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# **Home & Community-based Services and Texas Home Living Rules Webinar**

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**Olu Oguntade**

**October 13, 2022**

# Objectives

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- Review the purpose of the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) rules changes
- Review new requirements added to the HCS and TxHmL rules
- Review substantive changes to the HCS and TxHmL rules
- Provide additional information regarding [IL 2022-49](#), site assessments of 3-person, 4-person and host home/companion care (HH/CC) residences.

*The information in this presentation is based on draft rules, which were posted for public comment on the September 16<sup>th</sup> issue of the [Texas Register](#) and may change based on public comment.*



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# Questions??

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**Please submit all questions in the chat box in the right-hand corner of the presentation screen.**



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# Purpose of the HCS & TxHmL Rule Changes

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# Purpose of Rule Changes

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- Move HCS and TxHmL Programs rules from 40 TAC Chapter 9, Subchapter D and Subchapter N to 26 TAC Chapters 263 and 262
- Ensure HCS and TxHmL Program rules comply with federal and state statutes and regulations
- Codify certain HCS and TxHmL Program policies and procedures



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# New HCS & TxHmL Rule Language

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# Definitions

Audio-Only	Store and Forward Technology
Comprehensive Nursing Assessment	Supported Decision-Making Agreement
Delegated Nursing Task	Synchronous Audio-Visual
Determination of Intellectual Disability (DID)	Texas Administrative Code (TAC)
Election Visit Verification (EVV)	Telehealth Service
Health Maintenance Activities	Temporary Admission
In Person or In-Person	Transfer IPC
Platform	Videoconferencing

*§263.3 (HCS) and §262.3 (TxHmL)*



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# Requirement for Translation

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- A program provider or local intellectual and developmental disability authority (LIDDA) who submits documentation to HHSC containing information that is not in English, must, at the same time, submit an English translation of the information



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# Comprehensive Nursing Assessment

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- Comprehensive nursing assessments must be completed **in person** unless:
  - The comprehensive nursing assessment is not the annual comprehensive nursing assessment;
  - The registered nurse (RN) who completed the most recent comprehensive nursing assessment of the individual is no longer providing a nursing service to the individual; and
  - An unlicensed service provider is not performing a delegated nursing task or a health maintenance activity for the individual



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# Comprehensive Nursing Assessment (cont.)

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- An RN must document the comprehensive nursing assessment using the HHSC Comprehensive Nursing Assessment form.



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# Providing Therapy Services as a Telehealth Service

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- Physical therapy (PT), occupational therapy (OT) and speech and language pathology may be provided as telehealth services
- The program provider must ensure that the service provider of PT, OT or speech and language pathology:
  - Uses a HIPAA-compliant synchronous audio-visual platform
  - Does not use an audio-only platform; and
  - Obtains the written informed consent of the individual or legal authorized representative (LAR) to provide the service



# Providing Therapy Services as a Telehealth Service (cont.)

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- The program provider must ensure that the service provider of PT, OT, and speech and language pathology performs certain PT, OT or speech and language pathology services in person, as required by the Texas Medicaid Provider Procedures Manual and outlined in the rules.



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# Person-Centered Planning Process

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- Added to comply with 42 CFR, Chapter IV, Subchapter C, Part 441, Subpart G, §441.301(c)(1) (related to Person-centered planning process).
- The person-centered planning process must be:
  - Led by an individual to the maximum extent possible
  - Used to develop:
    - A person-directed plan (PDP)
    - Implementation plan
    - Individual plan of care (IPC)
    - Service backup plan
    - Transportation plan



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# Requirements for Home and Community-Based Settings

§263.501

- Added to comply with 42 CFR §441.301(c)(4) (related to Home and Community-Based Settings) and §441.301(c)(5).
- A home and community-based setting must:
  - Be integrated in and support the individual's access to the greater community
  - Be selected by the individual from setting options
  - Ensure an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint



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# Requirements for Home and Community-Based Settings (cont.) (Slide 2)

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- A home and community-based setting must:
  - Optimize individual autonomy and independence in making life choices
  - Facilitate individual choice regarding services and supports, and who provides them



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# Requirements for Home and Community-Based Settings (cont.)

