

Attachment G

HCBS Member Safeguards

The material presented in Attachment G corresponds to the contents of Appendix G of the Application for a §1915(c) Home and Community-Based Services Waiver, Version 3.5.

Introduction

Managed long-term services and supports (MLTSS) refer to the delivery of long-term services and supports (LTSS) through managed care programs, including community-based and institutional LTSS under the State Plan and home and community-based services (HCBS) under the STAR+PLUS Waiver. Under the authority of the Texas Healthcare Transformation and Quality Improvement Program Demonstration, managed care organizations (MCOs) deliver MLTSS to members in Medicaid managed care programs in Texas.

Texas has well-established safeguards to ensure that member health and welfare are assured within the delivery of MLTSS. The state's critical incident system is comprised of three parts: HHSC, the Department of Family and Protective Services (DFPS), and local law enforcement. Depending upon the type of critical incident, individuals may report to one or both state agencies. Abuse, neglect and exploitation allegations are reported to DFPS; however, investigations are the responsibility of HHSC Provider investigations who must coordinate with local law enforcement. Critical incidents are tracked and monitored by HHSC. This document details these protections, such as statements of member rights and the critical incident management system, in order to protect members from abuse, neglect, and exploitation.

In 2015, the Texas Health and Human Services (HHS) system, comprised of five separate state agencies, began a reorganization to produce a more efficient, effective, and responsive system, by consolidating Medicaid functions and activities under HHSC. This streamlined approach will increase efficiencies and improve communication within the HHS system by removing barriers that existed when Medicaid functions were spread across multiple independent agencies. On September 1, 2017, the final phase of this process, referred to as the HHS "Transformation", began when the regulatory and investigatory bodies of two different agencies transitioned to HHSC, creating a new Regulatory Services Division within HHSC. In accordance with 42 Code of Federal Regulations (CFR) §431.10(e), HHSC is the single state Medicaid agency and retains oversight and full administrative authority over the waiver program.

Participant Rights and Responsibilities

In accordance and consistent with federal law under the CFR, HHSC established a statement of member rights that may be found in the Texas Administrative Code (TAC). These rights are reflected in the managed care contracts and the Uniform Managed Care Manual (UMCM) to ensure members are advised of their rights. Members are informed through MCO member handbooks and are provided with additional support, as needed, to understand their rights as well as their responsibilities. This support might come from the MCO service coordinator or through an independent entity such as the Office of the Long-term Care Ombudsman.

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Code of Federal Regulations: Enrollee Rights

In accordance with 42 CFR §438.100 (relating to Enrollee rights), Texas assures that each MCO has written policies regarding the enrollee rights specified in this section and each MCO complies with applicable federal and state laws pertaining to enrollee rights. HHSC ensures its staff and affiliated providers take these rights into account when delivering services to individuals.

HHSC requires that each managed care enrollee is guaranteed the following rights:

- Receive information in accordance with 42 CFR §438.10.
- Be treated with respect and with due consideration for his or her dignity and privacy.
- Receive information on available treatment options and alternatives, presented in a manner appropriate to the enrollee's condition and ability to understand.
- Participate in decisions regarding his or her health care, including the right to refuse treatment.
- Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in other federal regulations on the use of restraints and seclusion.
- Request and receive a copy of his or her medical records, and request that they be amended or corrected, as specified in 45 CFR §164.524 and 164.526 (if the privacy rule, as set forth in 45 CFR parts 160 and 164 subparts A and E, applies).
- Receive health care services in accordance with §§438.206 through 438.210.
- Be free to exercise his or her rights.

Finally, HHSC ensures that each MCO complies with all applicable federal and state laws.

Texas Administrative Code: Member Bill of Rights

Each MCO participating in the Texas Medicaid program must provide to each of its members an easy-to-read, written document describing the member's rights, which must include the rights outlined in 1 TAC §353.202 (relating to Member Bill of Rights).

Managed Care Contracts: Member Rights and Responsibilities

In accordance with 42 CFR §438.100 (relating to Enrollee Rights), the managed care contracts require that MCOs maintain written policies and procedures for informing members of their rights and responsibilities, and notify members of their right to request a copy of these rights and responsibilities. An MCO's member handbook must include a notice regarding member rights and responsibilities, in compliance with the UMCM.

Definitions

Texas Human Resources Code, Chapter 48.251(b), directs HHSC to adopt definitions of abuse, neglect, and exploitation through rule. The following definitions of abuse, neglect, and exploitation (ANE) apply to investigations of alleged ANE in 1115 waiver programs:

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- Texas Administrative Code, Chapter 711.11 (relating to How is physical abuse defined?);
- Texas Administrative Code, Chapter 711.13 (relating to How is sexual abuse defined?);
- Texas Administrative Code, Chapter 711.17 (relating to How is verbal/emotional abuse defined?);
- Texas Administrative Code, Chapter 711.19 (relating to How is neglect defined?); and
- Texas Administrative Code, Chapter 711.21 (relating to How is exploitation defined?)

