

Home and Community-Based Services (HCBS) Settings Statewide Transition Plan

Appendix E. Stakeholder Feedback

April 2022 (Amendment 5)

The Texas Health and Human Services Commission (HHSC) posted the statewide transition plan (STP) for public comment from March 4, 2022 to April 4, 2022 and received written comments from 29 Acres; Achieving Dreams; Caregiver; Every Child, Inc.; HHS Office of Long-Term Care (LTC) Ombudsman; Private Providers Association of Texas (PPAT); Providers Alliance for Community Services of Texas (PACSTX); Texas Council for Developmental Disabilities; Texas Council of Community Centers; two Medicaid HCBS recipients; 16 family members of Medicaid HCBS recipients and intentional community residents; and two other individual stakeholders. A summary of the comments received during the public notice period and any modifications to the STP based upon those comments follows.

1. Comment: A commenter requested HHSC allow additional flexibility related to residency agreement requirements outlined in draft Texas Administrative Code (TAC) rules for the Home and Community-based Services (HCS) program.

1. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

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- 2. Comment:** A commenter stated they support the provisions in TAC rules for the HCS, Texas Home Living (TxHmL), Community Living Assistance and Support Services (CLASS) and Deaf Blind with Multiple Disabilities (DBMD) programs prohibiting an individual from residing in a setting that is in a residential area distinguishable from other areas primarily occupied by persons who do not have disabilities.

The commenter requested that, if this provision is removed from TAC rules, the affected settings be required to undergo heightened scrutiny.

2. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

- 3. Comment:** Several commenters requested HHSC amend draft TAC rules for the HCS, TxHmL, and CLASS programs to remove a provision prohibiting an individual from residing in a setting that is in a residential area distinguishable from other areas primarily occupied by persons who do not have disabilities. Commenters made this request because they believe the prohibition is more restrictive than the HCBS Settings Rule.

Commenters requested HHSC revise its STP to state that Texas will align its programs with the HCBS Settings Rule and will not have TAC rules and procedures that are more restrictive than what has been outlined by CMS.

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- 3. HHSC Response:** The requested changes are applicable to TAC program rules and are not germane to the STP. While CMS guidance allows states to adopt rules that are more restrictive than the HCBS Settings Rule, any updates to specific program policies will be outlined in TAC rules. Stakeholders have the opportunity to comment on draft TAC rules for the HCS, TxHmL, and CLASS programs through the rulemaking process. No changes were made to the STP in response to this comment.
- 4. Comment:** A commenter requested HHSC allow Individualized Skills and Socialization services to be delivered in intentional community settings.
- 4. HHSC Response:** HHSC is currently finalizing requirements for individualized skills and socialization, including eligible settings through the TAC rulemaking process. HHSC will take this comment into consideration. No changes were made to the STP in response to this comment.
- 5. Comment:** A commenter expressed concern about community integration requirements for individualized skills and socialization. The commenter is particularly concerned about the ability of certain providers, including smaller and rural providers, to identify community partners and sufficient community-based opportunities for individualized skills and socialization recipients.
- 5 HHSC Response:** HHSC recognizes challenges smaller and rural providers may face in identifying community integration activities. This may also be the case for individuals residing in rural areas who do not have disabilities. CMS has indicated community integration in rural communities for persons with disabilities should resemble the level of community activities available to others who do not have disabilities. Individuals receiving Medicaid HCBS should have the same opportunities for access to the community as other individuals in that community who do not receive Medicaid HCBS.

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At this time, draft TAC program rules for individualized skills and socialization do not require the provider to offer specific activities or to deliver a certain percentage of individualized skills and socialization services off site.

No changes were made to the STP in response to this comment.

6. **Comment:** Commenters requested HHSC amend draft TAC rules to clarify how individualized skills and socialization will complement or accommodate employment services available through the HCS, TxHmL and DBMD waiver programs. One commenter requested HHSC include an example to clearly illustrate how an individualized skills and socialization provider may accommodate an individual to pursue and achieve employment while receiving individualized skills and socialization.

6. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

7. **Comment:** Commenters stated HHSC did not engage providers to discuss concerns about rates for individualized skills and socialization after posting the "Transition of Day Habilitation Services" report in December 2020. The commenters expressed concern that HHSC has not reduced provider requirements or increased the proposed provider rates.

7. HHSC Response: HHSC has engaged stakeholders through multiple forums at all stages of planning for the transition of day habilitation to individualized skills and socialization.

Stakeholder engagement activities began in 2015 and HHSC continues to seek stakeholder input, including through regular advisory committee meetings and ongoing meetings with

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providers and advocates. Stakeholders will have the opportunity to comment on the individualized skills and socialization draft TAC rules through the rulemaking process and rate adoption process, including through public hearings on the TAC rules and rates. These public hearings have not yet occurred.

No changes were made to the STP in response to this comment.

- 8. Comment:** A commenter requested HHSC submit individualized skills and socialization providers for heightened scrutiny review and conduct ongoing monitoring of providers to ensure successful implementation and compliance with the HCBS Settings Rule.

8. HHSC Response: HHSC licensure and program policy requirements for individualized skills and socialization include specific measures to ensure compliance with the HCBS Settings Rule. This includes ensuring individual choice and integration into the community. HHSC does not anticipate individualized skills and socialization settings will need to undergo heightened scrutiny. However, if HHSC identifies an individual setting that meets the institutional presumption described by CMS, HHSC will review and submit the setting to CMS for heightened scrutiny review. HHSC will conduct ongoing monitoring to ensure continued compliance with the HCBS Settings Rule. HHSC revised Section 11 of the STP to add this information.

- 9. Comment:** Commenters expressed concerns that the TAC licensing rules for individualized skills and socialization providers include the majority of requirements for day activity health services (DAHS) providers.

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9. HHSC Response: The concerns described are about draft licensure TAC rules and not the STP. The STP does not address detailed licensure requirements for individualized skills and socialization providers. No changes were made to the STP in response to this comment.

However, HHSC will take this comment into consideration in the rule promulgation process for individualized skills and socialization licensure.

- 10.** **Comment:** A commenter requested HHSC amend draft TAC rules for individualized skills and socialization to further specify that no HCS, TxHmL, or DBMD participant may be prohibited from accessing off-site individualized skills and socialization services.

10. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

- 11.** **Comment:** A commenter noted that the STP, proposed TAC rules, and proposed rates for individualized skills and socialization do not include funds for off-site activity fees, and stated this will limit individuals' access to the full range of community opportunities available to people not receiving Medicaid HCBS.

11. HHSC Response: HHSC will not require individualized skills and socialization providers to pay for activities on behalf of individuals. HHSC recognizes this may limit available community activities. If individuals have resources for activities, this can be considered in activity planning. The STP does not address individualized skills and socialization rates. No changes were made to the STP in response to this comment. Stakeholders will have the opportunity to comment on proposed rates during the rate adoption process.

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12. Comment: A commenter requested HHSC amend draft TAC rules for individualized skills and socialization to add a description of the purpose of activities provided during on-site individualized skills and socialization. The commenter stated the TAC rules should require on-site individualized skills and socialization to provide activities that integrate an individual into the community and promote development of skills and behaviors that support independence and choice. The commenter suggested these activities include bringing preferred, person-centered community activities to the setting or offering on-site individualized skills and socialization in a community partner location.

12. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

13. Comment: Several commenters requested HHSC increase proposed provider rates for the new individualized skills and socialization service, in order to:

- ▶ Ensure settings for individualized skills and socialization will fully comply with the HCBS Settings Rule;
- ▶ Support providers transitioning to delivery of the new service;
- ▶ Ensure providers can meet staff ratio requirements;
- ▶ Support individuals to have choice of activities provided through individualized skills and socialization;

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- ▶ Cover costs for well-trained and fairly compensated staff; and
- ▶ Cover costs for transportation, insurance, operations and administration of the new services.

13. HHSC Response: The STP does not include proposed provider rates for individualized skills and socialization providers. Rates will be formally proposed through HHSC's rate adoption process, during which stakeholders will have an opportunity to review and submit comments in a public hearing.

In addition, HHSC has convened a workgroup to evaluate the rate methodology for certain Medicaid waiver services, including individualized skills and socialization. The workgroup includes providers and provider association representatives. Workgroup discussions will inform HHSC's rate recommendations to the Texas Legislature.

No changes were made to the STP in response to these comments.

14. Comment: Commenters expressed concerns about the title of the service individualized skills and socialization. Commenters are particularly concerned about negative connotations with the "ISS," which is often associated with in-school suspension.

14. HHSC Response: The name individualized skills and socialization was chosen based on stakeholder input. HHSC does not intend to change the name of individualized skills and socialization at this time. In response to stakeholder concerns, HHSC will not abbreviate the name of the service and will refer to it as "individualized skills and socialization."

No changes were made to the STP in response to this comment.

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- 15. Comment:** A commenter expressed concerns that draft TAC rules do not specify community setting options for the provision of off-site individualized skills and socialization, or the process for members to choose from among the available setting options.

15. HHSC Response: This comment pertains to draft TAC program rules and not the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

- 16. Comment:** Commenters stated that the statement on page 43 of the STP that lower staffing ratios support more personalized services and optimize an individual's initiative, autonomy and independence contradicts HHSC's statement in a stakeholder workgroup meeting that lower staffing ratios are to ensure health and safety. Commenters also suggested these statements contradict CMS guidance that staffing ratios are not required.

Commenters also indicate they are not able to determine how proposed ratios will promote choice. Comments appear to pertain to draft TAC rules regarding staffing ratios.

16. HHSC Response: The statement in the STP regarding lower staffing ratios supporting more personalized services and optimizing an individual's initiative, autonomy and independence, and HHSC's statement in the stakeholder workgroup meeting that lower staffing ratios help ensure health and safety are not contradictory.

However, to provide clarity on the expected impact of lower staffing ratios, HHSC has amended the STP passage in question to read: "HHSC anticipates individualized skills and socialization will have lower staffing ratios than day habilitation, to allow staff to provide more individual attention to program participants." References to "lower staffing ratios promoting more

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personalized habilitative activities and optimize an individual's initiative, autonomy and independence in making life choices" have been removed.

Stakeholders will have the opportunity to comment on proposed ratios for individualized skills and socialization through the TAC rulemaking process.

- 17. Comment:** A commenter requested provisions in draft TAC rules for individualized skills and socialization related to staff ratios be removed.

17. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process. No changes were made to the STP in response to this comment.

- 18. Comment:** A commenter referenced the draft TAC rules for individualized skill and socialization, which establish an add-on rate for HCS program recipients with a level of need (LON) 1 and LON 5, and requested HHSC include an add-on rate for HCS recipients with LON 8 and LON 6. The commenter also requested HHSC add an add-on rate to support a 1:1 staffing ratio for the TxHmL and DBMD programs.

18. HHSC Response: The requested changes are to draft TAC program rules and not to the STP. No changes were made to the STP in response to this comment. Stakeholders have the opportunity to comment on the individualized skills and socialization TAC rules during the rulemaking process.

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19. Comment: A commenter submitted the following questions regarding the "Transition of Day Habilitation to Individualized Skills & Socialization in HCS, TxHmL, and DBMD Programs" section of the STP:

- ▶ When will training be offered for current day programs?
- ▶ How long will training take?
- ▶ What are the licensing requirements?
- ▶ What are the requirements for transportation from the "on-site" component to the "off-site" component and vice versa?

19. HHSC Response: This level of detail about individualized skills and socialization is not included in the STP. No changes to the STP were made in response to this comment.

HHSC has created a new individualized skills and socialization provider portal. This new portal allows providers to review and complete trainings; review provider letters and other informational releases; and review TAC rules. The portal is available at:

<https://www.hhs.texas.gov/providers/long-term-care-providers/long-term-care-provider-resources/individualized-skills-socialization>

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- 20. Comment:** A commenter requested HHSC make individualized skills and socialization available through the Consumer Directed Services (CDS) option.

20. HHSC Response: HHSC clarifies individualized skills and socialization will be available through the CDS option in the TxHmL program. State statute requires all TxHmL program services to be made available through the CDS option. At this time, HHSC does not plan to make individualized skills and socialization available through the CDS option in the HCS and DBMD programs.

HHSC revised the STP to clarify individualized skills and socialization will be available through the CDS option in TxHmL.

- 21. Comment:** A commenter encouraged HHSC to enable National Core Indicators (NCI) survey participants to fill out Section II of the NCI Adult Consumer survey as independently as possible. The commenter recommends HHSC develop webinar and training materials specifically focused on the survey, including information on its purpose, types of questions, and how to get support filling it out.

