



Transition of Day Habilitation Services

As Required by

2020-21 General Appropriations Act, House Bill

1, 86th Legislature, Regular Session, 2019

(Article II, Health and Human Services

Commission, Rider 21)

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Executive Summary

This plan for the transition of day habilitation services is submitted in compliance with the 2020-21 General Appropriations Act, House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission [HHSC], Rider 21).¹

Rider 21 requires HHSC to develop a plan to replace day habilitation services in Medicaid 1915(c) home and community based services (HCBS) waiver programs for individuals with intellectual and developmental disabilities (IDD) with more integrated services that maximize participation and integration of individuals with IDD in the community. HHSC must submit the plan by January 1, 2021. Rider 21 provides that the plan is approved unless the Legislative Budget Board or the Governor issues a written disapproval within 15 business days of the plan's submission. Any request for additional information from the Legislative Budget Board shall interrupt the counting of the 15 business days.

The Centers for Medicare and Medicaid Services (CMS) issued regulations in 2014 governing the settings where Medicaid HCBS are provided. States must comply with the regulations by March 17, 2023.² If CMS determines a service does not comply with the regulations, CMS may take compliance action, which could include loss of federal matching funds for the noncompliant service.³ Based on available information, HHSC assumes a fiscal impact for changes to day habilitation services, which will require additional opportunities for community participation to comply with federal regulations. All other HCBS settings covered by Texas Medicaid can be brought into compliance with the federal regulations by making policy changes and increasing provider education.

Since 2014, HHSC has collaborated with stakeholders, including the Promoting Independence Advisory Committee⁴ and Intellectual and Developmental Disability System Redesign Advisory Committee (IDD SRAC), on a plan to bring day habilitation into compliance with the federal regulations. This work resulted in a

¹ [General Appropriations Act \(GAA\) 2020 - 2021 Biennium \(state.tx.us\)](#)

² CMS initially gave states until March 2019 to comply with the regulation, but in June 2017 issued an extension until March 2022. In July 2020, CMS provided an additional one-year extension due to COVID-19, giving states until March 2023 to comply.

³ Per 42 CFR 441.301(c)(6)(v), CMS may take compliance actions against a state that does not submit an approvable transition plan to CMS or that fails to comply with its approved transition plan. Action could include, but is not limited to, deferral or disallowance of federal financial participation.

⁴ The Promoting Independence Advisory Committee has since ended. However, many of the same stakeholders continue to participate in the Promoting Independence Workgroup.

proposed new, more integrated service to replace day habilitation referred to as individualized skills and socialization (ISS).

Pursuant to Rider 21, HHSC created a plan to replace day habilitation services with ISS. As part of the process, HHSC researched other states' day programming services to determine the extent of changes needed for compliance with the HCBS settings regulations. HHSC found that other states had implemented approaches similar to ISS to achieve compliance. Based on this research, stakeholder input, and available information from CMS, HHSC presumes replacing the day habilitation service with ISS would comply with federal requirements. Without ISS, CMS would likely expect residential services to provide these opportunities to comply with the HCBS regulations.

ISS maximizes integration and participation in the community. ISS also supports residential services in the state's compliance effort. Residential services currently do not provide individualized transportation and are unable to support each resident to engage in activities of their choice during the day. ISS would help support people in residential settings by providing increased opportunities for community integration. Implementation of ISS requires changes to:

- Include an off-site component;
- Lower provider staffing ratios to support individuals in participating in activities consistent with the goals in their person-centered plan;
- Implement an hourly rate rather than a daily rate to provide greater flexibility in scheduling of an individual's day; and
- Create a registry as an initial step towards oversight of ISS programs.

An appropriation to implement ISS is a key component of this plan. HHSC submitted an exceptional item in its fiscal years 2022-23 Legislative Appropriations Request to implement ISS to comply with federal requirements for community integration for individuals with disabilities. Based on this Rider 21 plan, the estimated cost to implement ISS is \$92,180,884 in All Funds and \$35,774,530 in General Revenue for the 2022-23 biennium. To meet the federal compliance deadline of March 17, 2023, HHSC recommends implementing this new service on September 1, 2022.