HHSC defines critical events or incidents in the managed care contracts as those that may bring harm, or create the potential for harm, to an individual. Critical events or incidents include but are not limited to:

- abuse, neglect, or exploitation;
- the unauthorized use of restraint,
- the unauthorized use of seclusion
- serious injuries that resulted in medical intervention or hospitalization;
- criminal victimization;
- unexplained death;
- medication errors; and
- other incidents or events that involve harm or risk of harm to a member.

Critical Incident System

The state has a system to prevent, identify, report, investigate, and remediate critical incidents that occur within the delivery of MLTSS as well as to track and trend results in order to make system improvements. The obligation to report abuse, neglect, and exploitation is mandated by statute and HHSC clarifies roles, expectations, and responsibilities for providers and MCOs in the managed care contracts.

Prevention

Licensure Requirements

The state licenses the following MLTSS providers:

- Day activity and health services providers (TAC Title 40, Chapter 98);
- Adult foster care, serving four or more individuals (licensing as assisted living facilities: TAC Title 26, Chapter 553);
- Assisted living facilities (TAC Title 26, Chapter 553);
- Home and community support services agencies (TAC Title 26, Chapter 558); and
- Nursing facilities (TAC Title 40, Chapter 19).

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- Prescribed Pediatric Extended Care Facilities (TAC Title 26, Part 1, Chapter 550) Additional MLTSS providers licensed through other entities:
 - Emergency response system providers (TAC Title 25, Part 1, Chapter 140, Subchapter B);
 - Licensed durable medical equipment providers (TAC Title 25, Part 1, Chapter 229, Subchapter X);
 - Providers of cognitive rehabilitation therapy services (TAC Title 16, Part 4; TAC Title 40, Part 12; TAC Title 22, Part 21)
 - Registered Nurses (TAC Title 22, Part 11);
 - Occupational therapists (TAC Title 40, Part 12);
 - Physical therapists (TAC Title 22, Part 16); and
 - Speech therapists (TAC Title 16, Part 4).

Prior to issuing licensure to the above healthcare providers, the state screens those facilities or persons for prior disciplinary or criminal history in Texas and in other states. In accordance with Section 1919(e)(2) of the Social Security Act, the state maintains a registry of all nurse aides who are certified to provide services in nursing facilities and skilled nursing facilities licensed by HHSC. These individuals may also be employed by assisted living facilities and home and community support services agencies. The Nurse Aide Registry (NAR) lists nurse aides who are unemployable because of confirmed instances of abuse, neglect, exploitation, misappropriation, or misconduct against a nursing facility resident. For those individual providers that do not require licensure, in accordance with state law, HHSC maintains an Employee Misconduct Registry (EMR) that includes the names of unlicensed persons who work at facilities licensed by HHSC, including intermediate care facilities for individuals with an intellectual disability or related conditions, adult foster care providers, home and community support services agencies, or prescribed pediatric extended care centers; or for individual employers, who have committed reportable conduct as defined in the Texas Health and Safety Code, Chapter 253.

HHSC-regulated facilities and agencies contracted with a MCO to provide MLTSS are required to check both the NAR and EMR before hiring an unlicensed individual and annually thereafter. In addition, all MCOs are required to check both the NAR and EMR prior to contracting with an unlicensed or uncertified MLTSS provider, and annually thereafter.

Credentialing Unlicensed or Uncertified Providers by MCOs

Through their credentialing process, the MCO ensures that the agencies they contract with have met all licensure requirements. According to the managed care contracts, before contracting with an unlicensed MLTSS provider or MLTSS provider not certified by a health and human services agency, such as minor home modification or home-delivered meals providers, the MCO must take steps to verify that the provider:

- has not been convicted of a crime listed in Texas Health and Safety Code, §250.006;

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- is not listed as "unemployable" in the EMR or the NAR maintained by HHSC by searching or ensuring a search of such registries is conducted before hire and annually thereafter;
- is knowledgeable of acts that constitute abuse, neglect, or exploitation of a member;
- is instructed on and understands how to report suspected abuse, neglect, or exploitation;
- adheres to applicable state laws if providing transportation; and
- is not a spouse of, legally responsible person for, or employment supervisor of the member who receives the service, except as allowed in the Texas Healthcare Transformation and Quality Improvement Program 1115 Waiver.

Training

The managed care contracts require MCOs to train and educate their staff, providers, and subcontractors to understand abuse, neglect, and exploitation and all prevention, detection, reporting, investigation, and remediation procedures and requirements. In addition, MCOs must educate members about abuse, neglect, and exploitation at enrollment with the MCO, 30 days prior to a change in covered services, and when requested by the Member. MCOs must ensure staff such as member services staff and service coordinators are knowledgeable about how to identify and report a critical event or incident such as abuse, neglect, and exploitation. MCOs must administer training for service coordination staff that includes identification and reporting of critical events or incidents.

In addition to the information provided to all members, a financial management services agency (FMSA), provides members who elect the consumer directed services option with training and written information related to reporting allegations of abuse, neglect, and exploitation.