21. HHSC Response: The NCI Adult Consumer survey is administered to adult IDD services and supports recipients. Section I can be answered only by the recipient in a face-to-face interview. Section II contains questions that can be answered by the recipient or, if needed, by someone who knows the recipient well, such as a family member, friend, guardian or advocate. HHSC is not responsible for designing the NCI Adult Consumer Survey. However, HHSC works extensively with survey administrators to ensure the NCI survey participant is the primary respondent. Survey administrators are trained on how to accommodate each participant's needs for completing the survey. If the survey respondent is not able to complete the survey independently, a proxy may assist the participant in completing the survey.

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No changes were made to the STP in response to this comment.

22. Comment: A commenter expressed support for HHSC's decision to submit assisted living facilities (ALFs) participating in the STAR+PLUS HCBS program for heightened scrutiny review. The commenter recommends HHSC also implement the following processes to ensure ongoing compliance with the HCBS Settings Rule:

- ▶ Create and publicize a consumer-oriented process for the public to submit complaints about a setting the person believes is not complying with the HCBS Settings Rule.
- ▶ Create an enforcement process and publish on the HHSC website the methods HHSC can take to enforce compliance with the HCBS Settings Rule when a setting is determined noncompliant.
- ▶ Determine which HCBS Settings Rule requirements are a logical extension of existing ALF licensing TAC rules pertaining to residents' rights and quality care, and where possible, to extend those rights to all ALF residents. Further, the commenter requests TAC rules regarding HCBS Settings Rule compliance for an ALF setting are issued with ALF rules in TAC Title 26, Chapter 553.
- ▶ Publish on the HHSC website any enforcement actions taken within the previous 24 months against an ALF, with the facility name and address identified for each finding of noncompliance.

22. HHSC Response: Medicaid HCBS recipients, including ALF residents, may submit complaints to the HHS Office of the Ombudsman, directly to their provider, or to their Medicaid managed care organization (MCO). HHSC uses various enforcement mechanisms to review and

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respond to member complaints, depending on the specific nature of the complaint. This can include referring the complaint to an MCO, HHSC Managed Care Compliance and Oversight, or HHSC Long Term Care Regulation for further investigation and enforcement, as necessary. HHSC will continue to explore mechanisms to clarify and streamline the complaint process for Medicaid members residing in an ALF.

HHSC will utilize existing provider monitoring processes and mechanisms to ensure ongoing compliance with the HCBS Settings Rule. HHSC is also amending Medicaid managed care contracts to require that the MCO ensures ALFs meet requirements at 42 CFR §441.301(c)(4)(vi), as a condition of contracting or credentialing to provide Medicaid HCBS. The HCBS Settings Rule applies specifically to Medicaid HCBS settings. Amending TAC rules for all ALFs is outside the scope of the STP.

HHSC will review and consider options for publishing information on enforcement actions related to noncompliance with HCBS Settings Rule requirements.

No changes were made to the STP in response to this comment.

- 23. Comment:** A commenter requested HHSC provide specific learning opportunities about upcoming rule amendments for self-advocacy and family organizations. The commenter suggested this education be provided at conferences and through webinars.

23. HHSC Response: HHSC currently conducts outreach to ensure members of the public are informed of upcoming policy and rule changes. HHSC will consider this comment in developing any additional plans for education and information sharing on upcoming policy changes. Self-advocates and families can also provide input on upcoming rule amendments through the [Medical Care Advisory Committee](#) and rule hearings.

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No changes were made to the STP in response to this comment.

- 24. Comment:** A commenter suggested HHSC design webinars and trainings in accessible styles, noting that education for individuals receiving services should be designed and delivered differently than provider education, with the understanding that the public's technical knowledge and experience may be different than providers' knowledge. The commenter recommends HHSC use plain language, avoid acronyms, limit text-per-slides, incorporate images, and provide relevant examples of how the HCBS Settings Rule will affect an individual's daily life.

24. HHSC Response: HHSC will consider this comment in its plans for education and information sharing on initiatives related to the HCBS Settings Rule. HHSC uses specific strategies to tailor communications to meet the needs of the targeted audience, including use of plain language, and providing information in accessible formats.

No changes were made to the STP in response to this comment.

- 25. Comment:** A commenter recommended all information regarding relocation of beneficiaries be provided in multiple accessible formats in addition to hard copy. These formats include email, social media, and updates on the HHSC or individual provider website. The commenter recommended HHSC survey the population on what is considered "reasonable notice" regarding relocation and follow public guidance.

25. HHSC Response: HHSC will consider this recommendation for future notices to individuals and their families regarding necessary relocation. The relocation process is driven by the person-centered planning process and ensures individuals are provided the information and support needed to make an informed choice of available alternate settings.

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No changes were made to the STP in response to this comment.

- 26. Comment:** A commenter stated that although the STP references stakeholder input and engagement, HHSC sought input after decisions have been made and stakeholders were not involved in the development process.

26. HHSC Response: HHSC has engaged stakeholders through multiple forums at all stages of planning for implementation of the HCBS Settings Rule, including before implementation decisions were made. Stakeholder engagement activities began in 2015 and are ongoing. Engagement activities have included conducting webinars to inform stakeholders about the HCBS Settings Rule; hosting stakeholder meetings specifically focused on HCBS compliance; and soliciting input from advisory committees. Stakeholder engagement activities are described in Section 4 of the STP.

HHSC continues to seek stakeholder input, including through regular advisory committee meetings, ongoing meetings with providers and advocates, and other forums that provide opportunities for public comment.

No changes were made to the STP in response to this comment.

- 27. Comment:** A commenter stated HHSC has not allowed any meaningful input, including from advisory committees, since 2017, and stated communications have been limited to only informing stakeholders of decisions the agency has already made, including the process for determining the best means of coming into compliance with the HCBS Settings Rule with limited fiscal appropriations.

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27. HHSC Response: HHSC has engaged stakeholders through multiple forums at all stages of planning for the implementation of the HCBS Settings Rule.

HHSC continues to seek stakeholder input, including through regular advisory committee meetings, ongoing meetings with providers and advocates, and other forums that provide opportunities for public comment.

No changes were made to the STP in response to this comment.

28. Comment: A commenter expressed concern that the timing of posting the STP for public comment, along with recent public comment periods for proposed rule amendments, all occurring within 12 months of the federal compliance deadline, do not provide sufficient time and opportunity for debate of proposed policies that will impact the lives of Medicaid HCBS recipients.

28. HHSC Response: HHSC has worked diligently since the publication of HCBS Settings rule to assess all Medicaid HCBS settings, and to develop and implement policy changes to bring all Medicaid HCBS settings into compliance with the final rule. Stakeholder input, which has been integral to this process, has been solicited and captured through multiple forums, including: webinars to inform stakeholders about the HCBS Settings Rule; stakeholder meetings specifically focused on HCBS compliance; advisory committee meetings and subcommittee meetings; regular meetings with providers and advocate groups; and solicitation of input on rule amendments and the STP through public comment processes. HHSC has posted five previous iterations of the STP for public comment.

HHSC also conducts regular outreach to ensure stakeholders are informed of opportunities to provide input on policies and participate in the rulemaking process.

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No changes were made to the STP in response to this comment.

- 29. Comment:** A commenter recommended HHSC inform all individuals receiving services, families, guardian and advocates in person, or through an audio-visual platform such as Zoom, about the transition of day habilitation services to individualized skills and socialization.

29. HHSC Response: HHSC appreciates the feedback on stakeholder outreach and will take it into consideration for future communications with stakeholders. No changes were made to the STP in response to this comment.

- 30. Comment:** A commenter suggested multiple acronyms be added to the STP List of Acronyms.

30. HHSC Response: HHSC has revised the "List of Acronyms" section of the STP to include additional acronyms.

- 31. Comment:** A commenter requested clarification regarding the availability of day habilitation and transportation services in the CLASS waiver program.

31. HHSC Response: HHSC clarifies that the CLASS program service array does not include day habilitation. However, transportation associated with habilitation services is a benefit provided under the waiver program.

No changes were made to the STP in response to this comment.

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- 32. Comment:** A commenter requested clarification regarding the listing of "day habilitation" under HCS in the "Non-Residential Services" chart on p.39 of the STP.

32. HHSC Response: HHSC clarifies that day habilitation is correctly listed under both HCS and TxHmL in the "Non-Residential Services" chart. HHSC has modified formatting of the chart to make this more clear.

- 33. Comment:** A commenter asked if day habilitation services should be listed as a service for the CLASS program in the "Non-Residential Services" chart on p.39 of the STP.

33. HHSC Response: HHSC clarifies that day habilitation is not a service available in the CLASS waiver program, so it should not be listed in under CLASS in the "Non-Residential Services" chart.

No changes were made to the STP in response to this comment.

- 34. Comment:** A commenter asked if day habilitation services should be listed in the "Residential Services" chart on p.40 of the STP.

34. HHSC Response: HHSC clarifies that day habilitation is not a residential service, so it should not be listed in the "Residential Services" chart. Day habilitation is included in the "Non-Residential Services" chart for HCS, TxHmL and DBMD.

No changes were made to the STP in response to this comment.

Appendix 5 (cont.)

- 35. Comment:** A commenter asked if any operational changes should be listed for the HCS program in the "Residential Services" chart on p.40 of the STP.

35. HSC Response: HHSC clarifies that there are no additional operational changes to be listed in the "Residential Services" chart of the STP for the HCS program. As indicated in the chart, HHSC plans to revise TAC rules and will update program handbooks, billing guidelines, and monitoring processes to align with the amended rules.

No changes were made to the STP in response to this comment.

- 36. Comment:** A commenter asked if any operational changes should be listed for the HCS program in the "Residential Services" chart on p.41 of the STP.

36. HHSC Response: HHSC clarifies that there are no additional operational changes to be listed in the "Residential Services" chart of the STP for the HCS program. As indicated in the chart, HHSC plans to revise TAC rules and will update program handbooks and monitoring processes to align with the amended rules.

No changes were made to the STP in response to this comment.

- 37. Comment:** A commenter asked if any operational changes should be listed for the DBMD program in the "Residential Services" chart on p.41 of the STP.

37. HHSC Response: HHSC clarifies that there are no additional operational changes to be listed in the "Residential Services" chart of the STP for the DBMD program. As indicated in the chart, HHSC plans to revise TAC rules and will update program handbooks and monitoring processes to align with the amended rules.

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No changes were made to the STP in response to this comment.

November 2019 (Amendment 4)

HHSC posted the STP for public comment from November 6, 2019 to December 6, 2019 and received written comments from Disability Rights Texas, The Arc of Texas, Texas Council of Community Centers, and one individual. A summary of the comments received during the public notice period and any modifications to the STP based upon those comments follows.

- 1. Comment:** A commenter asked HHSC to clarify the term "licensed home health assisted living" in the DBMD program.

1. HHSC Response: Licensed Home Health Assisted Living is a DBMD service that is provided under the DBMD program provider's home and community support services agency (HCSSA) license. The service must be provided in a residence having no more than 3 individuals as residents and, therefore, it does not require an ALF license. Information regarding this service is in 40 TAC §[42.630](#), Residential Services, and TAC §[42.103](#), Definitions (65).

No changes were made to the STP in response to this comment.

- 2. Comment:** A commenter requested that the STP include in its description of individuals who are eligible for the HCS program those individuals with a related condition who meet a nursing facility level of care and are avoiding admission to or transitioning from a nursing facility.

2.HHSC Response: HHSC has revised Section 5 of the STP to add that an individual with a related condition may be eligible for the HCS Program.

Appendix 4 (cont.)

- 3. Comment:** A commenter suggested that HHSC educate the general public regarding the value of individuals with intellectual disabilities to communities and the workforce.

3. HHSC Response: HHSC believes this type of information is beyond the scope of the STP. No changes were made to the STP in response to this comment.

- 4. Comment:** A commenter suggested that HHSC include peers and family members as trained assessors and compliance monitors, alongside State or contracted staff, to assess settings where Medicaid HCBS are provided.

4. HHSC Response: The HHSC Ombudsman receives inquiries and complaints from individuals receiving services and their families and ensures complaints related to program requirements, including the HCBS Setting Rule, are referred to the appropriate area within HHSC for review.

No changes were made to the STP in response to this comment.

- 5. Comment:** A commenter suggested that HHSC assess local communities for non-disability community opportunities.

5. HHSC Response: HHSC recognizes the role of local communities in providing opportunities for Medicaid HCBS recipients to engage in community life. HHSC has conducted survey assessments of individuals receiving services and their families, providers and service coordinators and case managers to determine compliance with the HCBS Settings Rule requirement that individuals can select settings from among setting options, including non-disability specific settings.