1. Introduction

Rider 21 requires HHSC to develop a plan to replace day habilitation services in HCBS waiver programs for individuals with IDD with more integrated services that maximize participation and integration of individuals with IDD in the community. HHSC must submit the plan, including recommendations and an estimate of fiscal impact, by January 1, 2021 to the Legislative Budget Board, Governor, Lieutenant Governor, Speaker of the House, and members of the Senate Finance Committee and House Appropriations Committee. The plan must be based on the most recent caseload and cost forecast submitted pursuant to Special Provisions, §8, Caseload and Expenditure Reporting Requirements and the most recent guidance available from CMS. Rider 21 provides that the plan is approved unless the Legislative Budget Board or the Governor issues a written disapproval within 15 business days of the plan's submission.⁵

A sufficient appropriation is a key component of the plan and is necessary to implement ISS as proposed in the plan. HHSC included an exceptional item in its fiscal year 2022-23 Legislative Appropriations Request to comply with federal requirements for community integration for individuals with disabilities.

⁵ Any request for additional information from the Legislative Budget Board shall interrupt the counting of the 15 business days.

2. Background

Effective March 17, 2014, CMS issued a regulation governing the settings in which HCBS are provided.⁶ The regulation provides, in part, that a setting must support a person's full access to the greater community, including providing opportunities to engage in community life, work in competitive integrated settings, and control personal resources. The rule states Medicaid HCBS may not be provided in locations having the qualities of an institution, such as a nursing facility or an intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID), or settings which isolate people receiving Medicaid HCBS. The regulation also sets forth a heightened scrutiny process for states to submit information arguing that a setting does not have the qualities of an institution and meets the rule's requirements.

CMS initially gave states until March 2019 to comply with the regulation, but in June 2017 issued an extension until March 2022. In July 2020, CMS provided an additional one-year extension due to COVID-19, giving states until March 2023 to comply.⁷ If CMS determines a service does not comply with the regulations, CMS may take compliance action, which could include loss of federal matching funds for the noncompliant service.

Day habilitation is a service in the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and the Deaf Blind with Multiple Disabilities (DBMD) Medicaid waiver programs serving people with IDD. People go in person to a day habilitation setting during the day and receive supports to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to live successfully in home and community-based settings.

HCBS may be delivered in a person's home, a group home, and community settings like places of employment or day habilitation settings. The regulation requires that a person receiving Medicaid HCBS must have the same access and engagement with their community as people not receiving Medicaid HCBS. Based on available information from CMS and research on other states, HHSC presumes day habilitation sites are non-compliant with the regulations because they require additional opportunities for people to interact in the community, participants

⁶ 42 CFR §441.301(c), <https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider>.

⁷ Home and Community-Based Settings Regulation – Implementation Timeline Extension and Revised Frequently Asked Questions [smd20003_2.pdf](#)

typically spend time only with other people with disabilities, and people do not usually leave the site during the day.

Federal Approval Process

Each state must submit for CMS approval a statewide transition plan (STP) detailing how it plans to bring its HCBS settings into compliance by the deadline. The STP assesses current compliance with the HCBS Settings Final Rule as well as identifying strategies and timelines for coming into compliance with the new rule. HHSC does not have an approved STP yet. Following HHSC's most recent STP submission in November 2019 which CMS did not approve, CMS continues to request additional detail be added to Texas' STP regarding remediation. Throughout 2020, HHSC worked through CMS' requested edits and additions. Texas will resubmit the STP for approval in Spring 2021.

The federal HCBS regulation also lays out a heightened scrutiny process by which a state can argue, and CMS can determine, that a setting having characteristics of an institution overcomes that presumption. The heightened scrutiny process is an opportunity for a state to demonstrate to CMS that a setting that appears to isolate individuals from the community meets the HCBS setting requirements.⁸

In March 2019, CMS released guidance that requires a state to identify and provide for public comment a list of isolating settings that the state determines have completed remediation (i.e., are in compliance with the HCBS setting requirements) as of July 1, 2020. However, in July 2020, due to COVID-19, CMS provided an additional one-year extension on all heightened scrutiny deadlines. A state must also include a list of settings that the state does not believe can overcome the presumption that the settings are institutional by March 17, 2023 and, therefore, may not receive Medicaid funding for HCBS after that date.