Identification and Reporting

Obligation to Report

The failure to report suspected abuse, neglect, or exploitation of a child or of an individual who is elderly or who has a disability is considered a criminal offense. State agencies receiving reports of suspected ANE keep the reporter's identity confidential. Information on how to report suspected ANE can be found on HHS agency websites, member handbooks for various programs, and MCO provider manuals.

Reports to the Department of Family and Protective Services (DFPS)

A person having cause to believe that an individual who is elderly or who has a disability (including a child with a disability), or that an individual receiving services from a:

- facility;
- community center, local mental health authority, and local intellectual and developmental disability authority;
- person who contracts with a health and human services agency or MCO to provide home and community-based services;

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- person who contracts with a Medicaid MCO to provide behavioral health services;
- MCO;
- contractor, subcontractor, officer, employee, or agent of a person or entity listed in (1)-(5); or
- fiscal agent, employee, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code is in a state of abuse, neglect or exploitation is required to report the information immediately to DFPS.

A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by a person must report the information immediately to DFPS.

A professional who has cause to believe that a child has been abused or neglected or may be abused or neglected must make a report to DFPS within 48 hours after the professional first suspects abuse or neglect. All HCSSAs are required to self-report abuse, neglect, or exploitation to HHSC and DFPS within 24 hours of suspecting that an employee, volunteer, or contractor has committed ANE against an individual served by the HCSSA.

Reports to HHSC

If a person has cause to believe that an individual who is elderly or who has a disability, or an individual receiving services from a facility or a provider operated, licensed, certified, or registered by HHSC, has been abused, neglected, or exploited in a facility or by a provider operated, licensed, certified, or registered by HHSC, the person shall report the information to HHSC. This requirement is also addressed in Chapter 260A of the Health and Safety Code. A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person shall report the abuse, neglect, or exploitation to HHSC and law enforcement as appropriate under Chapter 260A of the Texas Health and Safety Code.

STAR+PLUS MCOs are required to report on a quarterly basis to HHSC the aggregated number of critical incidents outlined in the definitions section above. MCOs are required to report confirmed, unconfirmed, inconclusive, unfounded and any systems issues identified as a result of reported abuse, neglect or exploitation. When there are questions about the data provided in the quarterly reports, HHSC may follow up with the MCO to discuss the data further.

An updated version of this report has been developed and is being finalized for inclusion into the UMCM in 2021. The updated report will vary from previous versions in that MCOs will submit the report via TexConnect, an online submission portal, which will allow additional HHSC divisions access to the report and keep track of past submissions. MCOs currently use TexConnect to submit other reports.

The updated version of the report will include individual level detail on critical incident events and the remediation details for these critical incidents. Individual remediation will include the following:

- Termination of service provider (employee/contractor);

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- Corrective action plan for contracted program provider (employee/contractor);
- Training for service provider (employee/contractor);
- Service planning meeting with victim;
- Program policy and procedure training for program provider (employee/contractor);
- Development of new program policies and procedures;
- Service provider (employee/contractor) suspended from providing pending appeal resolution;
- Employee (provider/contractor) disassociated from specific client.

The report will tie each case of reported ANE/CI to a remediation type so that HHSC can track and trend to determine how MCOs handle ANE/CI and the efficacy of the interventions they employ. Tracking and trending will take place through a Tableau dashboard dedicated to ANE/CI reporting.

HHSC is seeking a critical incident management system (CIMS) in 2021 that all 1915(c) and 1115 Medicaid Home and Community Based Service (HCBS) waiver providers will use to report all critical incidents as defined in state law and regulation. The CIMS solution will modernize, streamline, and advance the selected provider reporting and management activities defined by HHSC. This project constitutes a multi-year effort to provide a new CIMS solution to modernize and replace existing provider and some State agency critical incident reporting and management system functionality housed within various State provider systems. Through this project, the State seeks to maximize the current industry capabilities and trends. The proposed solution will enable the State to perform all functionality to operate, manage, control, and configure, as needed, a provider and State agency reporting and management application.

The new CIMS solution will include an online reporting portal for Texas Medicaid and Texas Medicaid-supported program providers. The solution will include a centralized data repository which will support online provider submissions, ad hoc query, and data retrieval processes through configurable business rules, workflow, and other features. Information will be analyzed, tracked, and trended to improve follow-up with MCOs and fee-for-service 1915(c) Medicaid waiver contracted providers. The system will provide a mechanism allowing HHSC to develop efficiencies in oversight and to comply with CMS guidance as outlined in Modifications to Quality Measures and Reporting in §1915(c) HCBS Waivers published by CMS on March 12, 2014.

Reports to Law Enforcement

Reports alleging that an individual's health or safety is in imminent danger; that an individual has died because of the alleged conduct; that an individual has been hospitalized or treated in an emergency room because of the alleged conduct; that the alleged conduct involves a criminal act; or that an individual has suffered bodily injury due to the alleged conduct shall be made to DFPS or HHSC and the appropriate law enforcement agency. All reports that allege abuse or neglect by a person responsible for a child's care, custody, or welfare received by a local or state law enforcement agency are referred immediately to DFPS or the designated agency. Reports of abuse, neglect or exploitation of an individual residing in a facility regulated by HHSC received by a law enforcement agency are referred to HHSC.