No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

6. Comment: A commenter suggested that HHSC engage stakeholders in the assessment and remediation processes, and requested that HHSC include in the STP specific stakeholders who will be involved in remediation activities such as developing training materials. The commenter also suggested that HHSC invite members of the public to attend training that is relevant to their lived experiences.

6. HHSC Response: HHSC does not include this level of detail in the STP. HHSC's advisory committee meetings regularly provide opportunities for external stakeholder input on HHSC's remediation activities to achieve full compliance with the HCBS Settings Rule.

No changes were made to the STP in response to this comment.

7. Comment: A commenter requested that HHSC prioritize items for remediation based on the percentage of discrepancies between survey responses from individuals, providers, service coordinators and case managers. Specifically, the commenter suggested that the items with the greatest percentage of discrepancies be remediated before other items.

7. HHSC Response: Because all items are being remediated at the same time through contract amendments and the adoption of rules, it is not feasible to complete remediation of items on varying timelines. All remediation activities must be completed by the federal deadline of March 2023.

No changes were made to the STP in response to this comment.

8. Comment: A commenter appears to request that state rules and manuals comply with requirements of the federal HCBS Settings Rule and that HHSC assess every individual and setting in its monitoring of provider-owned settings.

Appendix 4 (cont.)

8. HHSC Response: HHSC conducted external assessments that included provider self-assessments and surveys of individuals receiving services for the HCS, DBMD and STAR+PLUS HCBS. Section 7 of the STP provides additional detail about the external assessment process. Provider-owned and controlled settings will be monitored by HHSC or an MCO in accordance with the policies and procedures of the applicable program, which includes monitoring provider-owned settings. Section 10 of the STP describes HHSC's processes for monitoring ongoing compliance with the HCBS Settings Rule.

No changes were made to the STP in response to this comment.

- 9. Comment:** A commenter recommended that HHSC assure full compliance with HCBS Settings Rule requirements from every setting, rather than striving for an 86 percent compliance rate.

9. HHSC Response: HHSC used a compliance threshold of 86 percent because it is the threshold CMS uses for HCBS performance measurements. The State is conducting remediation for services that do not meet the threshold of 86 percent compliance with the HCBS Settings Rule.

No changes were made to the STP in response to this comment.

- 10. Comment:** A commenter suggested that HHSC prohibit settings with institutional qualities from providing Medicaid HCBS and objected to the classification of farmsteads and intentional communities as home and community-based settings.

Appendix 4 (cont.)

10. HHSC Response: Based on CMS guidance, settings presumed to have the qualities of an institution must undergo heightened scrutiny by CMS to demonstrate whether they can overcome the institutional presumption. At this time, HHSC has not submitted any farmsteads or intentional communities to CMS for heightened scrutiny review because these settings are generally not allowable under current state program rules.

No changes were made to the STP in response to this comment.

11. Comment: A commenter requested that HHSC add a timeline for relocation of Medicaid HCBS recipients and stated that relocations must ensure essential services are in place to prevent harm to the individual.

11. HHSC Response: Section 10 of the STP describes HHSC's plan to address relocation of Medicaid HCBS recipients. If an individual receiving assisted living services in the STAR+PLUS HCBS program needs to be relocated, the MCO service coordinator would be responsible for coordinating the relocation. HHSC anticipates that any necessary relocations will be identified during completion of the heightened scrutiny process in Spring 2022. HHSC will provide additional guidance and technical assistance to MCOs as needed.

Individuals receiving day habilitation in the HCS, TxHmL or DBMD programs may need to select a new individualized skills and socialization provider with the assistance of their comprehensive waiver provider. HHSC will provide additional training and guidance to comprehensive waiver providers in Fall 2022 before individualized skills and socialization is implemented.

No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

12. Comment: Commenters stated that lack of access to transportation poses challenges for Texans with disabilities to live in their own homes and community settings. Commenters encouraged HHSC to engage external stakeholders in ongoing discussions related to transportation.

12. HHSC Response: While transportation can be a barrier to community integration under certain circumstances, individuals in some waiver programs have access to transportation as part of a waiver program service.

HHSC's advisory committees regularly provide opportunities for external stakeholder input on HHSC's remediation activities, including addressing challenges related to community integration and transportation, in order to achieve full compliance with the HCBS Settings Rule.

No changes were made to the STP in response to this comment.

13. Comment: A commenter requests HHSC improve community services and satisfaction of people receiving services, including increasing the ability of an individual to interact with the community in day habilitation programs, protecting privacy of individuals, and ensuring an individual's right to receive visitors in their home.

13. HHSC Response: The purpose of the STP is to describe the HHSC's planned activities to comply with requirements of the HCBS Settings Rule, including addressing the issues raised by the commenter. HHSC's planned activities to achieve full and ongoing compliance with the HCBS Settings Rule are described in Section 9 of the STP and include amending TAC rules; revising handbooks and billing guidelines; and updating provider monitoring processes.

No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

14. Comment: A commenter stated that each setting that undergoes the heightened scrutiny process should require validation, and that HHSC and external stakeholders should be included in the heightened scrutiny review process. The commenter suggested that external stakeholders be involved in the development, implementation and monitoring of settings and should be able to review related materials.

14. HHSC Response: HHSC will submit all ALFs participating in the STAR+PLUS HCBS program for heightened scrutiny review. Each ALF setting has been assessed for compliance with HCBS Settings Rule requirements and, where determined noncompliant, must complete remediation.

HHSC has invited stakeholder input on the heightened scrutiny process through the following mechanisms:

- ▶ In September 2021, HHSC invited stakeholders to submit public comments on [a list](#) of the individual ALF settings for public comment.
- ▶ In October 2021, HHSC offered a webinar to inform ALF providers and other interested stakeholders about requirements for the heightened scrutiny process.
- ▶ In Spring 2022, HHSC will post additional information for public comment related to heightened scrutiny reviews of ALF settings, including identified remediation activities.

In addition, HHSC's advisory committees regularly provide opportunities for external stakeholder input on HHSC's remediation activities to achieve full compliance with the HCBS Settings Rule, including the heightened scrutiny process.

HHSC has added information regarding the heightened scrutiny process in Section 11 of the STP.

15. Comment: A commenter stated that external stakeholder engagement is critical in the HCBS Settings Rule implementation process and suggested that HHSC develop a more robust transition plan that includes strategies to identify and remedy non-compliance with the HCBS Settings Rule, and to maintain ongoing compliance.

15. HHSC Response: HHSC has added information regarding its remediation plans in Section 9 of the STP. Remediation activities include TAC rule promulgation and Medicaid managed care contract amendments.

In addition, HHSC's advisory committees regularly provide opportunities for external stakeholder input on HHSC's planned remediation activities to achieve full compliance with the HCBS Settings Rule.

No changes were made to the STP in response to this comment.

16. Comment: A commenter suggested that HHSC make the following improvements in residential settings in HCBS programs: ensure that an individual can visit and stay the night in potential residential settings; assist an individual in selecting compatible roommates or housemates; improve availability of transportation and staff support to help an individual implement unique daily schedules; ensure an individual's access to phones and to have visitors without restrictions; ensure the setting is physically accessible to the individual; ensure the individual is involved in any changes to their service plan; increase the individual's ability to choose the food they eat, the times they eat, and with whom they eat; increase an individual's access to personal resources, including managing their own funds. The commenter suggested that HHSC support providers to implement improvements to comply with the HCBS Settings Rule.

Appendix 4 (cont.)

16. HHSC Response: The purpose of the STP is to describe the state's planned activities to comply with requirements of the HCBS Settings Rule, including addressing areas of concern raised by the commenter.

While transportation can be a barrier to community integration under certain circumstances, individuals in some waiver programs have access to transportation as part of a waiver program service. HHSC's advisory committees regularly provide opportunities for external stakeholder input on challenges to community integration, including transportation.

HHSC has added information regarding its remediation plans in Section 9 of the STP.

Remediation plans are based on results of the systemic internal policy assessment and external assessments. Remediation activities include amending policies to enhance the person-centered planning process and clarify requirements for settings to have qualities described in the HCBS Settings Rule.

HHSC will also offer additional training to providers, service coordinators and case managers.

17. Comment: A commenter identified individual choice of daily activities and access to the community as areas for improvement, and stated that individuals receiving day habilitation typically do not leave the day habilitation site. The commenter requested that CMS not provide funding for facility-based services and suggested that HHSC consider alternatives to day habilitation and to ensure implementation of new options in a timely manner.

Appendix 4 (cont.)

17. HHSC Response: HHSC is aware of these issues from the results of its external assessments. HHSC's planned remediation activities to achieve compliance with HCBS Settings Rule requirements related to choice of daily activities and access to the community are described in Section 9 of the STP.

HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. HHSC anticipates that rules for individualized skills and socialization will become effective in November 2022. Policy manual and handbook revisions will also be updated.

18. Comment: A commenter stated that the STP does not include information provided to individuals about their rights under the HCBS Settings Rule and recommends that managed care organizations (MCOs) provide written information to individuals about their rights, as well as instructions for filing complaints. The commenter suggested that HHSC establish timeframes for MCOs to respond to complaints and inquiries, noting that unaddressed complaints could have negative consequences for assisted living facility (ALF) residents.

18. HHSC Response: Section 9 of the STP describes HHSC's planned updates to members' rights documents, such as rights booklets and managed care member handbooks.

MCOs are required to provide individuals with a member handbook, which describes the member's rights and procedures for filing a complaint against a provider.

HHSC has posted resource documents on the [HHSC website](#) that describe the process for complaint resolution that the HHSC Ombudsman follows. This information was also shared with external advisory committees. MCOs are contractually required to resolve complaints within 30 days. Failure to adhere to this requirement may result in liquidated damages.

Appendix 4 (cont.)

No changes were made to the STP in response to this comment.

- 19. Comment:** A commenter supports HHSC's proposed plan to improve the accessibility of information and tools for individuals selecting a residential setting. The commenter stated that the current method of searching provider directories on MCO websites is difficult and suggests that HHSC provide a list on their website of ALFs participating with each MCO.

19. HHSC Response: HHSC appreciates the commenter's support. The [HHSC website](#) provides a directory of all licensed ALFs in HHSC. An MCO is required to make a Provider Directory available to its members, including providing a hard copy free of charge upon request. Additional requirements related to the MCO provider directory are in [Uniform Managed Care Manual](#) Chapter 3.

No changes were made to the STP in response to this comment.

- 20. Comment:** A commenter disagrees with the assertion in the STP that current rules and policies for ALFs provide a solid framework for compliance with the HCBS Settings Rule.

20. HHSC Response: HHSC is amending managed care contracts to add requirements for MCOs to ensure their contracted providers meet requirements of the HCBS Settings Rule. This includes adding specific requirements for ALFs to meet requirements at 42 CFR 441.301(c)(4)(vi) for provider-owned and controlled residential settings. HHSC has added information about planned contract amendments to Section 9 of the STP.

Appendix 4 (cont.)

21. Comment: A commenter recommended that HHSC require MCOs to monitor compliance of ALF settings with the HCBS Settings Rule, including the use of person-centered planning.

21. HHSC Response: Medicaid managed care contracts currently require MCOs to ensure their contracted providers meet requirements of the HCBS Settings Rule at 42 CFR 441.301(c)(4), and require MCO service coordinators to meet person-centered planning requirements at 42 CFR 441.301(c)(1) and (2). HHSC is amending managed care contracts to add requirements for MCOs to ensure ALF providers comply with requirements at 42 CFR 441.301(c)(4)(vi) as a condition of contracting or credentialing. HHSC anticipates that these contract amendments will become effective in September 2022. HHSC has added information about planned contract amendments to Section 9 of the STP.

In addition, HHSC plans to submit all ALFs participating in the STAR+PLUS HCBS program for heightened scrutiny. This will allow HHSC and STAR+PLUS MCOs, in collaboration with each ALF setting, to confirm the ALF's compliance status and oversee any necessary remediation.

Additional information about the heightened scrutiny process has been added in Section 11 of the STP.

22. Comment: A commenter recommended that HHSC provide easily accessible information on its website about MCOs' compliance with contract requirements, and state and federal regulations to help individuals make informed choices.

21. HHSC Response: Managed Care Report Cards are available on the [HHSC website](#) for individuals to use as a resource when selecting an MCO. The report cards use ratings to describe an MCO compared to other MCOs around the state.

No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

23. Comment: A commenter pointed out that rule references for ALFs included in the systemic internal assessment were incorrect.

23. HHSC Response: HHSC has corrected these rule references in the STP.

24. Comment: A commenter identified an inconsistency in the compliance determination in the systemic internal policy assessment for ALFs and disagrees that ALFs currently meet either full or partial compliance with the HCBS Settings Rule requirement at 42 CFR 441.301(c)(4)(vi)(D).