(Slide 3 of 3)

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- HCS Program services and Community First Choice (CFC) services cannot be provided in a setting that is presumed to have the qualities of an institution **EXCEPT** if the Centers for Medicare & Medicaid Services determines through a heightened scrutiny review that the setting:
  - Does not have the qualities of an institution; and
  - Does have the qualities of home and community-based settings



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# Requirements for Program Provider Owned or Controlled Residential Settings

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- Added to comply with 42 CFR §441.301(c)(4)(vi)(B) - (F)
- In a residential support (RSS), supervised living (SL), or host home/companion care (HH/CC) residence, a program provider must ensure that an individual has:
  - Privacy in the individual's bedroom
  - The option not to share a bedroom with a roommate
  - A choice of roommates when sharing a bedroom
  - Can furnish and decorate the individual's bedroom



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# Requirements for Program Provider Owned or Controlled Residential Settings (cont.) (Slide 2 of 2)

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- In each residence that provides RSS, SL or HH/CC, a program provider must ensure that an individual has:
  - An operable lock installed on the individual's bedroom door at no cost to the individual
  - Control of the individual's schedule and activities that are not part of the implementation plan
  - Access to food at any time
- If a modification is needed to meet these requirement, the program provider must notify the service coordinator and provide the service coordinator with required information outlined in the rules.



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# Residential Agreements

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- Added to comply with 42 CFR §441.301(c)(4)(vi)(A)
- During a service planning team meeting to develop or update an individual's PDP, a service coordinator must inform an individual or LAR of the following:
  - The residential setting options available in the HCS
  - The individual or LAR will be responsible for paying room and board



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# Residential Agreements (cont.)

Slide 2 of 3

- During a service planning team meeting to develop or update an individual's PDP, a service coordinator must inform an individual or LAR of the following:
  - The individual's program provider or service provider of HH/CC may evict the individual for non-payment of room or board
  - If an individual is evicted, HHSC will deny the individual RSS, SL, or HH/CC until the individual or LAR pays the delinquent room or board



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# Residential Agreements (cont.) Slide 3 of 3

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- The program provider must ensure that an individual living in a:
  - 3-person or 4-person residence or their LAR has a written residential agreement\* with the program provider; and
  - Residence in which HH/CC is provided or their LAR has a written residential agreement with the service provider of HH/CC if the individual does not own the residence or lease the residence from another person

*\*Review the HCS rule for the list of requirements that must be included in a residential agreement*



# Denial of HCS Program Services or CFC Services

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- HHSC denies RSS, SL or HH/CC on an individual's IPC if:
  - The individual was evicted from a three-person residence, a four-person residence or a residence in which HH/CC is provided; and
  - The individual has not paid the delinquent room or board





# LIDDA Requirements for Providing Service Coordination

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- **A service coordinator must:**
  - Update the individual's PDP with required information if a requirement for a program provider owned or controlled residential settings needs to be modified
  - Submit required documentation to HHSC within one business day after the meeting to revise an IPC because an individual is evicted and the individual or LAR has not paid the delinquent room or board
  - Notify HHSC that an individual is no longer delinquent in room or board payments within one business day after receiving the notice from a program provider





# Exceptions to Certain Requirements During Declaration of Disaster

(Slide 1 of 3)

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- HHSC may allow program providers and service coordinators to use one or more of the exceptions described in §263.1000(HCS) and §262.801 (TxHmL) while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect



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# Exceptions to Certain Requirements During Declaration of Disaster (cont.) (Slide 2 of 3)

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- HHSC notifies program providers and LIDDAs:
  - If it allows an exception to be used; and
  - If an exception is allowed to be used, the date the exception must no longer be used, which may be before the declaration of a state of disaster expires



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# Exceptions to Certain Requirements During Declaration of Disaster (cont.) (Slide 3)

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- “Disaster area” means the area of the state specified in an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014
- For more detailed information on the exceptions to certain requirements during declaration of disaster, please review the §263.1000 in the HCS rule and §262.801 in the TxHmL rule





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# New Rule Specific to TxHmL Only

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# Reconsideration of LON Assignment

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- A LIDDA may request that HHSC reconsider a level of need (LON) assignment by submitting a written request to HHSC within 10 calendar days after receipt of the LON denial notification
- A LIDDA will receive reconsideration only if the LIDDA submits documentation supporting the recommended LON
- Reconsideration does not guarantee approval





# Reconsideration of LON Assignment (cont.)

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- Within 21 calendar days after receipt of a request for reconsideration, HHSC electronically approves the recommended LON or sends written notification that the recommended LON has been denied to the service coordinator



