are able to operate and provide services effectively during a disaster.

The rules implementing individualized skills and socialization in the TxHmL and DBMD Programs are being proposed in 26 TAC Chapter 262 Subchapter J and in 26

TAC Chapter 260, Subchapter I and published elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed new §263.2001, 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 §263.2003, Types of Individualized Skills and Socialization, identifies the three types of individualized skills and socialization.

Proposed new §263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization, provides a general description of on-site and off-site individualized skills and socialization. The proposed new rule also describes where on-site and off-site individualized skills and socialization are provided.

Proposed new §263.2007, Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization, provides a general description of in-home individualized skills and socialization. The proposed new rule also describes the criteria that must be met for an individual to receive in-home individualized skills and socialization.

Proposed new §263.2009, Exceptions to Certain Requirements During Declaration of Disaster, provides that HHSC may allow program providers and service coordinators to use one or more of the exceptions described in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. The rule provides that HHSC notifies program providers and local intellectual and developmental disability authorities if it allows an exception to be used and defines “disaster area.”

Proposed new §263.2011, Provision of On-Site and Off-Site Individualized Skills and Socialization, describes requirements for providing on-site and off-site 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 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 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 §263.2013, Provision of In-Home Individualized Skills and Socialization, describes requirements for providing in-home individualized skills and socialization. The proposed new rule also describes documentation that a program provider must obtain before providing in-home individualized skills and socialization to an individual.

Proposed new §263.2015, Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, establishes a combined service limit for on-site, off-site, and in-home individualized skills and socialization.

Proposed new §263.2017, Staffing Ratios for Off-Site Individualized Skills and Socialization, describes the required ratios for off-site individualized skills and socialization of service providers to individuals in the HCS Program and other persons receiving off-site 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 DBMD Program and the TxHmL Program, and other persons receiving a similar service, to ensure that the ratios of service providers to individuals in the HCS Program receiving off-site individualized skills and socialization are maintained. If a ratio described in this section includes individuals with different levels of need (LONs) and other persons receiving off-site individualized skills and socialization or a similar service, the proposed new rule requires that the ratio be the lowest staff ratio required by §263.2017 or other waiver program rules. The proposed new rule requires a service provider of off-site 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 §263.2019, Discontinuation of Day Habilitation, provides that day habilitation, which includes in-home day habilitation, is not a service in the HCS 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 §263.2021, Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC, describes requirements for service coordinators and program providers if an applicant wants to receive on-site, off-site, or in-home individualized skills and socialization, such as including the service on the applicant's person-directed plan and initial individual plan of care (IPC) and developing an implementation plan for the service. The proposed new rule requires a service coordinator to ensure that an initial IPC effective on or after March 1, 2023, does not include day habilitation and requires a program provider to ensure that a renewal IPC effective on or after March 1, 2023, does not include day habilitation. The proposed new rule also requires a program provider or service coordinator to ensure 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.

Proposed new §263.2023, Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, describes the qualifications for a service provider of on-site, off-site, or in-home individualized skills and socialization.

Proposed new §263.2025, Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, provides that HHSC pays for on-site, off-site, and in-home individualized skills and socialization in accordance with an individual's LON and the reimbursement rates for on-site, off-site, and in-home individualized skills and socialization. The proposed new rule provides that HHSC pays an approved enhanced staffing rate for off-site individualized skills and socialization for an individual with a LON 1 or LON 5. The proposed new rule prohibits a program provider from submitting a claim for on-site, off-site, or in-home 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 on-site, off-site, or in-home 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 provider fiscal compliance reviews to determine whether a program provider is in compliance with the new subchapter.

Proposed new §263.2027, Enhanced Staffing Rate, provides that a program provider may request the enhanced staffing rate for off-site individualized skills and socialization for an individual with a LON 1 or LON 5 and describes how the request must be made. The proposed new rule provides that HHSC approves a request for the enhanced staffing rate if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual would receive with the individual's assigned LON. The proposed new rule provides that HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate and notifies a program provider through the HHSC data system when an enhanced staffing rate is approved or denied. The proposed new rule provides that a program provider may request an administrative hearing if HHSC denies a request for the enhanced staffing rate.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that the cost to state government to pay for the automation changes needed in the Texas Medicaid and Healthcare Partnership (TMHP) automated system to add new service codes to allow program providers to submit claims for individualized skills and socialization is \$13,300 General Revenue (GR) funds (\$119,700 Federal Funds (FF)), \$133,000 All Funds (AF)) for the State Fiscal Year (SFY) 2023 and \$0 GR, (\$0 FF, 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 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 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.