The federal HCBS guidance also requires states to submit to CMS, by the end of October 2021, a list of all isolating settings that did not complete remediation by July 1, 2021, but the state believes can achieve compliance by March 17, 2023. This list will be used by CMS to select a sample of settings for CMS to conduct a "heightened scrutiny review". The state must submit a packet of evidence to CMS for each setting in the sample within 30 days after receiving the sample from CMS. HHSC believes most settings in which day habilitation is currently provided will not meet the HCBS settings requirements by July 1, 2021 and thus may require

⁸ Re: Home and Community-Based Settings Regulation – Heightened Scrutiny, <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/smd19001.pdf>.

heightened scrutiny. However, if day habilitation is discontinued and replaced by ISS, day habilitation settings may not require heightened scrutiny.

3. Current Day Habilitation Services

As required by CMS, in the years since the regulations were adopted, HHSC and the legacy Department of Aging and Disability Services (DADS) conducted assessments of all applicable HCBS programs:⁹ assessing current policies and processes, collecting provider self-assessments, surveying program participants and service coordinators, and assessing HCS and DBMD residential and non-residential settings, which included employment and day habilitation.

The day habilitation service is part of the HCS, TxHmL, and DBMD waivers.¹⁰ Approximately 19,000 people on average received day habilitation services each month across these waivers in 2019.¹¹ Day habilitation is currently offered in a congregate setting generally without supports for community integration or person-centered activities.

The number of participants varies by program; however, the largest number of people receiving day habilitation is in HCS with approximately 17,303 average monthly users in 2019, followed by TxHmL with 2,039, and DBMD with 33. In HCS, rates vary by the person's level of need¹² (LON). The current daily rates for day habilitation in HCS by LON are shown in Table 1.

⁹ Programs impacted by the HCBS regulations are the HCS, TxHmL, CLASS, DBMD, Medically Dependent Children's Program (MDCP) and Youth Empowerment Services (YES) 1915(c) waiver programs, STAR PLUS HCBS 1115 waiver program and the HCBS-Adult Mental Health 1915(i) program.

¹⁰ Day habilitation is also available to people living in ICFs/IID, but ICFs/IID are not required to comply with the HCBS settings rules.

¹¹ 2019 data were used in place of 2020 data due to the impact of the COVID-19 public health emergency on day habilitation.

¹² Level of need is an assignment given by HHSC to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based. The level of need ranges from intermittent to pervasive plus.

Table 1. Day Habilitation Rates by LON

LON	Base Rate¹³	% Day Habilitation Attendees (based on FY 2019 data)
Intermittent (LON 1)	\$28.13	23.1%
Limited (LON 5)	\$30.95	47.43%
Extensive (LON 8)	\$36.57	20.07%
Pervasive (LON 6)	\$45.68	8.57%
Pervasive Plus (LON 9)	\$149.50	0.82%

Currently, comprehensive waiver providers¹⁴ are contracted and monitored directly by HHSC. Day habilitation is provided by comprehensive waiver providers either directly or through subcontracts. HHSC does not directly regulate or contract with day habilitation providers, and HHSC on-site visits to day habilitation centers are limited to program participants included in the annual HHSC survey sample determined for HCS and TxHmL comprehensive provider certification.¹⁵ DBMD contract monitoring does not include on-site review of day habilitation sites.

Since HHSC does not contract directly with day habilitation providers, HHSC does not maintain a list of providers. It is possible there are some day habilitation locations that HHSC has not yet made an on-site visit to, due to the individual site not coming up through the monitoring of the comprehensive provider.

Additionally, the limited HHSC oversight of day habilitation prevents HHSC from ensuring a consistent level of services across programs. In July 2015, the Sunset Advisory Commission's review of DADS¹⁶ found "tremendous variation in the quality of programming and environment, many good but others quite poor." If HHSC staff

¹³ Providers participating in the Rate Enhancement program may have a higher rate based upon their level of participation.

¹⁴ An entity contracted with HHSC to provide or subcontract for all waiver services.

¹⁵ A random selection of individuals of approximately 10% of the census for the contract.

¹⁶<https://www.sunset.texas.gov/public/uploads/files/reports/DADS%20Staff%20Report%20with%20Final%20Results.pdf>

visit a day habilitation provider and find that services are substandard, direct action cannot be taken against the day habilitation provider but instead must be taken against the comprehensive waiver provider.