24. HHSC Response: HHSC has corrected the inconsistency in the systemic internal assessment. HHSC has determined that licensing rules for ALFs in 26 TAC §[553.267](#)(a)(3)(J) are partially compliant with the requirement in 42 CFR §441.301(c)(4)(vi)(D). HHSC will add requirements

in TAC rules for the DBMD program and managed care contracts for the STAR+PLUS HCBS program to ensure ALF settings in these programs fully comply with 42 CFR §441.301(c)(4)(vi)(D).

HHSC has added information about planned contract amendments in Section 9 of the STP.

25. Comment: A commenter pointed out that the systemic internal policy assessment in Appendix A to the STP indicates different levels of compliance with 42 CFR §441.301(c)(4)(v) for ALFs in the DBMD and STAR+PLUS HCBS programs. The commenter disagrees with HHSC's determination that TAC rules for ALFs at 26 TAC §553.41(d-e) are partially compliant or compliant with the HCBS Settings Rule requirement at 42 CFR §441.301(c)(4)(v).

Appendix 4 (cont.)

25. HHSC Response: HHSC's compliance determinations for ALF settings were based on licensing rules and Medicaid program rules and policies. HHSC determined that ALFs in the STAR+PLUS HCBS program comply with the requirement at 42 CFR §441.301(c)(4)(v) because Medicaid managed care contracts require STAR+PLUS MCOs ensure their contracted providers meet requirements at 42 CFR §441.301(c)(4). Medicaid managed care contracts also require MCOs to maintain adequate provider networks to ensure member choice of providers.

HHSC determined that ALFs in the DBMD program partially comply with the requirement at 42 CFR §441.301(c)(4)(v) because program policies specify that the individual is offered a choice of service provider, but do not specify that the setting facilitates the individual's choice regarding the services and supports they receive. HHSC has updated Appendix A of the STP to describe planned remediation activities, including promulgation of new TAC rules to ensure ALFs in the DBMD program achieve compliance with 42 CFR §441.301(c)(4)(v).

- 26.** **Comment:** A commenter pointed out that the systemic internal policy assessment in Appendix A to the STP indicates different levels of compliance with 42 CFR §441.301(c)(4)(vi)(A) for ALFs in the DBMD and STAR+PLUS HCBS programs. The commenter disagrees with HHSC's determination that rules for ALFs in STAR+PLUS are compliant or partially compliant with HCBS Settings Rule requirements at 42 CFR §441.301(c)(4)(vi)(A) and recommends that HHSC implement a fair hearing process for individuals to appeal discharge actions in ALF settings.

26. HHSC Response: HHSC's compliance determinations for ALF settings were based on licensing rules and Medicaid program rules and policies. HHSC determined that ALFs in the STAR+PLUS HCBS program comply with the requirement at 42 CFR §441.301(c)(4)(v) because Medicaid managed care contracts require STAR+PLUS MCOs ensure their contracted providers

Appendix 4 (cont.)

meet requirements at 42 CFR §441.301(c)(4). In addition, the STAR+PLUS Handbook requires specific steps to be taken before eviction and requires the setting to provide an eviction notice.

An individual in STAR+PLUS HCBS has the right to appeal and request a fair hearing in response to an MCO action, which includes the denial, reduction, suspension or termination of a previously authorized service. This would include a denial, reduction, suspension, or termination of assisted living services.

HHSC determined that ALFs in the DBMD program partially comply with the requirement at 42 CFR §441.301(c)(4)(vi)(A) because program policies specify that the individual has the right to live in the setting unless a transfer or discharge is warranted. However, policies do not specify lease requirements. HHSC has updated Appendix A of the STP to describe planned remediation activities, including promulgation of new TAC rules to ensure ALFs in the DBMD program achieve compliance with 42 CFR §441.301(c)(4)(vi)(A). To achieve full compliance with this requirement, HHSC will add TAC rule requirements to specify that the individual and DBMD provider must enter into a written residential agreement, which states that the residential agreement is a “lease” subject to Chapter 92 of the Texas Property Code and that they are subject to state law governing residential tenancies.

Individuals in the DBMD program have the right to a fair hearing if the individual’s DBMD program services have been denied, suspended, reduced or terminated by HHSC. This would include a denial, suspension, reduction or termination of assisted living services.

No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

27. Comment: A commenter suggested that the assessment process to determine a setting's compliance with the HCBS Settings Rule focus on the experience of individuals receiving services, rather than on information reported by providers. The commenter also suggested that HHSC evaluate individuals' options of non-disability specific settings.

27. HHSC Response: HHSC used both provider and individual survey results to determine a setting's compliance with the HCBS Settings Rule.

HHSC will require providers to ensure that the individual has a choice of setting options, including non-disability setting options, and that the settings comply with the HCBS Settings Rule.

No changes were made to the STP in response to this comment.

28. Comment: A commenter suggested that HHSC offer training to individuals receiving services regarding their rights, using a peer-to-peer model.

28. HHSC Response: HHSC plans to offer web-based trainings related to upcoming TAC rule amendments. Individuals receiving services will be able to attend these trainings.

No changes were made to the STP in response to this comment.

29. Comment: A commenter suggested that HHSC provide more information about its plan for ensuring person-centered service planning processes are implemented and working effectively.

29. HHSC Response: Managed care contracts require MCOs to ensure that the service planning process meets person-centered practices requirements at 42 CFR §441.301(c)(1) and (2). HHSC is amending rules for the CLASS, DBMD, HCS and TxHmL programs to ensure the

Appendix 4 (cont.)

programs meet requirements of the HCBS Settings Rule, including person-centered planning requirements at §441.301(c)(1) and (2).

In addition, HHSC received and recently completed a three-year technical assistance grant from the National Center on Advancing Person-Centered Practices and Systems (NCAPPS) to implement person-centered thinking, planning and practice across HHSC's programs.

No changes were made to the STP in response to this comment.

- 30. Comment:** A commenter suggested that HHSC add a new, more integrated service in conjunction with improving day habilitation.

30. HHSC Response: HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. HHSC has added information regarding the transition of day habilitation to individualized skills and socialization to Section 9 of the STP.

- 31. Comment:** A commenter stated that there must be ongoing monitoring by individuals receiving services and their families, in addition to monitoring activities conducted by HHSC. The commenter suggested that HHSC consider using the QUAIS model to ensure ongoing compliance with the HCBS Settings Rule and improve its delivery system.

31. HHSC Response: Monitoring of providers is conducted by HHSC or an MCO. Individuals and families are not responsible for monitoring providers. However, they may submit inquiries and complaints to the HHSC Ombudsman, including complaints regarding compliance with the HCBS Settings Rule.

The HHSC Ombudsman ensures inquiries and complaints are referred to the appropriate area within HHSC for review.

Appendix 4 (cont.)

HHSC's advisory committees regularly provide opportunities for external stakeholder input on HHSC's remediation activities to achieve full compliance with the HCBS Settings Rule, including ongoing provider monitoring processes.

No changes were made to the STP in response to this comment.

- 32. Comment:** A commenter stated that the STP should be more robust and should include adequate and comprehensive data and address barriers with concrete solutions that involve those impacted.

32. HHSC Response: HHSC conducted a systemic internal policy assessment, as well as external assessments that included provider self-assessments and surveys of individuals receiving services in HCS, DBMD and STAR+PLUS HCBS. Section 7 of the STP provides additional detail about the external assessment process. External assessment results are in Appendix B to the STP and a description of the assessment methodology is in Appendix C.

HHSC has added information to Section 9 of the STP regarding its planned remediation activities.

- 33. Comment:** A commenter identified the following issues affecting individuals receiving services in residential settings: lack of choice in roommates; having a curfew; not being allowed to ride with a friend who has not been approved by the provider; being discouraged from seeking employment; and being forced to participate in day habilitation. The commenter encouraged HHSC to involve individuals receiving services and their families in the remediation planning process, provide additional details in the STP, and obtain adequate funding to comply with the HCBS Settings Rule and improve service delivery.

Appendix 4 (cont.)

33. HHSC Response: HHSC is aware of these issues from the results of its external assessments. Remediation plans are based on results of the external assessments. Remediation activities to address these issues and achieve full and ongoing compliance with the HCBS Settings Rule include amending TAC rules to bring all services in the CLASS, DBMD, HCS and TxHmL programs. HHSC has added information about planned remediation activities in Section 9 of the STP.

HHSC's advisory committees regularly provide opportunities for external stakeholder input on HHSC's remediation activities to achieve full compliance with the HCBS Settings Rule.

34. Comment: A commenter encouraged HHSC to consider the economic impact of planned remediation activities on individuals receiving services and their families, providers, and small communities with limited opportunities to support community integration activities. The commenter suggested that HHSC allow providers to maintain centralized location(s) for individuals to attend during the day while participating in community integration activities.

34. HHSC Response: HHSC recognizes that changes to the delivery system in response to the HCBS Settings Rule may affect provider rates.

To increase community integration activities, HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. This new service will include an on-site (center-based) component and an off-site (community-based) component. HHSC has added information about this transition to Section 11 of the STP.

35. Comment: A commenter requested that HHSC add specialized therapy services to the service array in the HCS and TxHmL programs, and that HHSC consider offering travel vouchers and vouchers for gym and fitness center memberships as adaptive aids.

Appendix 4 (cont.)

- 35. HHSC Response:** HHSC believes this request is beyond the scope of the STP. No changes were made to the STP in response to this comment.
- 36. Comment:** A commenter suggested that HHSC clarify its planned transition of day habilitation services.
- 36. HHSC Response:** HHSC will replace day habilitation with a new, fully compliant service called individualized skills and socialization. HHSC has added information about the transition to Section 11 of the STP.
- 37. Comment:** A commenter suggested that HHSC develop resources to educate individuals and their families on upcoming system changes related to compliance with the HCBS Settings Rule. The commenter suggested that HHSC support the development of employment options and the development of integrated services.
- 37. HHSC Response:** HHSC has added more information about its plan to educate providers and individuals in Section 9 of the STP.

HHSC is currently amending rules to ensure affected programs and services comply with requirements of the HCBS Settings rule. This includes the requirement at 42 CFR 441.301(c)(4)(i) that a setting is integrated in the community and supports the individual's access to the community, including opportunities to seek employment. HHSC's rule promulgation process will offer opportunities for stakeholders to submit questions and comments.

Appendix 4 (cont.)

38. Comment: A commenter requested that the document HHSC intends to serve as a lease address instances when an individual is hospitalized for an extended period of time or is placed in a nursing facility for rehabilitation for an extended period, and the responsibility of the provider if an individual fails to pay their rent.

38. HHSC Response: HHSC does not include this level of detail in the STP. However, HHSC no longer plans to develop a universal lease agreement contract. Instead, HHSC will require providers to have a residential agreement with each individual who resides in provider owned or controlled settings. References to the lease agreement document have been removed from the STP.

HHSC clarifies that when an individual enters a hospital or nursing facility, the individual's program services must be suspended. When the individual returns from the hospital or nursing facility, the agreement between the program provider and the individual continues in effect if the individual continues to pay their room and board costs and any copayments, in accordance with applicable program rules.

39. Comment: A commenter requested that HHSC include in TAC rule amendments and address in the STP its expectations for visitation when an individual requests or allows a visitor with a known felony conviction into the residential setting.

39. HHSC Response: HHSC does not include this level of detail in the STP. No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

40. Comment: A commenter suggested that HHSC describe in the STP the process to determine the list of settings that will be subject to heightened scrutiny. The commenter noted that previous discussions with HHSC indicate that current oversight processes for day habilitation in the HCS program do not include monitoring site contact and location information.

40. HHSC Response: HHSC has added information about the heightened scrutiny process to Section 11 of the STP. Because HHSC will implement individualized skills and socialization (an HCBS Settings compliant service) to replace day habilitation before March 2023, day habilitation sites will not require heightened scrutiny.

To serve people in DBMD, HCS, or TxHmL, an individualized skills and socialization provider must be either a TxHmL or HCS comprehensive provider, a DBMD program provider, or a subcontractor of a TxHmL, HCS, or DBMD provider. Additionally, the provider will meet all requirements to be licensed to provide individualized skills and socialization, including completing required training.

41. Comment: A commenter requested that HHSC address in the STP the process for HHSC to notify the local intellectual and developmental disability authority (LIDDA) to present the individual a choice of providers in the event that a provider is terminated from providing Medicaid HCBS.

