# HCS/TxHmL Certification Principles Webinar Series

## Participant Q&A

**Current as of 9/22/21***

## Module 1: Administrative Penalties

Q: If the Informal Dispute Resolution (IDR) was in favor of the provider, will the report be revised to eliminate the citation in question and remove it from the record?

**A: Yes, subject to the Post-Michigan Peer Review Organization (MPRO) review Regulatory Services conducts. If a violation is amended or deleted, the report will be revised. A copy of the new report and cover letter will be issued to the program provider.**

Q: If a citation is deemed critical, when do the penalties start?

**A: Penalties start accruing the date the violation is identified.**

Q: What is the maximum administrative penalty amount a provider can be fined?

**A: It depends on the scope and severity of each violation. Penalty amounts are calculated per violation per day based on the number of days the violation was in place.**

Q: Will HCS/TxHmL surveyors be obtaining the Federal surveyor minimum qualification test (SMQT) certification?

**A: No, the HCS/TxHmL surveyors will not be obtaining SMQT. The SMQT is a federal qualification specifically designed for nursing facility surveyors and is based on nursing facility regulations; therefore, it would not be appropriate for HCS/TxHmL surveyors.**

Q: What would be the difference between Billing Survey Penalties and Certification Penalties?

**A: Provider Fiscal Compliance (formerly Billing and Payment) reviews a program provider's compliance with the HCS/TxHmL Billing Requirements, 40 TAC Chapter §49, 40 TAC Chapter §9, the provider application and CFR.**

**Provider Fiscal Compliance reviews for all paid claims to ensure that there is enough justification for the billing.**

**Long-term Care Regulation (LTCR) evaluates the program provider's compliance with the Certification Principles located in 40 TAC Chapter 9, Subchapter D for HCS and Subchapter N for TxHmL through initial certification, recertification, or intermittent surveys. Regulatory Enforcement may impose an administrative penalty for violations issues on the LTCR final survey report.**

**Provider Fiscal Compliance will recoup billing claims where program providers will submit payment for an administrative penalty imposed by Regulatory Enforcement. A billing recoupment and an administrative penalty may occur for the same issue; however, the recoupment would occur for the claim issue and the administrative penalty would occur due to a critical violation of a certification principle.**

Q: What if a provider does not get a response from HHSC after submitting a Plan of Correction (POC)?

**A: Please contact the Program Manager regarding the status of the POC. Current contact information can be found in [Provider Letter 2021-26]**

## Module 2: Program Provider Operations

Q: Do you have to have a Person Directed Plan (PDP) to develop an Individual Plan of Care (IPC)?

**A: Yes, 40 TAC §9.159(c) states that an IPC must be based on the PDP. The individual's service coordinator convenes the service planning team to develop, review, and revise the PDP prior to the development, renewal, or revision of an individual's IPC. These requirements are outlined in 40 TAC §9.158 relating to Process for Enrollment of Applicants, §9.166 relating to Renewal and Revision of an IPC, and §9.190(e)(5-15) relating to LIDDA Requirements for Providing Service Coordination in the HCS Program.**

## Module 3: Comprehensive Nursing Assessment

Q: Is a program provider required to provide nursing services if the individual refuses nursing services?

**A: Actions the program provider must take if the individual refuses a nursing assessment are outlined in 40 TAC §9.174(d).**

Q: Can the Comprehensive Nursing Assessment (CNA) be completed by an LVN with the RN present by webcam or face-time video and mobile medical devices?

**A: HHSC published an alert on April 21, 2020 stating that, due to COVID-19, nursing services can be provided by telehealth. Nursing services must be done within the scope of the nurse's license and standards of practice, and a nursing assessment is not under the scope of practice of an LVN. The program provider must not direct a nurse to complete an assessment through telehealth, as the RN has sole discretion to determine if this method can be used. The Texas Board of Nursing also provided additional resources and an FAQ about telehealth.**

Q: Does HHSC expect the nurse to be out to do a CNA at the time of admission?

**A: A nursing assessment must be completed by the RN prior to an unlicensed service provider performing a nursing task, per 40 TAC §9.174(a)(31)(J).**

Q: Does the RN need to sign every page of a report that is received – e.g., a lab report?