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Investigation of Abuse, Neglect, or Exploitation (ANE)

HHSC's Long Term Care Regulation Division investigates reports of alleged ANE of individuals who are elderly or who have a disability, including a child with a disability, as well as individuals receiving services from a home and community support services agency (HCSSA) or a facility; community center, a local mental health authority, and local intellectual and developmental disability authority; person who contracts with a health and human services agency or MCO to provide home and community-based services; person who contracts with a Medicaid MCO to provide behavioral health services; MCO; contractor, subcontractor, officer, employee, or agent of a person or entity listed in this section; or fiscal agent, employee, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

HHSC also investigates reports of ANE of individuals who are elderly or have a disability that occur in a facility, or that are perpetrated by certain providers, which are operated, licensed, or certified by HHSC. These investigations are governed by Title 2 of the Texas Human Resources Code, Subtitle D, Chapter 48 (relating to Investigations and Protective Services for Elderly and Disabled Persons) and Title 4 of the Texas Health and Safety Code, Subtitle B, Chapter 260A (relating to Reports of Abuse, Neglect, and Exploitation of Residents of Certain Facilities).

When DFPS receives ANE reports concerning an individual in a facility licensed by a state agency that is explicitly responsible for investigating ANE in that facility, such as investigations of ANE in nursing facilities licensed by HHSC, DFPS forwards the report to that agency for investigation.

Joint Investigations with Law Enforcement

State law requires HHSC to notify the appropriate law enforcement agency of reports of abuse, neglect, or exploitation during certain investigations. Specifically, HHSC is required to immediately notify the appropriate law enforcement agency when a caseworker or supervisor has cause to believe that an individual who is elderly or who has a disability has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law. This requirement does not apply when the law enforcement agency is the entity to report the alleged abuse, neglect, or exploitation to HHSC or DFPS.

Within 24 hours after the receipt of a report of abuse, neglect, or exploitation of a resident of an HHSC facility, HHSC must report the incident to the appropriate law enforcement agency when the complaint alleges: a resident's health or safety is in imminent danger; a resident has recently died because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint; a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint; a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021 of the Texas Penal Code; or a resident has suffered bodily injury, as that term is defined by Section 1.07 of the Texas Penal Code, because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint.

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HHSC must immediately notify the appropriate law enforcement agency of any report that concerns the suspected abuse, neglect, or exploitation of a child or the death of a child from abuse or neglect. If HHSC finds evidence indicating that a child may have been abused, neglected, or exploited, HHSC must report the evidence to the appropriate law enforcement agency. These requirements do not apply when the law enforcement agency is the entity to report the alleged abuse, neglect, or exploitation to HHSC or DFPS.

If a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in death or serious harm to the child, DFPS conducts a joint investigation with the appropriate law enforcement agency. Additionally, if DFPS initiates an investigation and determines that the abuse or neglect does not involve a person responsible for the child's care, custody, or welfare, DFPS refers the report to the appropriate law enforcement agency for further investigation.

Upon receipt of a report of alleged abuse, neglect, or exploitation of a person residing in a facility licensed, operated, certified or registered by HHSC, law enforcement must acknowledge the report and begin a joint investigation with HHSC within 24 hours after receipt of the report.

Monitoring

HHSC maintains overall responsibility for the operation of the critical incident system and engages in continuous process improvements. Protections against ANE are not limited to HHSC's jurisdiction; other state and local entities have related responsibilities as described elsewhere in this Attachment.

HHSC Utilization Review (UR) conducts annual MCO reviews of a statistically valid random sample of the MCO's members. Through the review, HHSC conducts interviews with STAR+PLUS HCBS members. HHSC UR provides updates to the MCO service coordinators after each member interview. If a critical incident is identified during the UR or through disclosure by the member during the interview, HHSC UR updates the MCO to intervene.

All access to care and health and safety issues are referred to HHSC Managed Care Compliance and Operations (MCCO) complaints team on behalf of the member so that the issue can be tracked and resolved. In addition, the HHSC UR team would refer to DFPS or HHSC Provider Investigations, if they identified any ANE. Referrals may also be made to other entities when appropriate, such as the board of nursing if a licensed nurse is involved, or HHSC Long Term Care Regulation for provider licensure issues.

If HHSC MCCO received an ANE report from DFPS or another agency, HHSC would send it to the MCO, to ensure that they were aware of the situation and are acting upon the referral. In the instances of ANE, the MCO has two hours upon receipt to respond to HHSC.

Through operational reviews, HHSC MCCO staff interview the MCOs about their process related to ANE calls and how to report and how to address calls. If HHSC identified a critical incident as part of the operational review process, the response would depend on the nature of the incident. Ensuring the safety of the member would be the first priority, and staff would make referrals to DFPS or other regulatory or legal entities if appropriate. HHSC MCCO would also determine whether or not the MCO

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was non-compliant with contractual requirements (partially or wholly responsible for the incident) and if so, would review for potential contractual remedies.