HHSC does not have the data to estimate the number of small businesses or micro-businesses subject to the rule, however as of January 24, 2022, there are 583 HCS program providers. As of January 24, 2022, there are 610 HCS and TxHmL legal entities. Legal entities include program providers that may be contracted to be both HCS program providers and TxHmL program providers and program providers that are only contracted to be HCS program providers or TxHmL 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 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 or 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 HCS 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 program providers may incur costs 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 this proposal will be held via GoToWebinar on September 7, 2022 from 8:00 a.m. to 12:00 p.m. (central time). The link to register for the GoToWebinar meeting is <https://register.gotowebinar.com/register/927810115195515152>.

The meeting date and time will be posted on the HHSC website at <https://www.hhs.texas.gov/providers/long-term-care-providers/home-community-based-services-hcs> or <https://www.hhs.texas.gov/providers/long-term-care-providers/texas-home-living-txhtml>.

Persons requiring further information, special assistance, or accommodations should contact McKenzie Sanchez at TxHmLPolicy@hhs.texas.gov.

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 22R037" 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) 438-4639.

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
<u>CHAPTER 263</u>	<u>HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM</u>
	<u>AND COMMUNITY FIRST CHOICE (CFC)</u>
<u>SUBCHAPTER L</u>	<u>INDIVIDUALIZED SKILLS AND SOCIALIZATION</u>

§263.2001. 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) Applicant--A Texas resident seeking services in the Home and Community-based Services (HCS) Program.

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

(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) CFC PAS/HAB--CFC personal assistance services/habilitation.

(6) 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.

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

(8) Day habilitation--An HCS Program service that provides assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual.

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

(10) 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.

(11) HCS Program--The Home and Community-based Services Program.

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

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

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

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

(A) a list of outcomes identified in the person-directed plan 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, legally authorized representative, and the program provider.

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

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

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

(19) 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.

(20) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(21) LAR--Legally authorized representative. A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

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

(23) LON--Level of need. An assignment given by HHSC to an individual upon which reimbursement for certain services is based.

(24) 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.

(25) PDP--Person-directed plan. A plan developed using an HHSC form that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety.

(26) 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.

(27) 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 a financial management services agency.

(28) Renewal IPC--An IPC developed for an individual in accordance with the rules governing the HCS Program.

(29) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with the rules governing the HCS Program to add a new HCS Program service or CFC service or change the amount of an existing service.

(30) Service coordinator--An employee of a local intellectual and developmental disability authority who provides service coordination to an individual.

(31) Service provider--A person who directly provides an HCS Program service or CFC service to an individual.

(32) 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.

(33) 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.

(34) 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.

§263.2003. Types of Individualized Skills and Socialization.

The following are the three types of individualized skills and socialization:

(1) on-site individualized skills and socialization;

(2) off-site individualized skills and socialization; and

(3) in-home individualized skills and socialization.

§263.2005. Description of On-Site and Off-Site Individualized Skills and Socialization.

(a) Individualized skills and socialization is an HCS Program service described in this section and in Appendix C of the HCS Program waiver application approved by CMS.

(b) On-site and off-site individualized skills and socialization:

(1) provide 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 PDP;

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

(c) 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 HCS Program, unless provided in an event open to the public; or

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

(d) 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 HCS Program, unless provided in an event open to the public; or

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

§263.2007. Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization.

(a) In-home individualized skills and socialization is:

(1) assistance with acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside and participate successfully in the community;

(2) the provision of age-appropriate activities that enhance self-esteem and maximize functional level;

(3) reinforcement of skills or lessons taught:

(A) in school or other settings; or

(B) during the provision of any HCS Program service or non-waiver service;

(4) the provision of personal assistance for an individual who cannot manage personal care needs during the provision of in-home individualized skills and socialization; and

(5) as determined by an assessment conducted by a registered nurse, 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.

(b) One of the following criteria must be met for an individual to receive in-home individualized skills and socialization:

(1) a physician must document that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) a licensed professional or behavioral supports service provider must document that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) the individual must be 55 years of age or older and request to receive in-home individualized skills and socialization.

§263.2009. Exceptions to Certain Requirements During Declaration of Disaster.

(a) HHSC may allow program providers to use one or both of the exceptions in subsections (c) and (d) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC notifies program providers:

(1) if it allows an exception to be used; and

(2) if an exception is allowed to be used, the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) In this section "disaster area" means the area of the state specified in an executive order or proclamation described in subsection (a) of this section.