As outlined in the HHSC Rate Tables¹⁷ for the 2022-23 biennium, HHSC analysis of reimbursement rates for the existing day habilitation service description showed that those in the HCS waiver for people with mid-level needs (LON 5), who most commonly use this service, are nearly 18 percent below the methodologically supported rate. Even if the current reimbursement rates were methodologically supported, the services would still not be in compliance with the federal regulations. HHSC assumes the ISS rates are required to enable providers to offer more opportunities for people to participate in off-site community activities through their day habilitation programs.

COVID-19 Impacts

Day habilitation services have been significantly impacted by the COVID-19 public health emergency. Many day habilitation centers have not been able to safely function as normal. HHSC has allowed the provision of day habilitation in homes during this time, impacting the financial sustainability for providers. It is unknown when day habilitation centers will resume normal operations. Additionally, it is unknown whether all day habilitation centers will reopen when the public health emergency ends.

¹⁷ <https://rad.hhs.texas.gov/rate-tables>

4. Individualized Skills and Socialization

Pursuant to Rider 21, HHSC developed a plan to replace the day habilitation service currently available in the waiver programs with a new service called ISS. This new service would provide an on-site (center-based) component and an off-site (community-based) component. A key component of ISS is lower staff ratios to allow staff to provide more individual attention to program participants both on-site and off-site. Lower ratios also permit the development of more personalized habilitative activities and optimize a participants' initiative, autonomy, and independence in making life choices (see [42 CFR 441.301\(c\)\(4\)\(iv\)](#)). To create the proposed ratios, HHSC sought input from stakeholders who were asked to suggest ratios for both "high-control" and "low-control" environments.¹⁸ These ratios were adjusted to develop a mid-level ratio which could meet regulatory requirements but also contain the fiscal impact of the new service.

On-site Individualized Skills and Socialization

To align with the federal regulations for person-centered planning, choice, and autonomy related to daily activities and social interactions, on-site ISS would be focused on achieving outcomes identified in person-centered plans to a much greater degree than the current day habilitation service. Group activities would be reduced, with the focus instead on person-centered activities related to skill development and gaining greater independence, socialization, community participation, or future volunteer or employment goals.

On-site ISS cannot include skills tests or similar thresholds a person must meet prior to participating in similar activities off-site. At any time, a person must be supported to pursue and achieve employment through school, vocational rehab, or waiver employment services.

The existing HCS LON structure is used as the basis for the proposed mid-level staff ratios that meet the need of each level¹⁹, as shown in Table 2.

¹⁸ A "high control" setting allows staff to maintain more control of situations that might trigger an unfavorable response from the individual. Examples include the library, a classroom, or a movie theater. A "low control" setting is one in which staff may have a more difficult time assisting individuals to regulate their behavior. Examples include a state fair, shopping mall, or crowded park.

¹⁹ Individuals in DBMD will receive services at the ratios developed for individuals with a LON 8. As is current practice, individuals in TxHmL will receive services as required for LON 5.

Table 2. ISS On-site Staffing Ratios and Rates

LON	Ratio	Estimated Rate
Intermittent (LON 1)	1:7	\$4.95/hr
Limited (LON 5)	1:5	\$5.83/hr
Extensive (LON 8)	1:3	\$7.85/hr
Pervasive (LON 6)	1:3	\$7.85/hr
Pervasive Plus (LON 9)	1:1	\$17.96/hr

Off-site Individualized Skills and Socialization

Off-site ISS provides activities integrated into the larger community to promote the development of skills and behavior that support greater independence and personal choice, and they must be consistent with achieving the outcomes identified in the person's service plan. These parameters address regulatory requirements for settings to be integrated and to support full access to the greater community to the same degree as a person not receiving HCBS services (see [42 CFR 441.301\(c\)\(4\)\(i\)](#)), as well as to optimize individual initiative, autonomy, and independence in making life choices (see [42 CFR 441.301\(c\)\(4\)\(iv\)](#)). The settings options are identified and documented in the person-centered service plan. They are based on the person's needs and preferences (see [42 CFR 441.301\(c\)\(4\)\(ii\)](#)).

As shown in Table 3, the following mid-level ratios for off-site ISS were determined in the same manner as on-site ISS.²⁰

²⁰ A rate "add on" is available for people with high support needs, which include but are not limited to medical, behavioral, or supervisory needs.