Remediation

If an MCO fails to meet contractual requirements related to protection against or reporting of ANE, such as contracting with MLTSS providers that fail to meet standards outlined in Sections A and B, then HHSC has authority to use a variety of remedies, up to and including contract termination. HHSC has the authority to terminate or replace an MCO or its subcontractor(s), according to managed care contracts, if either are convicted of a criminal offense related to the neglect or abuse of members in connection with the delivery of an item or service.

Member Support

Texas maintains a consumer support system that is independent of the MCOs to assist members in understanding managed care and resolution of problems regarding services, benefits, access, and rights.

Texas' independent consumer supports system (ICSS) consists of HHSC's Medicaid/CHIP Division, Office of the Ombudsman (Ombudsman), the state's managed care Enrollment Broker (EB, "MAXIMUS"), and community support from the Aging and Disability Resource Centers (ADRCs). These entities operate independently of any Medicaid MCO and work with beneficiaries and MCOs to ensure beneficiaries seeking to enroll with a MCO understand the managed care program, MCO options, and the process for resolving issues.

Member complaints, including those that could involve critical incidents, are handled through the HHSC Office of Ombudsman. Response to complaints involving critical incidents include reaching out to the member/Authorized representative, for a detailed description of the issue; contacting the MCO for access to care cases; and if necessary contacting the MCO to perform a well-check.

If a consumer provides information that gives the Office of Ombudsman staff reason to suspect abuse, neglect, or exploitation, OO staff will:

- provide the consumer with contact information for the DFPS Texas Abuse Hotline;
- inform the consumer that the Office of Ombudsman staff must report it to DFPS;
- make a report to DFPS by:
 - phone (800-252-5400) if the situation is urgent and needs to be investigated within 24 hours; or
 - online submission if the situation is not urgent;
- document these actions in the system; and
- email their supervisor so they are aware of the report.

HHSC's Medicaid and CHIP Services Department provides guidance to the MCOs on Medicaid policy and managed care program requirements, reviews MCO materials, monitors the MCOs' contractual obligations, answers managed care inquiries, and resolves managed care complaints. HHSC's Medicaid

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and CHIP Services Department also monitors implementation of MCO corrective action plans and assesses damages when necessary.

Restraints, Seclusions, and Medication Management

HHSC licenses adult foster care providers serving four or more individuals, assisted living facilities, nursing facilities, home and community support services agencies (HCSSAs), day activity and health services (DAHS) facilities, and prescribed pediatric extended care centers (PPECCs). HHSC is responsible for ensuring compliance with licensing requirements and inspects licensed providers for compliance with licensing requirements, such as medication management and authorized use of restraint and seclusion. HHSC licensing inspections include medication administration review that is based on a sample of individual and resident records. The state may seek enforcement action, such as administrative penalties and license revocation, when harmful medication management practices are detected. HHSC survey staff may conduct follow-up surveys and inspections to ensure the provider has effectively implemented plans of correction required due to cited state violations. HHSC tracks the number of substantiated instances of licensure violations.

Restraint

Pursuant to federal and state rules, a waiver recipient has the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation. The state does permit the use of restraints in limited and appropriate circumstances, as detailed in this section. All allegations of improper restraints by providers licensed by HHSC are referred to HHSC for investigation.

STAR+PLUS HCBS services are provided in adult foster care (AFC) and assisted living facilities (ALFs)—both of which allow the use of restraints under certain circumstances. HHSC Long Term Care Regulation conducts licensing surveys of ALFs every two years and MCOs or a subcontractor of the MCO are responsible for annually ensuring AFC providers contracted with the MCO are following contracting standards for AFC providers. MCOs remain responsible for oversight of any contractors the MCOs use to recruit, enroll and oversee AFC providers. During licensing and contract reviews, documentation of unauthorized restraints identified, or restraints conducted outside of licensing or contract standards are addressed through contract actions or licensing citations.

HHSC maintains a Managed Long-term Services and Supports Ombudsman's Office responsible for documenting and resolving complaints received from individuals receiving STAR+PLUS services, including HCBS. The MLTSS Ombudsman may receive complaints about unauthorized restraints which would be referred to the MCO for resolution.

Adult Foster Care

All individuals receiving AFC have the right to be free from physical or chemical restraints not required to treat the resident's medical symptoms or imposed for purposes of discipline or convenience. A provider may use physical or chemical restraints only if the use is authorized in writing by a physician or if the use

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is necessary in an emergency to protect the resident or others from injury. A physician's written authorization for the use of restraint must specify the circumstances under which the restraint may be used and the duration for which the restraint may be used. Except in a behavioral emergency, restraint may only be administered by qualified medical personnel. The AFC provider must inform the resident verbally and in writing, before or at the time of admission, of his rights and responsibilities, including those related to restraint and seclusion. HHSC applies and enforces these requirements for both licensed and unlicensed AFC facilities pursuant to the provisions in the STAR+PLUS Handbook. AFC providers who provide services to four or more unrelated individuals must be licensed as ALFs and are also subject to the requirements discussed below.