(c) Notwithstanding §263.2007 of this chapter (relating to Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization), an individual who resides in the disaster area is not required to meet any of the criteria described in §263.2007(b) of this chapter to receive in-home individualized skills and socialization.

(d) Notwithstanding §263.2013 of this chapter (relating to Provision of In-Home Individualized Skills and Socialization), if an individual who resides in the disaster

area does not meet any of the criteria described in §263.2007(b) of this chapter to receive in-home individualized skills and socialization, a program provider is not required to obtain the documentation described in §263.2013(b) of this chapter.

§263.2011. Provision of On-Site and Off-Site Individualized Skills and Socialization.

(a) On-site and off-site individualized skills and socialization must be 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.

(b) 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.

(c) 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 PDP, IPC, and implementation plan.

(d) 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.

(e) 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.

§263.2013. Provision of In-Home Individualized Skills and Socialization.

(a) A program provider must ensure that in-home individualized skills and socialization is provided in the residence of the individual receiving the service.

(b) In-home individualized skills and socialization is not required to be provided by an individualized skills and socialization provider.

(c) Before providing in-home individualized skills and socialization to an individual, a program provider must obtain documentation:

(1) from a physician that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) from a licensed professional or behavioral supports service provider that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) that the individual is 55 years of age or older and requests to receive in-home individualized skills and socialization.

§263.2015. Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

The service limit for the combined total of on-site, off-site, and in-home individualized skills and socialization is:

(1) 1560 hours during an IPC year;

(2) six hours per calendar day; and

(3) five days per calendar week.

§263.2017. Staffing Ratios for Off-Site Individualized Skills and Socialization.

(a) The ratio of service providers of off-site individualized skills and socialization to persons receiving services off-site must be:

(1) no higher than one service provider of off-site individualized skills and socialization to six individuals with an LON 1 without an enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:6);

(2) no higher than one service provider of off-site individualized skills and socialization to four individuals with an LON 5 without an enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:4);

(3) no higher than one service provider of off-site individualized skills and socialization to two individuals with an LON 8 or an LON 6 and other persons receiving off-site individualized skills and socialization or a similar service (1:2);

(4) no higher than one service provider of individualized skills and socialization to two individuals with an LON 1 with the enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:2);

(5) no higher than one service provider of off-site individualized skills and socialization to two individuals with an LON 5 with the enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:2); and

(6) no higher than one service provider of off-site individualized skills and socialization to one individual with an LON 9 and other persons receiving off-site individualized skills and socialization or a similar service (1:1).

(b) A ratio described in subsection (a)(1)-(6) of this section may include individuals with different LONs and other persons receiving off-site individualized skills and socialization or a similar service. If the ratio includes individuals with different LONs or other persons receiving off-site individualized skills and socialization or a similar service, the ratio must be one of the following, whichever is the lowest staffing ratio:

(1) the staffing ratio for the individual with highest level of need;

(2) the staffing ratio required by §262.917(a) of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), if a person in the TxHmL Program is one of the persons represented in the ratio; or

(3) the staffing ratio required by §260.507(a) of this title (relating to Staffing Ratios), if a person in the DBMD Program is one of the persons represented in the ratio.

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

§263.2019. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the HCS Program, effective March 1, 2023, day habilitation, which includes in-home day habilitation, is not a service in the HCS Program.

§263.2021. Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC.

(a) If an applicant wants to receive on-site or off-site individualized skills and socialization, or wants to receive and meets the criteria for in-home individualized skills and socialization:

(1) a service coordinator must include the type of individualized skills and socialization on the applicant's PDP and the type and amount of individualized skills and socialization on the initial IPC in accordance with the rules governing the HCS Program; and

(2) a program provider must develop an implementation plan for on-site, off-site, and in-home individualized skills and socialization.

(b) To renew or revise an IPC to include on-site, off-site, or in-home individualized skills and socialization, a service coordinator and program provider must comply with rules governing the HCS Program, which include developing an implementation plan that describes on-site, off-site, and in-home individualized skills and socialization.

(c) 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 service coordinator must document the decision in the individual's PDP.

(d) A service coordinator must ensure that an initial IPC that is effective on or after March 1, 2023, does not include day habilitation.

(e) A program provider must ensure that a renewal IPC that is effective on or after March 1, 2023, does not include day habilitation.

(f) A program provider or service coordinator must ensure that a revised IPC with an effective date that is 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.