Table 3. ISS Off-site Staffing Ratios and Rates

LON	Ratio	Estimated Rate
Intermittent (LON 1)	1:6	\$5.19/hr
Limited (LON 5)	1:4	\$6.42/hr
Extensive (LON 8)	1:2	\$10.12/hr
Pervasive (LON 6)	1:2	\$17.52/hr
Pervasive Plus (LON 9)	1:1	\$17.52/hr

Off-site and On-site Time

The federal HCBS regulations are clear that people must have full access to the greater community. This includes opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as people not receiving Medicaid HCBS. As a result, ISS includes an off-site component that is not available in the current day habilitation model. Other states' expectations for time spent in the community range from 25 percent to 100 percent of the time spent in the service.

Pennsylvania's model uses a 25 percent off-site benchmark. Pennsylvania also has a very comprehensive employment first plan which in conjunction with their day programming service provides ample opportunity for community integration. Pennsylvania initially set forth a benchmark of 75 percent, but this was reduced as a result of stakeholder input. HHSC assumes a 25 percent community integration goal for ISS.

Provider Qualifications

Provider qualifications for ISS are similar to qualifications currently required for day habilitation, but with an additional requirement that the provider be registered with HHSC. To serve people in DBMD, HCS, or TxHmL, the ISS provider would need to be either a TxHmL or HCS comprehensive provider, a DBMD program provider, or a subcontractor of the TxHmL, HCS, or DBMD provider. Additionally, the provider would need to meet all requirements to become registered to provide ISS, including

completing required training and providing business information such as location and owner.

Monitoring

Federal HCBS regulations require states to demonstrate ongoing oversight of settings to ensure compliance with the regulations. Oversight for ISS providers would need to be conducted by new HHSC staff for the TxHmL and HCS programs. Current contract monitoring of DBMD providers would ensure the ISS provider meets all requirements for the DBMD program. To ensure all ISS provider locations are known to HHSC, providers would be required to register with HHSC. Additional information on oversight of these providers is included in the ISS Provider Oversight section of this report below.

Implementation Date

To implement the ISS benefit, HHSC would need to complete waiver amendments, rule promulgation, IT systems changes, and provider education and outreach. There are several feasible implementation dates for ISS since the federal compliance deadline has been extended by one year to March 1, 2023. The benefit could be implemented by September 1, 2022, allowing six months before the federal compliance deadline to resolve any issues and make adjustments. A December 1, 2022, implementation of ISS is also possible and would allow HHSC three months to work out any issues before the federal compliance deadline. Due to the level of changes required of providers to implement and the potential need for providers to hire new staff once funding is available, HHSC recommends implementing on September 1, 2022 with full compliance not required until March 1, 2023.

5. ISS Provider Oversight

Today, HHSC has no direct oversight of day habilitation providers because comprehensive waiver program providers that directly contract with HHSC either subcontract for this service or provide it directly. HHSC must add resources for ISS provider oversight to ensure providers implement the changes described above, safeguard the health and safety of the people receiving services, and ensure that compliance is sustained over time.

State licensure of ISS providers would provide the strongest regulatory health and safety protections for individuals in the program. It also would offer a fuller array of enforcement actions that the state can take against providers for failure to comply with health and safety regulations.

However, as an interim step prior to full licensure of the new provider type, another option is to establish an ISS provider registration process with both external and internal facing capabilities. ISS providers would be required to complete required training as well as providing necessary information to HHSC. The external functions would require ISS providers to enter their information into the registry and upload required documents directly to HHSC. Among the information ISS providers would be required to submit before they could be posted to the public-facing registry on the HHSC website are:

- Business entity
- CEO/owning individuals
- Location
- Contracted providers (providers who use this entity for ISS services)
- Maximum number of people allowed in the program
- Date open for business
- Proven ability to upload documents to HHSC Regulatory Services

Internally, the registry would allow HHSC to learn the number of ISS providers statewide and their location. Because day habilitation providers are not directly regulated by the state, it is not known exactly how many are currently providing services and where.

ISS providers would be required to join the HHSC registry before they could contract with a comprehensive Medicaid waiver provider, including the HCS program, which has the most individuals receiving day habilitation services. If HHSC determines through an annual survey or investigation that a comprehensive

provider is not using a registered ISS provider, it could cite the comprehensive provider for a regulatory violation and require it to come into compliance.