In addition, AFCs licensed as Type A or B ALFs are also subject to ALF restraint rules that are specific to Type A or Type B facilities. These rules are found under TAC Title 26, Chapter 553, §553.41 (relating to Standards for Type A and Type B Assisted Living Facilities). Pursuant to these rules, all restraints for purposes of behavior management, staff convenience, or resident discipline are prohibited. A facility may use physical or chemical restraints only (1) if the use is authorized in writing by a physician and specifies: (a) the circumstances under which a restraint may be used; and (b) the duration for which the restraint may be used; or (2) if the use is necessary in an emergency to protect the resident or others from injury.

A restraint must not be administered under any circumstance if it obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose; impairs the resident's breathing by putting pressure on the resident's torso; interferes with the resident's ability to communicate; or places the resident in a prone or supine position. After the use of restraint, the facility must, with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made. If the resident refuses to see the physician, staff must document the refusal in the resident's record. As soon as possible but no later than 24 hours after the use of restraint, the facility must notify the resident's legally authorized representative or an individual actively involved in the resident's care, if there is such a person, that the resident has been restrained, unless the release of this information would violate other law.

Staff at Type A or B ALFs must attend training which includes practices to decrease the frequency of the use of restraint and alternatives to restraints. Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint. In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the required resident assessment. A facility may adopt policies that allow less use of restraint than allowed by these rules.

Assisted Living Facilities

ALFs must comply with restraint rules found in TAC Title 26, Chapter 553, §92.125 (relating to Resident's Bill of Rights and Provider Bill of Rights). Pursuant to these rules, ALF residents have the right to be free from physical and chemical restraints that are administered for the purpose of discipline or convenience

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and not required to treat the resident's medical symptoms. A provider may use physical or chemical restraints only if the use is authorized in writing by a physician or if the use is necessary in an emergency to protect the resident or others from injury. A physician's written authorization for the use of restraint must specify the circumstances under which the restraint may be used and the duration for which the restraint may be used. Except in a behavioral emergency, restraint may only be administered by qualified medical personnel.

Furthermore, Type A and Type B ALFs must also comply with restraint rules in TAC Title 26, Chapter 553, §553.41 (relating to Standards for Type A and Type B Assisted Living Facilities). Pursuant to these rules, all restraints for purposes of behavior management, staff convenience, or resident discipline are prohibited. A facility may use physical or chemical restraints only (1) if the use is authorized in writing by a physician and specifies: (a) the circumstances under which a restraint may be used; and (b) the duration for which the restraint may be used; or (2) if the use is necessary in an emergency to protect the resident or others from injury.

A restraint must not be administered under any circumstance if it obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose; impairs the resident's breathing by putting pressure on the resident's torso; interferes with the resident's ability to communicate; or places the resident in a prone or supine position. After the use of restraint, the facility must, with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made. If the resident refuses to see the physician, the facility must document the refusal in the resident's record. As soon as possible but no later than 24 hours after the use of restraint, the facility must notify the resident's legally authorized representative or an individual actively involved in the resident's care, if there is such a person, that the resident has been restrained, unless the release of this information would violate other law.

Staff at Type A or B ALFs must attend training which includes practices to decrease the frequency of the use of restraint and alternatives to restraints. Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint. In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the required resident assessment. A facility may adopt policies that allow less use of restraint than allowed by these rules.

Nursing Facilities

Nursing facilities must comply with restraint rules found in TAC Title 40, Chapter 19 (relating to Nursing Facility Requirements for Licensure and Medicaid Certification). Nursing facility providers may use restraints, of any kind, only with the orders of the attending physician. Residents must be informed in writing upon admission, and during their stay, of HHSC rules and the facility's policies related to the use of restraint and involuntary seclusion. As part of orientation, and annually, each employee must receive instruction regarding restraint reduction. If restraints are used to treat a resident's medical condition, the resident must be monitored hourly, and at a minimum, restraints must be released every two hours

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for a minimum of ten minutes, and the resident must be repositioned. Restraints that obstruct the resident's airway, impair the resident's breathing, interfere with the resident's ability to communicate, or place the resident in a prone or supine position are prohibited. The use of restraints and their release must be documented in the clinical record.

Home and Community Support Services Agencies

Members receiving contracted services from home health agencies, licensed as HCSSAs, have the right to be free from restraint when it is used for someone else's convenience or is meant to force the member to do something, or to punish the member (TAC Title 1, Chapter 353, Subchapter C (relating to Member Bill of Rights and Responsibilities)).

Day Activity and Health Services

Providers of DAHS require a license issued by HHSC in accordance with TAC Title 40, Chapter 98 (relating to Day Activity and Health Services Requirements).