**A: No, the nurse can sign off on the last page with a legible signature. The nurse is responsible for all content in that report when he/she signs.**

Q: What are considered nursing tasks?

**A: Nursing tasks are those performed by a licensed nurse that require skill and training.**

## Module 4: Staff Member and Service Provider Requirements

Q: If a person lives in a different state, do we check their background in that state plus Texas?

**A: No, 40 TAC §49.304 requires the criminal history check through the Texas Department of Public Safety.**

**(b) A contractor that is not required to have a license, as described in §49.302(a) of this subchapter, must:**

> **(1) before offering employment to an unlicensed applicant for employment or contracting with an unlicensed potential subcontractor, obtain directly or through a private agency the criminal history record of the applicant or potential subcontractor from the Department of Public Safety (DPS);**

**(2) before accepting an unlicensed volunteer applicant for a volunteer position that directly interacts with an individual, obtain directly or through a private agency the criminal history record of the applicant from DPS;**

**(3) review the criminal history record of the unlicensed applicant or potential subcontractor;**

**(4) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position, for the time periods set forth in Texas Health and Safety Code, §250.006, if the applicant or potential subcontractor has been convicted of an offense listed in Texas Health and Safety Code, §250.006; and**

**(5) not employ an unlicensed applicant for employment, contract with an unlicensed potential subcontractor, or accept an unlicensed applicant for a volunteer position if the applicant or potential subcontractor has been convicted of an offense that the contractor determines is a contraindication to the applicant's employment, contracting, or volunteering.**

Q: Can you explain what a TAS provider does?

**A: A resident in a Nursing Facility, Intermediate Care Facility (ICF), or General Residential Operation (GRO) who is certified for waiver services may receive a one-time TAS authorization of up to $2,500, if the case manager determines that no other resources are available to pay for the basic services/items needed by the individual. Expenses covered by TAS are security and utility deposits, moving expenses and essential furnishings necessary to establish a basic living arrangement.**

**The TAS provider will:**

- **purchase the authorized items/services and arrange and pay for the delivery of the purchased items, if applicable;**
- **deliver or arrange delivery of the authorized services by the completion date recorded on the TAS authorization form;**
- **contact the individual to confirm the services were delivered;**
- **document the service delivery on the date the services are delivered; and**
- **in the event of a delay in service delivery, verbally notify the case manager of a delivery delay before the completion due date.**

**More information can be found in the TAS Orientation Handbook.**

Q: Do background checks have to be completed on every adult in the home of a host home setting?

**A: There is no rule requiring background checks on household members who are not providing services, only the service providers. If a member of the household is a service provider, then background checks must be conducted for that member of the household.**

Q**:** Do Community First Choice (CFC)/respite or Host Home/Companion Care (HH/CC) staff need to have a Texas ID or Driver's License or can it be identification from another country?

**A: If the service provider will not provide transportation and the ID can provide the information required to complete all required background checks and personnel checks as required by the program and for employability purposes, then other types of identification can be used.**

Q: Can a day program staff administer medication to a consumer in their facility even if they don't have a nurse in the facility?

**A: The program provider's RN is responsible for delegating all medication administration to unlicensed service providers, which would include staff at a contracted day habilitation site.**

Q: What if the Legally Authorized Representative (LAR) wants a family member of their choosing to provide respite when they want to use it? Is that a violation?

**A: The family member would need to meet all qualifications of a service provider of respite per 40 TAC §9.177(h) or §9.579(h). A qualified service provider of respite:**

**(1) may not have the same residence as the individual; and**

**(2) must have one of the following:**

**(A) a high school diploma;**

**(B) a high school equivalency certificate issued in accordance with the law of the issuing state; or**

**(C) both of the following:**

**(i) a successfully completed written competency-based assessment demonstrating the ability to provide respite and the ability to document the provision of respite; and (ii) written personal references which evidence the service provider's ability to provide a safe and healthy environment for the individual from at least three persons who are not relatives of the service provider. (Appendix II, Degree of Consanguinity or Affinity, explains who is considered a relative for purposes of these billing guidelines)**

**A service provider is not qualified to provide a service component or subcomponent to a minor if the service provider is: (1) the minor's parent; (2) the spouse of the minor's parent.**

## Module 5: Restraints and Seclusion

Q: Would a client hitting himself in the face, when he has a history of breaking his nose, be considered a behavioral emergency?