41. HHSC Response: If an individual receiving assisted living services in the STAR+PLUS HCBS program needs to be relocated, the MCO service coordinator would be responsible for coordinating the relocation. Individuals receiving day habilitation in the HCS, TxHmL or DBMD programs may need to select a new individualized skills and socialization provider with the assistance of their comprehensive waiver provider.

No changes were made to the STP in response to this comment.

Appendix 4 (cont.)

42. Comment: A commenter requested that HHSC update the Service Coordination Assessment section of Appendix C, as the current language states, "The results of these assessments are in the analysis phase and HHSC expects to complete analysis by December 2016."

42. HHSC Response: HHSC has removed this statement and added more recent information.

November 2016 (Amendment 3)

During the December 2015-January 2016 public comment period for the amendment to the STP, the State received written comments from Disability Rights Texas; Texas Council for Developmental Disabilities; Every Child, Inc.; The Arc of Texas; Texas Council of Community Centers; United Healthcare; and Caregiver Homes of Texas. Any comments completely outside the scope of the settings requirements imposed under 42 CFR §441.301, will not be addressed.

A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the statewide transition plan based upon those comments follows.

Please note that the STP also contained the following two appendices: (1) the State's internal (systemic) assessment of whether the settings in which these services are provided comport with the Home and Community Based Services (HCBS) settings requirements and (2) an explanation of the State's external assessment methodology. As of the October 2016 revision, the STP contains a STAR+PLUS member assessment methodology appendix.

1. Comment: Commenters suggested that stakeholders should be involved in requests for additional legislative funding and rate increases to ensure compliance with HCBS regulations. Providers expressed rates may need to increase to ensure the capacity and appropriate resources to serve individuals with complex medical and behavioral needs.

Appendix 3 (cont.)

- 1. State Response:** The State recognizes that changes to the delivery system as a result of the HCBS regulations may impact provider rates. The state is committed to working with stakeholders in all phases of the HCBS implementation. The state does provide opportunities for stakeholders to comment on the legislative appropriations request. Although the comment only references the 1915(c) waivers only, the State has added clarification to the STP to also address that funding that may be needed for the 1115 waiver. Stakeholders are invited to comment on proposed rate changes in accordance with state law.
- 2. Comment:** With regard to assessing the availability of choice, commenters encourage the Health and Human Services Commission (HHSC), Department of Aging and Disability Services (DADS), and Department of State Health Services (DSHS) expand the assessment of choice from just service coordinators and case managers to include providers as well.
2. State Response: Participants in the Youth Empowerment Services (YES) Waiver program operated by DSHS currently have availability of choice of comprehensive waiver providers, case managers, and direct service providers. With respect to other HCBS programs, the State appreciates these comments and will consider these comments when finalizing the provider surveys. No changes were necessary, and none were made to the STP as a result of this comment.
Additional clarification: The YES Waiver program has implemented "Freedom of Choice" and "Provider Choice" forms that are to be signed by the participant and the legally authorized representative to ensure choices are given to YES Waiver participants.
It is the responsibility of service coordinators/case managers to work with the individual to choose providers, specific living locations, and specific services to be included on the Individual

Appendix 3 (cont.)

Service Plan. Broadening the external assessment to include these staff was a strategic decision on the part of HHSC and DADS to ensure the information obtained through the assessment would be the most meaningful. The STP was not revised in response to this comment.

- 3. Comment:** With regard to Assisted Living Facilities (ALFs), beyond the Assisted Living Centers Bill of Rights, rules and policies should be updated to address how assisted living centers provide access to food at any time, privacy, engagement in the community, control of personal finances and protections against eviction, including posting any rights and rights limitations (if any) in the facility and providing this information in writing when a person signs an agreement for facility services, including room and board. Involuntary ALF discharges should be followed up with a survey to the resident to determine the level of choice and satisfaction with the discharging facility.

3. State Response: The State appreciates these comments related to ALFs and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

3. Additional clarification: This feedback will be important to the development of the remediation strategy, but is not part of the STP at this time.

3. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. HHSC anticipates that rules will be effective by January 2023. HHSC is also amending managed care contracts and anticipates that contract amendments will become effective in September 2022.

Appendix 3 (cont.)

4. Comments: Regarding day habilitation/pre-vocational/employment assistance, rules and policies need to be revised to require routine opportunities for community participation, with an initial goal of at least 51 percent of an individual's services being in settings where individuals without disabilities are participating and according to preferred interests of individuals receiving these services.

4. State Response: The State appreciates these comments related to day habilitation/pre-vocational/employment assistance and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

4. Additional clarification: These comments will be considered during the 1915(c) rule making and policy revision process. Because employment services provided through STAR+PLUS are not permitted to be provided at an institution, they are not included in the STAR+PLUS component of this project.

4. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

5. Comment: Establishing credentialing standards for day habilitation programs that focus on increasing person centered, individualized meaningful day activities and how and where those services occur (including providing or arranging for transportation through a transportation plan) is critically needed. Expectations for day habilitation services through standards and credentialing should begin to be developed immediately, with stakeholder input. Program and rule changes should

Appendix 3 (cont.)

support an individual's ability to decline day habilitation and access other waiver and non-waiver services during the day according to personal preferences, including no services or set daily schedule and/or control of one's own schedule.

5. State Response: The State appreciates these comments and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

5. Additional clarification: The state agrees and is working to accomplish these changes during the upcoming 2017 legislative session.

5. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.

6. Comment: Access to and control of an appropriate personal spending allowance is needed. HHSC and DADS should provide oversight and remediation policies to ensure individuals are receiving a personal needs allowance, understand how much they are paying for room and board, what they are able to receive each month, how they can access their available funds and what their money is being spent on.

6. State Response: The State appreciates these comments related to the personal spending allowance and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

Appendix 3 (cont.)

- 6. Additional clarification:** The State supports the premise of this comment. The external assessment includes questions related to financial management, both on the member survey and the provider survey. Changes to policy will be made as necessary depending on the outcome of the assessments.
- 6. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.
- 7. Comment:** It would be helpful if providers were required to get State approval of their lease agreement templates.
- 7. State Response:** The State appreciates this comment and will consider this comment during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of this comment.
- Additional clarification: This suggestion may be useful for the development of the remediation strategy but is not part of the STP at this time.
- 7. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined. The detailed remediation strategy will be developed in 2022 once initial approval of the STP is obtained.

Appendix 3 (cont.)

8. Comment: Commenters were concerned that individuals do not engage in choice of staff, especially in residential settings.

8. State Response: The State appreciates these comments and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

8. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.

9. Comment: The State should consider adding a participant direction option called Service Responsibility Option (SRO) to all HCBS services in Texas that currently do not include that option now.

9. State Response: The State appreciates the suggestion regarding SRO. However, no changes were made to the STP in response to this comment.

9. Additional clarification: The STP was not revised in response to this comment as this issue is outside the scope of the project.

10. Comment: Choice of provider of day habilitation, supported employment (SE) and employment assistance (EA) should allow for a consumer directed option (regardless of an individual's living arrangement). The extent to which an individual had choice of day program, supported employment and employment assistance should be incorporated into regulatory reviews.

Appendix 3 (cont.)

10. State Response: During the remediation process, the State will consider rule and policy changes that facilitate individual choice regarding services, supports and who provides them. No changes were necessary, and none were made to the STP as a result of this comment.

10. Additional clarification: The STP was not revised in response to this comment as this issue is outside the scope of the project.

10. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

11. Comment: Any change of residential setting or day habilitation (or switch from employment to day habilitation) should trigger heightened review by a service coordinator and involve the service planning team, consumer rights or regulatory services to ensure that the changes are participant driven and to monitor for outcomes such as choice, stability and satisfaction.

11. State Response: The State appreciates this comment and will consider this comment during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of this comment.

11. Additional clarification: The STP was not revised in response to this comment as this issue is outside the scope of the project.

11. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

Appendix 3 (cont.)

12. Comment: Individuals with limited skills should select what they want to eat, not just when they want access to food. There should be an initiative to change the current practices that limit participant involvement in choice of food, meal planning, grocery shopping, paying for groceries with the Supplemental Nutrition Assistance Program (SNAP) or personal funds and the use of food restrictions in residential settings. Medical contraindications for food access and choice, when necessary, should be well documented.

12. State Response: The State appreciates these comments and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

12. Additional clarification: The State supports the premise of this comment. The external assessment includes questions related to meal selection, both on the member survey and the provider survey. Changes to policy will be made as necessary depending on the outcome of the assessments.

12. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.

13. Comment: Commenters suggested that developing a bill of rights for community-based services that incorporates HCBS settings requirements and that it should go beyond the right to protection from abuse, exploitation and incorporate rights related to choice and control, privacy, choice of staff, control of personal funds and other rights consistent with the aims of HCBS settings requirements.

Appendix 3 (cont.)

13. State Response: The State will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

13. Additional clarification: The State supports the premise of this comment. This suggestion may be useful for the development of the remediation strategy but is not part of the STP at this time.

13. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

14. Comment: The Centers for Medicare and Medicaid Services (CMS) and the State should re-assess respite services and the settings where respite is offered now or is proposed to be offered in the future, including institutional settings such as nursing facilities (NFs), ALFs, and intermediate care facilities (ICFs). Greater effort should be made to develop and require respite options that are community-based.

14. State Response: CMS has indicated that it intends to permit states to use institutional settings for the provision of respite services on a short-term basis. The state appreciates the suggestion; however, no changes are necessary, and none were made to the STP as a result of this comment.

14. Additional clarification: The STP was not revised in response to this comment as this issue is outside the scope of the project.

Appendix 3 (cont.)

15. Comment: The State should continue all possible efforts to support individuals to access housing that is not provider controlled so that housing and services are not connected to the degree that if you want to make a choice or change it impacts housing options or access to preferred providers.

15. State Response: In compliance with the HCBS rules, the State is using the person-centered planning process to support individual's choosing the housing option that is best suited to their needs. No changes were necessary, and none were made to the STP as a result of this comment.

15. Additional clarification: The state supports individual choice of where an individual would most like to live. However, the STP was not revised in response to this comment as the State believes this issue to be outside the scope of the project.

16. Comment: The STP does not provide information on how the State plans to bring providers into compliance if they are found to be noncompliant or partially noncompliant with the new HCBS rules. HHSC and DADS have identified settings that are not compliant or partially compliant. For each instance, they should identify how they plan to bring those settings into compliance or if those settings are not able to comply. While the updated plan includes the results from the 1115 systemic survey, it does not provide estimates of the number of settings that fully comply, do not comply but will with modifications, cannot comply with the federal settings requirements, or are presumed to have institutional characteristics.

16. State Response: The State STP addresses compliance in the remediation section through remedial actions such as rule and policy changes, in combination with revisions to our current oversight process. Examples of current methods for ongoing oversight would be contract monitoring and enforcement of requirements via corrective action plan or assessment of other

Appendix 3 (cont.)

contract remedies. At this time, the State is not able to identify a specific number of settings that are non-compliant because the State is still completing the assessment process. No changes were necessary, and none were made to the STP as a result of this comment.

16. Additional clarification: Until the State has sufficient survey results from the external assessment process, it cannot identify this level of specificity. Changes to rule and/or policy will be made as necessary depending on the outcome of the assessments.

17. Comment: The STP does not explain the validation method that will be used to link the provider and participant surveys.

17. State Response: The State explains the validation method in Appendix C of the STP.

Appendix C outlines the State's use of management information systems to link the provider to a particular individual. The multi-stage random sampling methodology considers providersettings and individuals served within those settings to ensure individual surveys are linked to providers. No changes were necessary, and none were made to the STP as a result of this comment.

17. Additional clarification: With updates to the October 2016 submission of the revised STP, Appendix C was added outlining the 1115 HCBS methodology.

18. Comment: While the STP recognizes that the State will develop remedial actions if they find compliance issues, the STP does not provide a detailed explanation of remedial action.

18. State Response: The State is still assessing the settings and therefore, specific remedial actions are still under discussion. The survey results will inform the State of specific remedial actions (e.g. changes to rule, policy and contract monitoring). No changes to the STP will be made at this time based on this comment.

Appendix 3 (cont.)