DAHS providers must comply with licensure and program rules found in TAC Title 40, Chapter 98, §98.61 (relating to General Requirements) and §98.62 (relating to Program Requirements). Pursuant to this section, DAHS providers must provide an individual with a written list of the individual's rights, as outlined under the Texas Human Resource Code, Chapter 102, §102.004 (relating to List of Rights). §102.003 (relating to Rights of the Elderly) sets forth the specific rights addressed by §102.004. Under this section, individuals receiving DAHS have the right to be free from physical or chemical restraints that are administered for the purpose of discipline or convenience and are not required to treat the individual's medical symptoms. A person providing services may use physical or chemical restraints only if the use is authorized in writing by a physician or the use is necessary in an emergency to protect the individual or others from injury. A physician's written authorization for the use of restraint must specify the circumstances under which the restraint may be used and the duration for which the restraint may be used. Except in an emergency, restraint may only be administered by qualified medical personnel.

Seclusion

The state does not permit the use of seclusion. The state does not permit the use of seclusion as it relates to services delivered through managed long term services and supports. All allegations of improper seclusion of individuals receiving managed long term services and supports by providers licensed by HHSC are referred to HHSC for investigation.

Because licensing regulation for home and community support services agencies allow for seclusion in narrow circumstances under the order of a physician, HHSC issues direction to MCOs making it clear that the use of seclusion in a person's own home is not permitted even if allowed by HCSSA licensure.

Adult Foster Care

The use of seclusion in any licensed or unlicensed AFC is prohibited. The state applies and enforces these requirements for licensed and unlicensed AFC facilities under provisions in the STAR+PLUS Handbook.

Assisted Living Facilities

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The use of seclusion by Type A and Type B ALF providers is prohibited.

Nursing Facilities

Nursing facilities may not use involuntary seclusion on a resident. "Involuntary seclusion" is defined as the "separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed 24 hours, until professional staff can develop a plan of care to meet the resident's needs."

Home and Community Support Services Agencies

Members receiving services from home health agencies, licensed as HCSSAs, have the right to be free from seclusion when it is for someone else's convenience or is meant to force the member to do something, or to punish the member.

Day Activity and Health Services

Members receiving DAHS have the right to be free from seclusion when it is for someone else's convenience or is meant to force the member to do something, or to punish the member.

Medication Management

AFC providers, ALFs, nursing facilities, HCSSAs, and DAHS providers must provide medication management in accordance with licensing standards. The State enforces the same requirements for unlicensed AFC facilities under provisions in the STAR+PLUS Handbook.

A registered nurse who supervises a medication aide or delegates medication administration must provide ongoing supervision and any necessary training to the unlicensed person. Registered nurses must follow procedures for delegation in accordance with relevant law and rule. An RN that fails to properly supervise or delegate is subject to action by the Texas Board of Nursing.

HHSC conducts surveys of HCSSAs licensed providers who administer medications to ensure they have policies for maintaining a current medication list and a medication administration record. HHSC Long Term Care Regulation is a separate division within HHSC which serves as the Medicaid agency.

HHSC UR conducts annual MCO reviews of a statistically valid random sample of the MCO's members. Through the review, HHSC conducts interviews with STAR+PLUS HCBS members. HHSC UR provides updates to the service coordinators after each member interview. If a critical incident, such as a medication error, is identified during the UR or through disclosure by the member during the interview, HHSC UR updates the MCO to intervene.

All access to care and health and safety issues are referred to HHSC MCCO complaints team on behalf of the member so that the issue can be tracked and resolved. Referrals may also be made to other entities when appropriate, such as the board of nursing if a licensed nurse is involved, or HHSC Long Term Care Regulation for provider licensure issues which would include problems with medication administration.

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Adult Foster Care

All AFC providers must ensure that all medications are taken as prescribed and in a timely manner according to the instructions on the medication label or instructions from the resident's physician. The AFC provider may administer medications only as allowed by state law or regulation, and prescription medications must be kept in a locked container. Medications must be disposed of when the resident's medication regimen changes or when the medication is out of date. The AFC provider must ensure that a resident takes over-the-counter medications according to the package directions. Excessive use of these medications must be reported to the AFC caseworker. The AFC provider must inform the resident verbally and in writing, before or at the time of admission, of his rights and responsibilities. The State enforces the same requirements for unlicensed AFC facilities under provisions in the STAR+PLUS Handbook.

In addition, AFCs licensed as Type A or B ALFs, which are AFCs serving 5 or more residents and licensed prior to September 1, 2014, and AFCs with a current contract with HHSC, serving 4 or more residents and licensed after September 1, 2014, are also subject to ALF medication management rules that are specific to Type A or Type B facilities. These rules are found in TAC Title 40, Chapter 92, §92.41 (relating to Standards for Type A and Type B Assisted Living Facilities). Pursuant to these rules, medications must be administered according to physician's orders.