**A: A behavioral emergency is defined in 40 TAC §9.153(8) as:**

**A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:**

> **(A) poses a substantial risk of imminent probable death, or substantial bodily harm to, the individual or others;**
>
> **(B) has not abated in response to preventative de-escalatory or direction techniques**
>
> **(C) is not addressed in a written behavior support plan; and**
>
> **(D) does not occur during a medical or dental procedure.**

**If the individual has a history of self-injurious behaviors, then a behavioral support plan should be discussed to intervene before the behavior causes significant bodily injury.**

Q: Can an RN complete the Restraint Risk Assessment?

**A: The rule 40 TAC §9.179(c)requires initial involvement of a physician to identify risk factors, but an RN or LVN may conduct the annual review and update.**

Q: If the provider was not able to obtain a restraint assessment from the physician, what should the provider do?

**A: If the physician refuses to sign the restraint risk assessment, they are not required to do so. Documentation such as service delivery logs indicating that the restraint risk assessment was addressed and evidence of the office visit with the physician would be sufficient.**

Q: Is locking an individual outside the home alone considered seclusion?

**A: Seclusion is defined in 40 TAC §9.153(102) as "the involuntary placement of an individual alone in an area from which the individual is prevented from leaving." If the individual is being locked outside and being unable to leave the area, such as returning inside by their choice, it would be considered seclusion. It is important to note that seclusion is considered physical abuse and must be reported to DFPS.**

Q: Is a PRN medication considered a restraint even if the PRN medication is part of the standard medication regimen? The TAC does not address PRN medications as a chemical restraint.

**A: A chemical restraint is defined in 40 TAC §9.153(19) as "a medication used to control an individual's behavior or to restrict their freedom of movement that is not a standard treatment for a medical or psychological condition." For example, if a medication is a standard treatment for anxiety prescribed to an individual diagnosed with that condition, it may not be a chemical restraint, but if it is being used on an as-needed basis or occasionally as an elevated dose to control undesired behavior or manage an outburst that an individual may exhibit, it would be a chemical restraint.**

## Module 6: Quality Assurance

Q: I thought that for satisfaction surveys, there is no list and it is done randomly, and no names are required. Is this the case?

**A: According to 40 TAC §9.178(h), program providers must provide all individuals receiving services and their LARs with an opportunity to participate in a satisfaction survey at least annually.**

Q: Are expenses for personal items such as clothing and shoes or items for their bedroom the individual's responsibility?

**A: Yes, the individual may purchase clothing and personal items using their own funds as they desire. Per 40 TAC §9.178(p)(3), the program provider may accrue an expense for necessary personal items, such as essential clothing, and seek reimbursement if the individual does not have the personal funds available at the time of purchase.**

Q: If an individual moves to a different home where the room is higher than the prior residence, is the program provider allowed to increase the room rate?

**A: Room and board is calculated for each residence a program provider operates, so two different residences may have different room and board rates. If an individual chooses to move a new residence, in compliance with 40 TAC §9.178(m)(6) the program provider must provide the new room and board charge, in writing, to the individual or LAR, prior to the individual selecting the new residence.**

Q: Can an individual choose to give money to their family members out of their personal funds?

**A: In compliance with 40 TAC §9.173(b)(31), the individual may possess and use their funds in personal and individualized ways or learn to do so. That may include gifting money to others if they wish, but if there is suspected exploitation of the individual by the person receiving gifted funds this must be reported to DFPS for investigation.**

Q: What happens if we do not hear back from HHSC regarding the approval of a 4-person residence?

**A: Per 40 TAC §9.188(c) HHSC has 14 calendar days to notify the program provider of the approval or disapproval of a four-person residence request. If a response has not been received after this timeline, the program provider may follow-up with HHSC at [HCSFourPersonResidenceRequests@hhs.texas.gov](mailto:HCSFourPersonResidenceRequests@hhs.texas.gov).**

Q: Is TAC §9.178(m) only applicable to group home residences and individuals? Do Host Home/Companion Care individuals have financial recommendations?

**A: TAC 40 TAC §9.178(m)(9) outlines the actions a program provider must take regarding room and board payments to a host home/companion care provider if they manage an individual's funds.**

Q: How can the consumer/advocate advisory committee be effectively conducted during COVID?