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# Existing HCS & TxHmL Rules with Substantive Changes

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# Eligibility Criteria for HCS Program Services and CFC Services

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- The proposed rules **do not include** language in 40 TAC §9.155(a)(5)(H) and 40 TAC §9.553(65)(H) that prohibits the provision of HCS or TxHmL Program services to an applicant or individual who resides in a setting in which two or more dwellings:
  - Create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;
  - Most of the residents of the dwellings are persons with an intellectual disability; and
  - The residents of the dwellings are provided routine support services that are shared with the residents of the other dwellings



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# HCS Interest List

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- If HHSC or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (g)(1)-(4) of this section, and a request is received to add the applicant's name to the HCS interest list:
  - Within 90 calendar days after the name was removed, and **the request is the applicant's first request**, HHSC adds the applicant's name to the HCS interest list using the HCS interest list date that was in effect at the time the applicant's name was removed from the HCS interest list



# HCS Interest List (cont.)

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- If HHSC or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (g)(1)-(4) of this section, and a request is received to add the applicant's name to the HCS interest list:
  - More than 90 days after the name was removed from the list **and the request is the applicant's first request**, HHSC adds the applicant's name to the interest list using the interest list date that was in effect at the time the applicant's name was removed from the list, if HHSC determines that extenuating circumstances exist



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# HCS Interest List (cont.)

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- If HHSC or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (g)(1)-(4) of this section, and a request is received to add the applicant's name to the HCS interest list:
  - And if the request is not the applicant's first request, the LIDDA adds the applicant's name to the HCS interest list using the date the LIDDA receives the request as the HCS interest list date



# Process for Enrollment of Applicants

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- The LIDDA must conduct a determination of intellectual disability and ICAP assessment **in person**
- The HHSC HCS/TxHmL CFC PAS/HAB Assessment form must be completed in person unless:
  - The service coordinator gives the individual the opportunity to complete the form in person and the individual agrees to the form being completed by videoconferencing or telephone; and receives appropriate in-person support



# LOC Determination

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- An LOC determination is valid for a 365-calendar day period starting on the begin date of the ID/RC assessment except:
  - If the begin date of the ID/RC assessment is March 1 or later in a year before a leap year or January 1-February 28 of a leap year, the LOC determination is valid for a 366-calendar day period starting on the begin date of the ID/RC assessment
- The proposed rule removes the requirement for the service coordinator to notify the individual or LAR, if the service coordinator disagrees with the ID/RC Assessment



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# Renewal & Revision of an IPC

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- The service coordinator, within 10 calendar days after the PDP is updated, must send a copy to the individual or LAR
- The HHSC HCS/TxHmL CFC PAS/HAB Assessment form must be completed in person unless:
  - The service coordinator gives the individual the opportunity to complete the form in person and the individual agrees to the form being completed by videoconferencing or telephone; and receives appropriate in-person support



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# Service Limits

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- The following limits apply to minor home modifications and pre-enrollment minor home modifications combined:
  - \$7,500 during the time the individual is enrolled in the HCS Program, which may be paid in one or more IPC years; and
  - A maximum of \$300 for repair and maintenance during an IPC year, which may be used even if the lifetime limit has not been exhausted



# Program Provider Reimbursement

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- HHSC does not pay a program provider for:
  - A service or recoups any payments made to the program provider for a service if the program provider does not comply with 40 TAC §49.305 (relating to Records)



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# Program Provider Reimbursement (Cont.)

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- HHSC does not pay a program provider for:
  - CFC PAS/HAB, in-home day habilitation provided to an individual with a residential type of “own/family home,” or in-home respite, if the CFC PAS/HAB, in-home day habilitation, or in-home respite, does not match the EVV visit transaction as required by 1 TAC §354.4009(a)(4) (relating to Requirements for Claims Submission and Approval)





# Suspension of Program Services

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- If an individual's program services are suspended, the service coordinator must, at least every 30 calendar days, review the individual's circumstances and document in the individual's record:
  - The reasons for continuing the suspension
  - Whether the individual anticipates resuming participation in the HCS program; and
  - The anticipated date the individual will be discharged from the facility, if applicable



# Suspension of Program Services (cont.)

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- If an individual's suspension should be extended, the service coordinator must request that HHSC extend the suspension before:
  - The end of the first 270 calendar days of the temporary admission; or
  - The end of a 30 calendar-day extension previously granted by HHSC
- HHSC may extend an individual's suspension for 30 calendar days based on a service coordinator's request as described



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# LIDDA Requirements for Providing Service Coordination (cont.)