- 18. Additional clarification:** Until the State has sufficient survey results from the external assessment process, it cannot identify this level of specificity. Changes to rule and/or policy will be made as necessary depending on the outcome of the assessments.
- 18. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined. Detailed remediation activity will be part of an additional document called the remediation strategy but is not part of the STP at this time. The detailed remediation strategy will be developed in 2022 once initial approval of the STP is obtained.
- 19. Comment:** The updated STP does not identify how the State will include the individual who is being relocated in the relocation planning process. The STP should detail in full how the State will implement a person-centered plan to relocate the individual to a residence of their choice. It also does not explain how choice will be provided to the individuals.
- 19. State Response:** As referenced in the STP, the relocation process is driven by person-centered planning (described by the HCBS regulations). The STP outlines that information will be provided to the individual, including what will happen if the individual chooses to remain in a non-compliant setting. If relocation becomes necessary, the individual will indicate his or her choice of a new setting. The current plan will be revised in this amendment to provide greater clarification in the 1115 demonstration waiver section of the STP.
- 20. Comment:** Regarding day habilitation and pre-vocational programs, new licensure and credentialing oversight from HHSC and DADS can be implemented to ensure these programs are individualized based on person-centered plans, fully integrated in community life where individuals are learning from and meeting people without disabilities and are not scheduled around group activities and

Appendix 3 (cont.)

outings where individuals do not have choice of participation. A new licensure and credentialing process would also allow HHSC and DADS to identify all the programs that are providing services to individuals through state funding. HHSC and DADS cannot ensure compliance if they are not able to identify all existing programs.

20. State Response: The State appreciates the suggestion, however although licensing could be used with some entities to ensure compliance, it is not appropriate for all entities. All licensed entities serve both Medicaid and non-Medicaid populations, thus in many instances specific HCBS requirements are more appropriately applied through contracting requirements targeted at individuals receiving Medicaid in HCBS programs. For the above reasons, no changes to the STP will be made as a result of these comments.

20. Additional clarification: This feedback will be important to the development of the remediation strategy but is not part of the STP at this time.

21. Comment: Outcome-based employment services that link success to the individual's person directed plan, train consumers in settings that are not facility-based, and secure employment for at least minimum wage are all ways HHSC and DADS can update policies to ensure employment services are compliant with HCBS rules.

21. State Response: The State appreciates these comments and will consider this comment during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of this comment.

21. Additional clarification: This feedback will be important to the development of the remediation strategy but is not part of the STP at this time.

Appendix 3 (cont.)

- 21. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined. Detailed remediation activity will be part of an additional document called the remediation strategy but is not part of the STP at this time. The detailed remediation strategy will be developed in 2022 once initial approval of the STP is obtained.
- 22. Comment:** Commenters suggested use of the National Core Indicator (NCI) to the greatest extent possible during the assessment phase to help benchmark lack of, partial, or full compliance with HCBS requirements. The State should consider using relevant NCIs questions that are more oriented to self-determination and accessible to individuals with cognitive limitations. We strongly encourage DADS and HHSC, if using NCI is not feasible, to re-write the participant surveys so that people with IDD can understand them and provide meaningful feedback. It is our understanding that based on stakeholder feedback; certain modifications (including limited open-ended questions) may be incorporated in the final participant surveys.
- 22. State Response:** The State used the NCI as the basis for some of the survey questions developed for the participant and provider surveys. The actual NCI questions do not mirror all the requirements in the settings rule and therefore, could not be used verbatim in the survey. The State did receive comments on the survey from stakeholders and used this stakeholder feedback to revise the questions. No changes to the STP were necessary and none were made as a result of this comment.
- 22. Additional clarification:** According to the CMS document entitled, "CMS Assessment of State Systems for Compliance with the HCBS Settings Rule", "The NCI should only be used for examining trends in state systems over time. NCI is not site-specific."

Appendix 3 (cont.)

23. Comment: The participant surveys seem to assume that the questions are to address the current “place” where services are being provided now. We believe that the surveys and required service delivery settings improvements need to align with the aspirations of choice, control and integration and not an endorsement of current settings or a narrow focus on what happens in current settings.

23. State Response: The State received comments on the survey and used stakeholder feedback to revise the questions. No changes to the STP were necessary and none were made as a result of this comment.

23. Additional clarification: The purpose of the surveys is to obtain information on how compliant the relevant settings are currently. This is why the assessments focus on the physical location operations and structure. The STP was not revised in response to this comment.

24. Comment: Commenters encourage DADS and HHSC to contract with an entity that understands and has experience supporting people with intellectual and developmental disabilities (IDD) and have participated in a person-centered thinking training.

24. State Response: The State appreciates the commenters’ concerns and is contracting with entities that have experience working with individuals with cognitive disabilities. No changes were necessary, and none were made to the STP as a result of this comment.

24. Additional clarification: The State has contracted with the Texas A&M University which received Institutional Review Board approval.

Appendix 3 (cont.)

25. Commenters: Commenters hope that the individuals filling out the “Provider Self-Assessments” will have worked directly with the individuals supported by the services they are reporting on.

25. State Response: The State recognizes the benefits of specific provider staff completing the surveys and will include that in guidance given to providers during the assessment process. No changes were necessary and none were made to the STP as a result of this comment.

25. Additional clarification: All assessments for the 1915(c) programs were sent to direct service providers. HHSC did not make this a specific requirement of the survey but is collecting the names of individuals completing the survey. It is important to note that the member surveys will be used to validate the provider surveys, so regardless of who completes a provider assessment the State will, for a sample, have corroborating member responses.

February 2016 (Amendment 2)

During the December 2015-January 2016 public comment period for the amendment to the STP, the State received written comments from Disability Rights Texas, Texas Council for Developmental Disabilities, Every Child, Inc., the Arc of Texas, Texas Council of Community Centers, United Healthcare, and Caregiver Homes of Texas. Any comments that were completely outside the scope of the settings requirements imposed under 42 CFR §441.301, will not be addressed.

A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the statewide transition plan based upon those comments follows. Please note that the STP also contains the following two appendices: (1) the State's internal (systemic) assessment of whether the settings in which these services are provided comport with the HCBS settings requirements and (2) an explanation of the State's external assessment methodology.

Appendix 2 (cont.)

- 1. Comment:** Commenters suggested that stakeholders should be involved in requests for additional legislative funding and rate increases to ensure compliance with HCBS regulations. Providers expressed rates may need to increase to ensure the capacity and appropriate resources to serve individuals with complex medical and behavioral needs.
 - 1. State Response:** The State recognizes that changes to the delivery system as a result of the HCBS regulations may impact provider rates. The state is committed to working with stakeholders in all phases of the HCBS implementation. The state does provide opportunities for stakeholders to comment on the legislative appropriations request. Although the comment only references the 1915c waivers, the State has added clarification to the STP to also address that funding that may be needed for the 1115 waiver.
- 2. Comment:** Regarding assessing the availability of choice, commenters encourage HHSC, DADS, and DSHS to expand the assessment of choice from just service coordinators and case managers to also include providers.
 - 2. State Response:** Participants in the YES Waiver Program operated by DSHS currently have availability of choice of comprehensive waiver providers, case managers, and direct service providers. The State appreciates these comments and will consider these comments when finalizing the provider surveys. No changes were necessary, and none were made to the STP as a result of this comment.
- 3. Comment:** With regard to ALFs, beyond the Assisted Living Centers Bill of Rights, rules and policies should be updated to address how assisted living centers provide access to food at any time, privacy, engagement in the community, control of personal finances and protections against eviction, including posting any rights and rights limitations (if any) in the facility and providing this

Appendix 2 (cont.)

information in writing when a person signs an agreement for facility services, including room and board. Involuntary ALF discharges should be followed up with a survey to the resident to determine the level of choice and satisfaction with the discharging facility.

3. State Response: The State appreciates these comments related to ALFs and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

3. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.

4. Comment: Regarding day habilitation/pre-vocational/EA, rules and policies need to be revised to require routine opportunities for community participation, with an initial goal of at least 51% of an individual's services being in settings where individuals without disabilities are participating and according to preferred interests of individuals receiving these services.

4. State Response: The State appreciates these comments related to day habilitation/pre-vocational/EA and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

4. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

Appendix 2 (cont.)

5. Comment: Establishing credentialing standards for day habilitation programs that focus on increasing person centered, individualized meaningful day activities and how and where those services occur (including providing or arranging for through a transportation plan) is critically needed. Expectations for day habilitation services through standards and credentialing should begin to be developed immediately, with stakeholder input. Program and rule changes should support an individual's ability to decline day habilitation and access other waiver and non-waiver services during the day according to personal preferences, including no services or set daily schedule and/or control of one's own schedule.

5. State Response: The State appreciates these comments and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

5. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.

6. Comment: Access to and control of an appropriate personal spending allowance is needed. HHSC and DADS should provide oversight and remediation policies to ensure individuals are receiving a personal needs allowance, understand how much they are paying for room and board, what they are able to receive each month, how they can access their available funds and what their money is being spent on.

Appendix 2 (cont.)

- 6. State Response:** The State appreciates these comments related to the personal spending allowance and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary and none were made to the STP as a result of these comments.
- 6. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.
- 7. Comment:** It would be helpful if providers were required to get State approval of their lease agreement templates.
- 7. State Response:** The State appreciates this comment and will consider this comment during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of this comment.
- 7. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.
- 8. Comment:** Commenters were concerned that individuals do not engage in choice of staff, especially in residential settings.
- 8. State Response:** The State appreciates these comments and will consider these comments during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of these comments.

Appendix 2 (cont.)

- 8. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.
- 9. Comment:** The State should consider adding a participant direction option called Service Responsibility Option (SRO) to all HCBS services in Texas that currently do not include that option now.
- 9. State Response:** The state appreciates the suggestion regarding SRO. However, no changes were necessary, and none were made to the STP as a result of this comment.
- 10. Comment:** Choice of provider of day habilitation, SE and should allow for a consumer directed option (regardless of an individual's living arrangement). The extent to which an individual had choice of day program, SE and EA should be incorporated into regulatory reviews.
- 10. State Response:** During the remediation process, the State will consider rule and policy changes that facilitate individual choice regarding services, supports and who provides them. No changes were necessary, and none were made to the STP as a result of this comment.
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Appendix 2 (cont.)

11. Comment: Any change of residential setting or day habilitation (or switch from employment to day habilitation) should trigger heightened review by a service coordinator and involve the service planning team, consumer rights or regulatory services to ensure that the changes are participant driven and to monitor for outcomes such as choice, stability and satisfaction.

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Appendix 2 (cont.)

- 12. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.
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- 13. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by May 2022 but the exact timeline for public comment has not yet been determined.
- 14. Comment:** CMS and the State should re-assess respite services and the settings where respite is offered now or is proposed to be offered in the future, including institutional settings such as NFs, ALFs, and ICFs. Greater effort should be made to develop and require respite options that are community-based.
- 14. State Response:** CMS has indicated that it intends to permit states to use institutional settings for the provision of respite services on a short-term basis. The state appreciates the suggestion; however, no changes are necessary, and none were made to the STP as a result of this comment.

Appendix 2 (cont.)

15. Comment: The State should continue all possible efforts to support individuals to access housing that is not provider controlled so that housing and services are not connected to the degree that if you want to make a choice or change it impacts housing options or access to preferred providers.

15. State Response: In compliance with the HCBS rules, the State is using the person-centered planning process to support individual's choosing the housing option that is best suited to their needs. No changes were necessary, and none were made to the STP as a result of this comment.

16. Comment: The STP does not provide information on how the State plans to bring providers into compliance if they are found to be noncompliant or partially noncompliant with the new HCBS rules. HHSC and DADS have identified settings that are not compliant or partially compliant. For each instance, they should identify how they plan to bring those settings into compliance or if those settings are not able to comply. While the updated plan includes the results from the 1115 systemic survey, it does not provide estimates of the number of settings that fully comply, do not comply but will with modifications, cannot comply with the federal settings requirements, or are presumed to have institutional characteristics.

16. State Response: The State STP addresses compliance in the remediation section through remedial actions such as rule and policy changes, in combination with revisions to our current oversight process. Examples of current methods for ongoing oversight would be contract monitoring and enforcement of requirements via corrective action plan or assessment of other contract remedies. At this time, the State is not able to identify a specific number of settings that are non-compliant because the State is still completing the assessment process. No changes were necessary, and none were made to the STP as a result of this comment.

Appendix 2 (cont.)

- 17. Comment:** The STP does not explain the validation method that will be used to link the provider and participant surveys.

17. State Response: The State explains the validation method in Appendix C of the STP.

Appendix C outlines the State's use of management information systems to link the provider to a particular individual. The multi-stage random sampling methodology considers provider settings and individuals served within those settings to ensure individual surveys are linked to providers. No changes were necessary, and none were made to the STP as a result of this comment.

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18. State Response: The State is still assessing the settings and therefore, specific remedial actions are still under discussion. The survey results will inform the State of specific remedial actions (e.g. changes to rule, policy and contract monitoring). No changes to the STP will be made at this time based on this comment.

18. Update to Response: Detailed remediation activity will be part of an additional document called the remediation strategy but is not part of the STP at this time. The detailed remediation strategy will be developed in 2022 once initial approval of the STP is obtained.