**A: Rule does not require that the consumer/advocate advisory committee meet in-person. Committee meetings may be conducted by telephone and/or virtual meeting platforms to minimize COVID-19 transmission.**

Q: Is it a requirement that providers apply for SNAP benefits for everyone living in a group home or host home?

**A: Rule does not require that the program provider submit an application for SNAP benefits for all individuals, just that the program provider is not required to collect a monthly board amount if it would impact an individual's eligibility for SNAP benefits.**

Q: May the provider enter into an agreement with the individual for repayment for non-critical, non-essential items if the individual requests it? An example would be a cell phone and the monthly payment until his funds come in. The individual says this is essential for him.

**A: Rule does not explicitly define what would be a necessary item or service as outlined in 40 TAC §9.178(p)(3). This allows for the program provider along with the individual to determine what items or services are**

**essential and what expenses the program provider agrees to accrue and seek reimbursement for once individual funds are available.**

Q: The aggregate data has not been updated since 2017. Is there a plan to keep this information current?

**A: HHSC is aware that the aggregate data available on the website is from FY 2017. Program providers should continue to utilize the latest data available on the website.**

Q: What can a provider do if an individual engages in significant property destruction in a residential home and the individual/LAR refuses to agree to a BSP or to pay for the extensive damages/repairs?

**A: If the individual/LAR refuses a BSP the SPT should convene to discuss how the individual's health and safety needs can be met without the use of a BSP.**

**Regarding repairs, the program provider may seek reimbursement from the individual or LAR. If the individual/LAR refuses to provide payment, the program provider may consider consulting legal counsel to resolve the situation. Certification principles are requirements of the program provider and therefore these rules are not enforced upon the individual/LAR by HHSC.**

## Module 7: Rights of Individuals

Q: Can an individual living in 3-person residence receiving Supported Living services pay for a MetroLift ticket?

**A: Service delivery of residential services, such as Residential Support Services (RSS), Supervised Living (SL) or Host Home/Companion Care (HH/CC) includes securing and providing transportation. An individual may choose to use their personal funds to purchase a bus pass, such as a MetroLift ticket. This is only if the individual chooses to use their personal funds, such as they have a goal of learning how to navigate the public transportation system, and the use of funds does not cause a financial hardship. Routine transportation, such as to a day habilitation site, should be provided by the program provider. The individual should be made aware that transportation is available through the HCS Program and the program provider is required to provide transportation as needed. The individual should refuse the transportation that is available prior to paying for an alternate form of transportation.**

Q: What would be the recommendation for showing a surveyor that a program provider met §9.173(b)(7) - the individual knowing the name and qualifications of persons serving or treating him? Does it suffice for the surveyor to ask an individual who his nurse/case manager is, and he responds, or would the surveyor look for documented evidence?

**A: HHSC survey staff will interview the individual to determine if they are familiar with their service provider. Additional documentation, such as progress notes that include staffing information, may be used to demonstrate the individual has been informed.**

Q: Providers continue to encourage essential services along with providing individuals with informed info about the risks of community activities. However, if the individual is aware of the risks and continues to request community activities, is this going to be a concern during an annual review?

**A: Individuals have the right to participate in community activities and should be informed of the risks of participating in those activities. An individual cannot be prohibited from leaving a residence or returning to their residence, even if they meet COVID-19 screening criteria. Program providers should document the information provided to the individual and the individual's choice to participate in activities following the information being provided. Additional information about COVID-19 can be found at HCS and TxHmL COVID-19 FAQ-faq.pdf.**

## Module 8: Abuse Neglect and Exploitation (ANE)

Q: I have a question about restricting access of an alleged perpetrator (AP) to the victim. In the case of a non-serious report, would adding a second staff member and/or moving the AP to another home be acceptable? Cases in our region have been taking 6 months to complete.