Residents who choose not to or who cannot self-administer their medications must have their medications administered by a person who: (i) holds a current license under state law that authorizes the licensee to administer medication; (ii) holds a current medication aide permit and functions under the direct supervision of a licensed nurse on duty or on call by the facility and that nurse authorizes the licensee to administer medication; or (iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, and must have been trained by the nurse to administer medications or have had the nurse verify the training of the employee. The delegation of the administration of medication is governed by TAC Title 22, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

A resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist. Each resident's medications must be listed on an individual resident's medication profile record. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance. Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications and if security of medications can continue to be maintained. The facility must keep a written record of counseling. Residents who choose to keep their medications locked in a central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication. A facility staff member must remain in or at the storage area the entire time any resident is present.

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Facility staff immediately must report to the resident's physician and responsible party any unusual reactions to medications or treatments. When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications or treatments as prescribed. The facility must provide a locked area for all medications. Medications no longer being used by the resident are to be kept separate from current medications and are to be disposed of according to state law.

Assisted Living Facilities

ALF providers must comply with medication management rules found in TAC Title 40, Chapter 92, Section 92.41 (relating to Standards for Type A and Type B Assisted Living Facilities). Pursuant to these rules, medications must be administered according to a physician's orders.

Residents who choose not to or who cannot self-administer their medications must have their medications administered by a person who: i) holds a current license under state law that authorizes the licensee to administer medication; (ii) holds a current medication aide permit and functions under the direct supervision of a licensed nurse on duty or on call by the facility and that nurse authorizes the licensee to administer medication; or (iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, and must have been trained by the nurse to administer medications or have had the nurse verify the training of the employee. The delegation of the administration of medication is governed by TAC Title 22, Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

A resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist. Each resident's medications must be listed on an individual resident's medication profile record. Supervision of a resident's medication regimen by facility staff may be provided to a resident who is incapable of self-administering without assistance. Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications and if security of medications can continue to be maintained. The facility must keep a written record of counseling. Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication. A facility staff member must remain in or at the storage area the entire time any resident is present.

Facility staff immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments. When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications or treatments as prescribed. The facility must provide a locked area for all medications. Medications no longer being used by the resident are to be kept separate from current medications and are to be disposed of according to state law. Providers are required to record any type of medication error, regardless of severity, in the resident's clinical record.

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Nursing Facilities

Nursing facility providers must comply with medication management rules found in TAC Title 40, Chapter 19 (relating to Nursing Facility Requirements for Licensure and Medicaid Certification). A nursing facility provider must ensure that medications are administered pursuant to the ordering physician's directions. Each resident must have an individual medication record. An individual may self-administer medications if the interdisciplinary team has determined that this practice is safe. The facility nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record them in the resident's record. Medication errors include, but are not limited to, administering the wrong medication, administering at the wrong time, administering the wrong dosage, administering by the wrong route, omitting a medication, or administering to the wrong resident.

When not in use, a medication cart must be secured in a designated area. Self-administered medications may be kept in a locked cabinet in the resident's room. When medications are self-administered, the facility remains responsible for medication security, accurate information, and medication compliance. Medications of deceased residents, medications that have passed the expiration date, and medications that have been discontinued must be securely stored and reconciled. These medications must be disposed of according to federal and state laws or rules on a quarterly basis.

Home and Community Support Services Agencies

Home health agencies licensed as HCSSAs must comply with medication management rules found in TAC Title 26, Chapter 558, §558.300 (relating to Medication Administration). A HCSSA must adopt and enforce a written policy for maintaining a current medication list and a current medication administration record. An individual's healthcare provider must order administration of medication. Each individual must have an individual medication record. An individual delivering care must report any adverse reaction to a supervisor and document this in the individual's record on the day of occurrence. If the adverse reaction occurs after regular business hours, the individual delivering care must report the adverse reaction as soon as it is disclosed. Notification must also be made in the medication administration record or clinical notes of medications not given and the reason.

Day Activity and Health Services

DAHS require a license issued by HHSC in accordance with TAC Title 40, Chapter 98 (relating to Day Activity and Health Services Requirements).

DAHS providers must comply with medication management rules found in TAC Title 40, Chapter 98, §98.62 (relating to Program Requirements).

The facility nurse is responsible for obtaining physician's orders for medication and treatments to be administered, and administering medication and treatments. Individuals who choose not to or cannot self-administer their medications must have their medications administered by a person who holds a current license under state law which authorizes the licensee to administer medications. All medication

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prescribed to individuals must be dispensed through a pharmacy or by the individual's treating physician or dentist. Each individual's medications must be listed on his or her medication profile record.

Assistance with medication self-administration by licensed nursing staff may be provided to individuals who are incapable of self-administering without assistance. Individuals who self-administer their own medications must be counseled at least once a month by licensed nursing staff to ascertain if the individuals continue to be capable of self-administering their medications and/or treatments. A written record of counseling must be kept by the facility.

The facility director, the activities director, or a facility nurse must immediately report to the individual's physician and responsible party any unusual reactions to medications or treatments. When the facility supervises or administers the medications, a written record must be kept when the individual does not receive or take his medications and/or treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed. The facility must provide a locked area for all medications. Medications no longer in use must be disposed of according to state law.