§263.2023. Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) A service provider of on-site, off-site, or in-home individualized skills and socialization must be at least 18 years of age and:

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

(2) have 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) A service provider of on-site or off-site individualized skills and socialization who provides transportation must:

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

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

(c) A service provider of on-site, off-site, or in-home individualized skills and socialization must complete training as required by the rules governing the HCS Program.

§263.2025. Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) Except as provided in subsection (b) of this section, HHSC pays for on-site, off-site, and in-home individualized skills and socialization provided to an individual in accordance with an individual's LON and the reimbursement rates for on-site, off-site, and in-home individualized skills and socialization.

(b) If approved in accordance with §263.2027 of this subchapter (relating to Enhanced Staffing Rate) HHSC pays an enhanced staffing rate for off-site individualized skills and socialization for an individual with a LON 1 or LON 5.

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

(d) HHSC does not pay a program provider for on-site, off-site, or in-home individualized skills and socialization, or recoups any payments made to the program provider for on-site, off-site, or in-home individualized skills and socialization, if:

(1) the individual receiving on-site, off-site, or in-home individualized skills and socialization was, at the time on-site, off-site, or in-home individualized skills and socialization was provided, ineligible for the HCS Program;

(2) on-site, off-site, or in-home individualized skills and socialization is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(3) on-site, off-site, or in-home 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) on-site, off-site, or in-home individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with a signed, dated, and authorized IPC that includes on-site, off-site, or in-home individualized skills and socialization;

(6) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the individual's PDP or implementation plan;

(7) on-site, off-site, or in-home individualized skills and socialization is provided before the individual's enrollment date into the HCS Program;

(8) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with this subchapter;

(9) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the HCS Program Billing Requirements;

(10) on-site, off-site, or in-home individualized skills and socialization is not documented in accordance with the HCS Program Billing Requirements;

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

(12) the claim for on-site, off-site, or in-home individualized skills and socialization does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the HCS Program Billing Requirements;

(13) HHSC determines that on-site, off-site, or in-home individualized skills and socialization would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for on-site, off-site, or in-home individualized skills and socialization;

(14) on-site, off-site, or in-home individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide on-site, off-site, or in-home individualized skills and socialization as described in §263.2023 of this subchapter (relating to Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization) and in the HCS Program Billing Requirements;

(15) on-site, off-site, or in-home individualized skills and socialization was paid at an incorrect LON because the information entered in the HHSC data system from a completed ID/RC Assessment is not identical to the information on the completed ID/RC Assessment;

(16) on-site, off-site, or in-home individualized skills and socialization was not provided;

(17) on-site or off-site 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;

(18) in-home individualized skills and socialization is not provided in the residence of the individual as required by §263.2013(a) of this subchapter (relating to Provision of In-Home Individualized Skills and Socialization); or

(19) in-home individualized skills and socialization is provided to an individual without the documentation required by §263.2013(c) of this subchapter.

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

(f) HHSC conducts provider fiscal compliance reviews, also known as billing and payment reviews, in accordance with rules governing the HCS Program and the HCS Program Billing Requirements to determine whether a program provider is in compliance with this subchapter.

§263.2027. Enhanced Staffing Rate.

(a) A program provider may request the enhanced staffing rate for off-site individualized skills and socialization described in §263.2025(b) of this subchapter (relating to Program Provider Reimbursement for Individualized Skills and Socialization) for an individual with a LON 1 or LON 5 by submitting the following documentation to HHSC:

(1) a completed HHSC Enhanced Staffing Rate Request Form;

(2) the most recent ICAP scoring booklet;

(3) the most recent ID/RC Assessment;

(4) the most recent PDP;

(5) the most recent implementation plan for individualized skills and socialization; and

(6) other documentation that supports the individual's request for an enhanced staffing rate, which may include:

(A) the behavior support plan;

(B) a physician's order;

(C) an assessment completed by a service provider of a professional therapy;

(D) the nursing assessment; and

(E) the CFC PAS/HAB assessment.

(b) HHSC approves a request made in accordance with subsection (a) of this section if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual would receive with the individual's assigned LON. The requirement for additional support may be because of the individual's mobility, medical, or behavioral needs.

(c) HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate. If HHSC reviews an enhanced staffing rate, a program provider must submit documentation supporting the enhanced staffing rate to HHSC in accordance with HHSC's request.

(d) HHSC notifies a program provider that an enhanced staffing rate is approved or denied through the HHSC data system.

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

(1) denies a request made in accordance with subsection (a) of this section; or

(2) denies an enhanced staffing rate based on a review described in subsection (c) of this section.