**A: Per 40 TAC §9.175(d)(2), rule states that when the program provider is taking measures to secure the safety of the individual, the program provider must ensure that the alleged perpetrator(s) do not have contact with the alleged victim(s) or other individuals if necessary. Alleged perpetrators are not prohibited from working with individuals while under investigation, but the program provider will need to consider the safety of the individuals the alleged perpetrators will encounter. Program providers also still need to consider 40 TAC §9.175(d)(3), specifically the potential to further traumatize the individual, if that alleged perpetrator is to remain with the alleged victim but with a second staff member.**

Q: Our agency has been completing Form 8494 for administrative referrals, as surveyors asked for that form for these referrals several years ago. So just to confirm...providers don't need to complete Form 8494 for administrative referrals?

**A: Program providers are not required to submit Form 8494 for administrative referrals.**

## Module 9: Service Delivery

Q: If the LAR obtains physician orders that no one can visit the home, including nursing, is that considered refusal of a nursing assessment?

**A: There was an alert that allowed a nursing assessment to be completed by telehealth. If the RN is still unable to complete the nursing assessment, then it would be considered a refusal. If nursing is refused and nursing hours removed from the IPC, the program provider must complete the nursing tasks screening tool in accordance with 40 TAC 9.174(c).**

Q: If an individual secures their own employment, is the service provider still responsible for ensuring the employment assistance requirements are met?

**A: TAC related to the service delivery of employment assistance is applicable for individuals who have employment assistance on their IPC. If the individual obtains employment independently and does not have a need for employment assistance, then the service delivery TAC would not be applicable.**

Q: Can you provide additional information on CFC support management?

**A: 40 TAC §9.153(18) defines CFC support management as "Training regarding how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB, as described in the HCS handbook." More information on CFC services can be found in the CFC Billing Guidelines.**

Q: If we have clients that are under 22 years of age and they have HHSC guardians, do the assigned guardians have to provide a copy of their driver's license/ID?

**A: If the individual is receiving supervised living or residential support services, then yes, this information would need to be requested by the program provider.**

Q: What should a provider do if they are having difficulty getting denial letters for adaptive aids?

**A: A program provider must obtain proof of non-coverage from a durable medical equipment provider that contracts with the individual's managed care organization (MCO).**

**The HHS Website has information on Provider Complaints and Appeals: https://www.hhs.texas.gov/services/health/medicaid-chip/provider-information.**

Q: What do you do if you cannot reach a client to renew an IPC?

**A: The program provider is required by 40 TAC 9.174(a)(52) to maintain current information in the HHSC data system about the individual and the individual's LAR, including:**

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

**Has the program provider discussed the concern with the Service Coordinator (SC)? If the individual is missing, has law enforcement been notified? For an individual under the age of 22 receiving RSS or SL, if the parent or LAR is unable to be located, HHSC will refer the case to DFPS in accordance with 40 TAC 9.174(a)(7).**

Q: Can we continue to hold annual staffing meetings via phone and document in the client record/chart "staffing conducted via phone due to COVID-19 pandemic" so long as we document services discussed and were agreed upon during the meeting?

**A: Please see IL2020-45.**

**A service coordinator or program provider is not required to obtain signatures of the individual or LAR on an IPC renewal or on supporting documentation. However, the program provider or LIDDA service coordinator must obtain oral agreement from the individual or LAR about the IPC renewal and supporting documentation and document the oral agreement in the individual's record.**

**Please Note: Guidance for Local Intellectual and Developmental Disability Authority service coordinators was released by HHSC LIDDA program staff on Aug. 20 via IDD Services Broadcast 2021-54.**

Q: If a client is put into a temporary wheelchair and the home needs modification, what needs to be done and how quickly?

**A: The answer would be dependent on the circumstances of the situation.**

**For example, how long is "temporary?" What modifications are needed for the individual?**

**Given the length of time the individual would be using a wheelchair, is it enough time to complete a modification or would temporary additional staffing or an adaptive aid meet the individual's needs?**

**The PDP, IPC, and the nursing assessment should be updated to clearly identify the individual's needs regarding the use of the wheelchair and the services and supports that are necessary to assist the individual during this time.**

**For a more precise answer to a specific situation, please contact LTCRPolicy@hhs.texas.gov.**

Q: Does adding funds for a Community First Choice (CFC) Emergency Response System (ERS) device require 3 bids?

**A: Per the HCS Billing Guidelines, three bids are not required for CFC ERS services.**

*Information in this document is current as of 9/17/21 and is subject to change. Providers are responsible for keeping up to date on current rules.