- 19. Comment:** The updated STP does not identify how the State will include the individual who is being relocated in the relocation planning process. The STP should detail in full how the State will implement a person-centered plan to relocate the individual to a residence of their choice. It also does not explain how choice will be provided to the individuals.

Appendix 2 (cont.)

- 19. State Response:** As referenced in the STP, the relocation process is driven by person-centered planning (described by the HCBS regulations). The STP outlines that information will be provided to the individual, including what will happen if the individual chooses to remain in a non-compliant setting. If relocation becomes necessary, the individual will indicate his or her choice of a new setting. The current plan will be revised in this amendment to provide greater clarification in the 1115 demonstration waiver section of the STP.
- 20. Comment:** Regarding day habilitation and pre-vocational programs, new licensure and credentialing oversight from HHSC and DADS can be implemented to ensure these programs are individualized based on person centered plans, fully integrated in community life where individuals are learning from and meeting people without disabilities and are not scheduled around group activities and outings where individuals do not have choice of participation. A new licensure and credentialing process would also allow HHSC and DADS to identify all the programs that are providing services to individuals through state funding. HHSC and DADS cannot ensure compliance if they are not able to identify all existing programs.
- 20. State Response:** The State appreciates the suggestion, however although licensing could be used with some entities to ensure compliance, it is not appropriate for all entities. All licensed entities serve both Medicaid and non-Medicaid populations, thus in many instances specific HCBS requirements are more appropriately applied through contracting requirements targeted at individuals receiving Medicaid in HCBS programs. For the above reasons, no changes to the STP will be made as a result of these comments.
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21. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

22. Comment: Commenters suggested use of the NCI to the greatest extent possible during the assessment phase to help benchmark lack of, partial, or full compliance with HCBS requirements. The State should consider using relevant NCIs questions that are more oriented to self-determination and accessible to individuals with cognitive limitations. We strongly encourage DADS and HHSC, if using NCI is not feasible, to re-write the participant surveys so that people with IDD can understand them and provide meaningful feedback. It is our understanding that based on stakeholder feedback; certain modifications (including limited open-ended questions) may be incorporated in the final participant surveys.

22. State Response: The State used the NCI as the basis for some of the survey questions developed for the participant and provider surveys. The actual NCI questions do not mirror all the requirements in the settings rule and therefore, could not be used verbatim in the survey. The State did receive comments on the survey from stakeholders and used this stakeholder feedback to revise the questions. No changes to the STP were necessary and none were made as a result of this comment.

Appendix 2 (cont.)

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24. State Response: The State appreciates the commenters concerns and is contracting with entities that have experience working with individuals with cognitive disabilities. No changes were necessary, and none were made to the STP as a result of this comment.

25. Comment: Commenters hope that the individuals filling out the “Provider Self-Assessments” will have worked directly with the individuals supported by the services they are reporting on.

25. State Response: The State recognizes the benefits of specific provider staff completing the surveys and will include that in guidance given to providers during the assessment process. No changes were necessary, and none were made to the STP as a result of this comment.

March 2015 (Amendment 1)

A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the STP based upon those comments follows. The State's current plan already includes an internal and external assessment of all HCBS waiver services delivered under the 1115 Demonstration waiver and whether the settings in which these services are provided comport with the HCBS settings requirements.

1. Comment: ALFs and facility-based day programs should be considered as they may be problematic based on CMS guidance. The State should acknowledge that there are issues that will probably need to be addressed and remediation strategies that are person-centered and that meet CMS guidance.

1. State Response: The State will consider these suggestions as it moves forward with the next stages of implementing the STP. The current Texas STP already addresses that ALFs may be an issue and, thus, assessment of ALFs was already a part of the plan. 42 CFR §441.301(c)(5(v) addresses settings that are presumed not to be community-based settings, however, the rule provides general guidelines and does not list specific settings, such as ALFs. In its guidance to states, CMS recognized that some ALFs might meet the description of presumed not to be community-based setting while others may not. Prior to completion of the assessment phase, the State does not presume that the ALFs in its 1115 Demonstration waiver fit within the scope of presumed not to be community-based settings, however, as indicated in the settings transition plan, the State understands that it might be problematic and intends to use the assessment process and additional CMS guidance to determine if the ALFs fit within the realm of presumed not to be community-based settings. If the settings are found to be presumed not to be community-based settings, the State will address the issue by rebutting the presumption or taking steps to address the setting if it is found to be not community-based. The State's plan already provides a timeframe to update the STP after the completion of the assessment phase to address the results of the assessment in the form of an amendment to the plan and references this

Appendix 1 (cont.)

possibility in the remediation phase. The STAR+PLUS program does not provide any HCBS waiver services in facility-based day programs. Although STAR+PLUS program participants may receive day activity and health services (DAHS), they are provided as state plan services, not waiver services.

- 2. Comment:** The State should re-assess respite services and the settings where respite is offered now or is proposed to be offered in the future, including institutional settings such as NFs, ALFs, and ICFs. Greater effort should be made to support respite options that are community-based.

2. State Response: The State will consider these suggestions as it moves forward with the next stages of implementing the STP. HHSC will assess respite to the extent that it is provided in settings that are relevant to CMS guidance. 42 CFR §441.301(c)(5)(v) addresses settings that are presumed not to be community-based settings, however, the rule provides general guidance and does not list specific settings, such as ALFs. In its guidance to states, CMS recognized that some ALFs might meet the description of presumed not to be community-based setting while others may not. Prior to completion of the assessment phase, the State does not presume that the ALFs in its 1115 Demonstration waiver fit within the prevue of this section of the rules, however, as indicated in the settings transition plan the State understands that it might be problematic and already intended to use the assessment process and additional CMS guidance to determine if the ALFs fit the within the realm of presumed not to be community-based settings. If the settings are found to be presumed not to be community-based settings, the State will address the issue by rebutting the presumption or taking steps to address the setting if it is found to be not community-based. The State's plan already provides a timeframe to update the STP after the completion of the assessment phase, in the form of an amendment to the plan, and references this possibility in the remediation phase. 42 CFR §441.301(c)(5) prohibits the provision

Appendix 1 (cont.)

of home and community-based services in NFs institutions for mental disease (IMD), intermediate care facilities for individuals with intellectual disabilities (ICF/IID) and hospitals because these settings have been defined by the regulations to be not home and community-based. The State's plan already provides a timeframe to update the STP after the completion of the assessment phase, in the form of an amendment to the plan. To the extent that the State's assessment should reveal services are being provided in these settings, the State would develop a transition plan to move the provision of the services to a setting in compliance with the regulations, if possible, or discuss other options with CMS if no such facility exists within the individual's geographic area. The plan already addresses this possibility in the remediation phase.

- 3. Comment:** Commenter is unsure how DAHS and the Program of All-inclusive Care for the Elderly (PACE) services may be considered under the HCBS guidance.

3. State Response: DAHS and PACE are not applicable to the STAR+PLUS HCBS services delivered under the 1115 Demonstration waiver as defined by 42 CFR §440.180. Thus, the STP will not be changed at this time to address this comment.

- 4. Comment:** During the February stakeholder meeting, a commenter indicated that there appears to be a need to address day habilitation, and that respite is provided differently and in different settings and as such might need further review. She further stated it is good to know about the NCI's new module for Aging and Disability (NCI-AD), and that the participant experience survey is a good thing. The commenter also suggested that there could be meetings on specific topics; that every managed care

Appendix 1 (cont.)

organization (MCO) should be doing the same version of surveys; and that Disability Rights is thinking about assisted living facilities, as is HHSC. She finally suggested HHSC may want to involve the Promoting Independence Advisory Committee (PIAC) going forward.

4. State Response: The State will consider these suggestions as the state moves forward with the next stages of implementing the transition plan. As previously discussed, the State will assess ALFs and settings in which respite is provided to the extent that a service is provided in a setting relevant to CMS guidance. Day habilitation is not a STAR+PLUS HCBS service delivered under the 1115 Demonstration waiver, thus, it is not being addressed in this amendment. However, the STP already indicates that day habilitation will be addressed during the assessment phase for the 1915(c) waivers. The plan already provides for discussion of the settings and the transition plan as part of the presentations throughout the transition process to advisory committees and agency workshops as well as at stakeholder meetings. The current STP already includes the provider surveys and the follow-up participant surveys. All providers will receive the same version of the survey, just as all participants will receive the same version of their survey. The current STP process includes obtaining feedback from current advisory committees, and HHSC plans to include the PIAC.

December 2014

During the July 2014 public comment period for several waiver-specific preliminary settings transition plans, the State received one 16-page document developed by Disability Rights Texas, Texas Council for Development Disabilities, Every Child, Inc. and the Arc of Texas which provided recommendations for the HCBS waivers in general, in addition to waiver specific comments. The State did not receive any other comments during the July 2014 public comment period. The State previously submitted to CMS the public comments from the July 2014 public comment period for Community Based Alternatives (CBA), Home and Community-based Services (HCS), Medically Dependent Children Program (MDCP) and Community Living

Assistance and Support Services (CLASS) when the State submitted waiver-specific preliminary settings transition plans for those waivers. Per CMS guidance, the State will now submit those comments from the July 2014 public comment period that have not already been submitted to CMS through the aforementioned waiver-specific submissions. In short, the State is submitting those comments related to the Deaf Blind with Multiple Disabilities (DBMD), Texas Home Living (TxHmL), YES and the Texas Healthcare Transformation Quality Improvement Program (THTQIP) 1115 Demonstration waivers. During the November - December 2014 public comment period for the statewide settings transition plan, the State received comments from two commenters, Texas Homecare and Hospice Association and Disability Rights Texas. The November/December comments are similar to the comments received during the July 2014 comment period that they are being summarized and addressed in the summary along with the July comments.

Three days after the official comment period ended, the State received an additional comment from Providers Alliance for Community Services of Texas, related to day habilitation. The State is including this comment. However, per CMS guidance, in the future, the State intends to summarize only those comments received during the official public comment period. Comments received outside of any official public comment period throughout the transition process will be considered by the State. The State intends to accept comments throughout the entirety of the transition process and is committed to using feedback to guide assessment and remediation strategies until the transition is complete.

The State has considered and modified the STP as the State deemed appropriate, to account for public comment.

A summary of the comments received during the public notice period, reasons why comments were not adopted, and any modifications to the statewide settings transition plan based upon those comments follows. The State did not receive any comments specific to the YES Waiver program. Although comments received by the State addressed the DADS 1915(c) waivers, for those comments that the State determined were also applicable to the YES 1915(c) waiver, the State indicated so in the comment or the State response.

Appendix 1 (cont.)

- 1. Comment:** Commenters suggested that the ideal process would include the perspective of waiver participants, people with disabilities, their families, providers, advocates, and state staff. Commenters also suggested that the State use focus groups and participant surveys.
 - 1. State Response:** The STP includes stakeholder groups that will consist of providers, advocates and individuals receiving services. In addition to stakeholder groups, the State will survey a representative sample of providers and people receiving services using a self-assessment tool based on the new HCBS provisions. This response is applicable to the YES Waiver Program.
- 2. Comment:** Commenters recommend an HCBS Settings Transition Workgroup in order to get meaningful input to determine how close Texas programs come to full compliance. An HCBS Settings Transition Workgroup should be required to recommend that the most meaningful features of each of the waivers, those that support community integration and independence, be expanded to each of the other waivers as part of each waiver's remediation in preparation for the consolidation anticipated in future years.
 - 2. State response:** The STP references the stakeholder workgroups it has met with and received comments from, including legislatively mandated advisory bodies and committees, informal stakeholder workgroups, waiver specific dedicated email boxes, etc. All areas of community integration, including access and control, will be continually assessed throughout the state's transition compliance activities which include continued opportunity for stakeholder input. This response is applicable to the YES Waiver Program.
- 3. Comment:** Commenters noted that each waiver has services unique to that waiver such as respite, orientation, mobility, intervener, habilitation and specialized therapies, and suggested that these services might also be useful in the other waivers. The commenters also suggested that all waivers include such services as supported employment and employment assistance.

Appendix 1 (cont.)