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- **A service coordinator must:**
  - Complete a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the service coordinator's date of hire, unless an extension is granted by HHSC
  - Ensure that the updated finalized PDP is signed by the individual or LAR



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# LIDDA Requirements for Providing Service Coordination (cont.)

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- **A service coordinator must:**
  - Ensure that the service planning team determines if an individual without a guardian would benefit from having a guardian or a less restrictive alternative to a guardian;
  - If the individual would benefit from having a less restrictive alternative to a guardian, take appropriate actions to implement such an alternative; and
  - If the individual would benefit from having a guardian, make a referral to the appropriate court



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# LIDDA Requirements for Providing Service Coordination (cont.)

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- **A service coordinator must:**
  - Inform applicants and individuals about responsibilities related to EVV
  - Have contact with an individual in-person, **by videoconferencing, or by telephone** to provide service coordination during a month in which it is anticipated that the individual will not receive an HCS Program service





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# Site Assessments of 3- and 4-Person Residences and HH/CC

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**Kate Layman**

***Director, Program Policy***

# Site Assessment Requirements

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- CMS requires states to conduct site assessments of provider-owned and controlled settings to ensure the settings meet all requirements at 42 CFR §441.301(c)(4) by the federal compliance deadline of March 17, 2023.
- This means HHSC must assess HCS 3-person residences, 4-person residences, and HH/CC settings to ensure each setting's compliance with the HCBS settings requirements.
  - Refer to [Information Letter 2022-49](#)



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# Assessment Criteria

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- HHSC Long-term Care Regulation (LTCR) assesses 3 and 4-person residences and HH/CC providers for compliance with most HCBS settings requirements through their regular visit processes.
- HH/CC providers who are a family member of the individual will not be assessed.



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# Assessment Criteria (cont.)

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- To ensure compliance with the HCBS Settings rule, HHSC will assess settings using three criteria not currently included in routine oversight processes:
  - Residential agreement
  - Operable lock on the individual's bedroom door
  - Access to food at any time



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# Assessment Process

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## Step 1: In-Person Visit

The assessors are:

- For 3-person and 4-person residences: HHSC LTCR
- For HH/CC: HHSC Contract Administration & Provider Monitoring (CAPM) or Texas Medicaid & Healthcare Partnership (TMHP)



# Assessment Process (cont.)

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## Step 1: In-Person Visit

The assessors will:

- Request a copy of the residential agreement
- Administer a short verbal questionnaire
- Observe and take photos of bedroom doors and kitchen area



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# Assessment Process (cont.)

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## Step 2: Receive Assessment Results & Review Action Plan

- HHSC or TMHP staff will review results of the on-site assessment and reach out by phone or email to notify you:
  - Of compliance determinations made based on assessment
  - Of follow-up actions needed to achieve full compliance with the HCBS settings requirements



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# Assessment Process (cont.)

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## Step 3: Complete Activities on Action Plan

- The 3-person residence, 4-person residence, or HH/CC setting:
  1. Completes activities outlined in action plan
  2. Reports completion of activities to HHSC
- After receiving the report of completed activities, HHSC will confirm the setting is compliant and the assessment is complete.

**NOTE:** The action plan will not result in any penalty or sanction on the provider at this time.



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# Assessment Process (cont.)

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- The requirements of the federal HCBS settings rule addressed in the assessment process will be included in the HCS rules to be adopted by HHSC in Dec. 2022.
- Providers are required to comply with these requirements at the time the HCS rules become effective.



# Assessment Process (cont.)

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- HHSC encourages providers to begin compliance activities now.
- This will help expedite the assessment process and will ensure providers are able to meet all compliance deadlines.



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# Thank you!

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**Send HCS and TxHmL rules questions to:**

[HCSPolicy@hhs.texas.gov](mailto:HCSPolicy@hhs.texas.gov)

[TxHmLPolicy@hhs.texas.gov](mailto:TxHmLPolicy@hhs.texas.gov)

**Send Site Assessment questions to:**

[Medicaid\\_HCBS@hhs.texas.gov](mailto:Medicaid_HCBS@hhs.texas.gov)