- 3. State Response:** The State is already in the process of adding supported employment (SE) and employment assistance (EA) to the waivers. Adding other services to waiver programs would require additional funding. The State does not have plans to add additional services to the waivers at this time. This response is applicable to the YES Waiver Program.
- 4. Comment:** Commenters suggested that the program rules need to be addressed or strengthened to include the following:
- a. visitability standards;
 - b. unimpeded, private, and uncensored communication and visitation with persons of the program participant's choice;
 - c. access to the religious services of one's choosing;
 - d. co-location and spacing requirements that discriminate against persons with disabilities;
 - e. self-advocacy and peer supports;
 - f. rules that encourage the development or maintenance of maximum self-reliance and independence with a goal of self-sufficiency;
 - g. limiting the use of ALFs and, if continued in DBMD and STAR+PLUS, program rules that prevent the isolation of individuals in "institution-like" settings;
 - h. access to certain consumer directed services (CDS) in group home and host home settings;
 - i. service limits that limit access to the greater community or cause risk of institutionalization;
 - j. a community living options information process that encourages the most integrated settings and includes ongoing information to people in group homes and host homes, not just for those in institutions; and

Appendix 1 (cont.)

k. uniform mandatory participation (program termination) requirements without sufficient due process protections.

4. State response: The STP identifies a process for rule and policy manual revisions. The State will work with stakeholders and evaluate areas in the rules and policy manual that need revisions to support the implementation of the new regulations. All comments related to rule and policy revisions are being tracked and will be addressed during the applicable phase of the state's transition activities.

4. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

5. Comment: Commenters suggested that the State create an advisory committee (in line with the Sunset Advisory Commission recommendations) to address the redesign of day habilitation programs to include the perspective of waiver providers, day habilitation owners, advocates, and a substantial number of persons who use or have used day habilitation services. Commenters suggested that Texas should move toward Employment First and Community-Based Non-Work (CBNW) and away from the current facility-based day habilitation programs and sheltered employment. In addition, commenters recommended restructuring of waiver programs to allow for a combination of service arrays across all waivers.

5. State Response: The STP already identifies opportunities to address non-residential issues in the timeline. The State will address compliance of non-residential services as the State deems necessary in accordance with the new HCBS regulations, based on recent CMS guidance.

Appendix 1 (cont.)

- 6. Comment:** Commenters expressed concern that individuals cannot choose the CDS option if the individual resides in a residential setting.

6. State Response: The STP already identifies a process for rule and policy manual revisions. The State will work with stakeholders and evaluate areas in the rules and policy manuals that need revision to support the implementation of the new regulations, including any needed revisions related to this comment.

6. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

- 7. Comment:** Commenters recommended expanding Community Living Options informing processes to include focus on non-group home housing opportunities and seeking additional subsidized housing funds to support individuals in HCS, CLASS and other programs. Commenter also recommended pursuing any necessary remedy to prevent local municipalities, homeowners' associations or other entities from excluding small group home settings in typical neighborhoods or individuals accessing an accessible, affordable apartment of their choosing in an integrated apartment community that serves individuals with and without disabilities.

7. State Response: The STP has not been adjusted as a result of this comment. State agencies have limited ability to dictate laws governing local community ordinances governing group home settings in typical neighborhoods. The State currently has initiatives to support housing for individuals with disabilities in local communities and will continue to work collaboratively with local housing authorities and state agencies to support housing initiatives.

Appendix 1 (cont.)

In response to guidance from CMS, the State has summarized the comments related to non-residential settings and they are as follows:

- 8. Comment:** Commenters suggested that sheltered workshops and provider-owned and/or controlled day service settings, as currently operated, be presumed to be settings that isolate individuals receiving HCBS from the broader community. Commenters also suggested that these settings be replaced with community-based integrated employment and community based integrated non-work. Commenters further stated that individuals using day habilitation or individuals that have received day habilitation services should be included on the advisory committee stakeholders recommended for ongoing evaluation of HCBS compliance.

8. State Response: The State appreciates these comments and will consider this comment during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of this comment.
- 9. Comment:** Commenters recommended expansion of competitive and customized employment for individuals with disabilities. This comment is applicable to the YES Waiver Program.

9. State Response: The State appreciates this comment and will consider this comment during the rule making and policy revision process outlined in the remediation sections of the STP. No changes were necessary, and none were made to the STP as a result of this comment.
- 10. Comment:** Commenters recommended expansion of CBNW within day habilitation programs and through other funding sources such as safety net and home and community-based services or programs. CBNW refers to services focused on supporting people with disabilities to access community activities in settings where most people do not have disabilities.

Appendix 1 (cont.)

- 10. State Response:** The STP already identifies opportunities to address non-residential issues in the timeline. The State will address compliance of non-residential services as the State deems necessary in accordance with the new HCBS regulations based on recent CMS guidance.
- 11. Comment:** Commenters stated that based on numbers from the Health and Human Services Commission used for the development of the Consolidated Budget, day habilitation services in HCS are currently underfunded by about \$20 million for the biennium. Commenters indicate that assessing compliance and quality of current day habilitation programs and to allow for flexibility to begin implementing changes sooner rather than later, a request for appropriations to fully fund day habilitation services during the 2015 legislative session is recommended.
- 11. State Response:** This comment was received outside of the official comment period. The State does not anticipate requesting additional funding until after the assessment process is complete. Therefore, the State has not changed the STP.
- 12. Comment:** Regarding protecting each individual's privacy, commenters indicated that TxHmL may force a choice between employment and remaining eligible for the program by requiring eligibility based on a lower income level than most HCBS programs. Commenters stated that TxHmL does not have the institutional income limit up to 300% and that increasing the limit would allow this lower cost program with an overall cost cap of \$17,000 annually, to serve individuals who could also work part time. Additionally, commenters suggested that the program would be ideal for keeping children in families if, like the other programs, the parent's income was not counted.
- 12. State Response:** The State interprets this comment to be a request that it increase the income limit for waiver participants so that they can remain in the waiver and work. This suggestion appears to be outside the scope of the settings requirements imposed by the new rule. Thus, the State is not currently making changes to the STP to address the comment.

Appendix 1 (cont.)

However, the State notes for the commenters' benefit that adopting a higher income threshold for TxHmL may be under consideration in the State's upcoming 2015 legislative session.

13. Comment: Commenters stated that HCBS requirements include that an individual has the same responsibilities and protections from eviction that tenants have under the landlord tenant law and that the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each participant that provides protections that address eviction processes and appeals comparable to those provided under landlord tenant law. Commenters further stated that this is not currently required by the Texas Administrative Code (TAC) and should be addressed as Texas revises applicable TAC rules for compliance with the Federal HCBS Setting rules.

13. State Response: The State finds this comment applicable to all its 1915(c) waivers except for TxHmL and YES. The STP already identifies a process for rule and policy manual revisions. The State will work with stakeholders and evaluate areas in the rules and policy manuals that need revision to support the implementation of the new regulations, including any needed revisions related to this comment.

13. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

14. Comment: Commenters indicated that HCBS settings exclude locations that have qualities of an institutional setting and stated the commenters felt that the DBMD program currently does not meet that standard because it allows for services to be provided to individuals in assisted living facilities with up to 6 individuals in a home.

Appendix 1 (cont.)

14. State Response: The State does not presume that the State's DBMD 4-6 bed assisted living facilities are settings that have the qualities of an institution, such that they would be subject to heightened scrutiny. However, the STP already identifies a process for assessing compliance with the new HCBS rules and for any necessary rule and policy manual revisions.

15. Comment: Commenters recommended that the DBMD waiver include a core set of community integration principles.

15. State Response: The STP already provides opportunities for the State to assess the level of community integration through the existing statewide settings transition assessment process and to make appropriate changes as necessary in the existing remediation phase.

16. Comment: Commenters suggested that the DBMD waiver needs attention and work to ensure compliance with HCBS settings rules regarding the protection of each individual's privacy. The commenters stated that §42.630 of the TAC which specifies the residential service requirements of the DBMD waiver need to be amended to ensure that each individual's privacy is protected.

16. State Response: The State will assess the level of community integration through the existing statewide settings transition assessment process and make appropriate changes as necessary in the existing remediation phase.

17. Comment: Regarding the DBMD waiver, commenters indicated that further review of residential services is required to address inclusion of a private unit option for individuals.

17. State Response: The State will assess residential services through the existing statewide settings transition assessment process and make appropriate changes as necessary in the existing remediation phase.

Appendix 1 (cont.)

18. Comment: Commenters suggested an increase in focus and accountability regarding choice of housemates or roommates and other choices through training and regulatory activities, including the requirement that service planning addresses desired characteristics of housemates, roommates, and staff and that providers are held accountable for implementing these choices.

18. State Response: Although commenters are addressing the HCS waiver with regard to this comment, the State is also addressing it with regard to DBMD. The STP already identifies a process for rule and policy manual revisions. The State will work with stakeholders and evaluate areas in the rules and policy manual that need revisions to support the implementation of the new regulations. In addition, the STP already provides for webinars during the remediation phase designed to educate providers which will support efforts directed at individuals understanding rights afforded to them under the new HCBS regulations. The plan currently includes revising contract monitoring processes to ensure provider reviews include elements indicating that individuals are afforded choices as outlined in the new regulations.

18. Update to response: Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.

19. Comment: Commenters indicated that work needs to be done through service planning, implementation plan development, and provider accountability to increase the individual's control of one's own schedule of activities, money management, and access to food. Commenters recommended that (1) food choice begin at the grocery store and not at the refrigerator or food pantry door; (2) the individual have access to a minimum personal spending amount; (3) the individual have independent access to those funds; and (4) the individual receive training to manage those funds.

Appendix 1 (cont.)

- 19. State Response:** Although commenters specified the HCS waiver with regard to this comment, the State is addressing it in the DBMD settings transition plan as well. The statewide settings transition plan already identifies a process for rule and policy manual revisions. The State will work with stakeholders and evaluate areas in the rules and policy manual that need revisions to support the implementation of the new regulations.
- 19. Update to response:** Rule revisions are currently being drafted and handbook revisions will follow if necessary. Rule revisions will follow rule promulgation guidelines and be posted for public comment. The rules will be effective by September 2022 but the exact timeline for public comment has not yet been determined.
- 20. Comment:** Commenters stated that strict enforcement requiring disclosure of the current room and board agreements prior to enrollment with a provider should happen and individuals should be made aware of the room and board rules and agreements through an educational campaign.
- 20. State Response:** Although commenters are addressing the HCS waiver with regard to this comment, the State is also addressing it with regard to DBMD. The DBMD settings transition plan includes stakeholder groups targeted at individuals receiving services to ensure that individuals receiving services are able to share experiences.
- 21. Comment:** Commenters stated that not only should a person be able to find a living arrangement that is physically accessible, a person who does not use a wheelchair or other mobility device should be able to have a visitor who does.
- 21. State Response:** Although commenters are addressing the HCS waiver with regard to this comment, the State is also addressing it with regard to DBMD. Without additional funding, incorporation of this suggestion will not be implemented into the DBMD settings transition plan at this time.

Appendix 1 (cont.)

22. Comment: Commenters recommended that the State create peer support for individuals with IDD by individuals, as a means of encouraging more empowerment and choice in the developmental disabilities HCBS programs.

22. State Response: Although commenters are addressing the HCS waiver with regard to this comment, the State is also addressing it with regard to DBMD and TxHmL. Without additional funding, incorporation of this suggestion will not be implemented into the DBMD settings transition plan at this time.

23. Comment: Commenters recommended establishing an educational campaign regarding aspects of the HCBS guidelines, to empower self-advocates and their families to fully benefit from the new guidelines and engage in the 5-year transition process.

23. State Response: Although commenters are addressing the HCS waiver with regard to this comment, the State is also addressing it with regard to DBMD and TxHmL. The statewide settings transition plan already identifies that the State is providing webinars during the remediation phase designed to educate providers which will support efforts directed at individuals understanding rights afforded to them under the new HCBS regulations.

24. Comment: Commenters state that while MDCP does not pay for a residential service, the program would be more consistent with the HCBS guidelines if respite was not allowed to be provided in institutional settings, moving Texas toward more focus on community-based respite options across the waiver programs.

Appendix 1 (cont.)

- 24. State's Response:** Although commenters are addressing the MDCP waiver with regard to this comment, the State is also addressing it with regard to DBMD. Clarification provided by CMS about the HCBS regulations indicates that states are allowed to deliver out-of-home respite in an institution. Thus, at this time, the State has no plans to revise out-of-home respite settings in the waiver.
- 25. Comment:** Commenters suggested that the settings transition plan include a review of STAR+PLUS waiver rules, policy and procedures.
- 25. State Response:** In accordance with recent CMS guidance regarding the 1115 STAR+PLUS HCBS Program, the State will address the application of the HCBS regulation to all HCBS services provided through the Demonstration waiver in an amendment to the statewide transition plan.
- 26. Comment:** The State received comments related to person-centered planning process and will work with stakeholders to address comments related to person centered planning. The STP was not revised in response to these comments because the statewide settings transition plan and related public notice and comment requirements are only applicable to HCBS settings requirements.