HHSC would require statutory authority to explicitly authorize HHSC to enter these facilities to assess ISS providers' compliance with HCBS regulations. HHSC staff would use any interim period between implementation of ISS and the March 2023 deadline for federal compliance to offer guidance and training to providers on these requirements. HHSC also could implement a hold-harmless period, during which on-site visits are held and ISS providers are informed of determinations, but no violations are cited, or enforcement actions taken against them.

HHSC estimates additional staff would be required to establish and maintain the ISS registry as well as to assess ISS provider compliance as providers begin operations statewide. HHSC would charge a reasonable fee to ISS providers to join the registry, which could eventually help offset some of the costs to the state.

It is important to note that a registry is not equal to full regulatory oversight, which requires providers to meet an array of state requirements to receive a license, as well as pass on-site inspections by HHSC staff to assess health and life safety code compliance. As noted, full regulatory oversight also would allow the state to issue citations for regulatory violations and take direct enforcement actions – such as issuing administrative penalties or revoking a license – against ISS providers for more serious failure to comply with state regulations.

Without full regulatory oversight, if HHSC identifies a health and safety risk to individuals receiving ISS services, it can only take enforcement or other regulatory action against the comprehensive provider, which is the current process. Comprehensive providers would remain responsible for ensuring the health and safety of individuals in their subcontracted ISS settings, and they could terminate a subcontract with an ISS provider for failure to do so if needed to come into compliance with all regulatory requirements.

6. Comparisons to Other States

HHSC researched other states' day programs using statewide transition plans, state presentations, and conversations with state officials. Additional information regarding other states can be found in [Appendix B](#).

Each state reviewed, including Tennessee, Ohio, Pennsylvania, and Nebraska, took different approaches to reach compliance with the CMS settings regulations. HHSC's plan for implementing an ISS service with both a community component and a facility-based component is consistent with other states. Pennsylvania set a benchmark of 25 percent community integration, but other states did not set benchmarks, instead relying on the person to determine how much integration they desired.

The research on other states also identified differences between the rates that HHSC is paying for day programming compared to other states. All the other states reviewed currently pay higher rates for their day programming service.

Of the states reviewed, three of the four have direct contractual or licensure relationships with their day programming providers. Ohio's monitoring appears to be similar to Texas' current structure where HHSC monitors the waiver services provider and only monitors the day programming when a person is selected for monitoring that used that service. Ohio reported they are currently working to improve their oversight efforts but did not offer specifics.

HHSC has received feedback from some stakeholders to remove the facility-based service in its entirety. It appears that other states have not moved in this direction, as all four states reviewed maintain the option for a facility-based service.

7. Stakeholder Feedback

HHSC consulted the IDD SRAC on potential options to scale the ISS service. The IDD SRAC is composed of people with IDD who receive Medicaid supports, representatives of Medicaid health care and long-term services and supports providers, managed care organizations, and advocates for and family members of people with IDD.

Off-site and On-site Time

Stakeholders had differing opinions on benchmarks for time off-site. It was generally agreed that time off-site should only be a goal and not an amount that should be enforced. Stakeholders instead advocated for a person-centered approach using each person's plan to determine if they would want more or less than 25 percent of time off-site. Additionally, one stakeholder suggested a phased-in approach where the state begins with 25 percent off-site and then progresses over time to 50 percent of time off-site.

Provider Staffing Ratios

Stakeholders felt that a maximum ratio of 1:5 would be needed to ensure successful community integration. Multiple stakeholders had concerns that raising the maximum ratios could jeopardize individualization of services and prevent services from being person-centered. Multiple stakeholders also expressed a need for a 2:1 ratio to support some people with higher medical or behavioral needs.

Implementation Date

Stakeholders felt that a September 1, 2022 implementation date, which allows six months before the final compliance deadline, would be a reasonable timeline to implement the ISS benefit. They had concerns with any less time than six months.

8. Fiscal Impact Estimates

Rider 21 requires HHSC to develop a plan, including recommendations and a fiscal impact estimate, to replace current day habilitation services in waiver programs for individuals with IDD with more integrated services that maximize participation and integration in the community. In response to Rider 21, HHSC developed this plan to implement ISS. A sufficient appropriation is a key component of the plan and is necessary to implement ISS as proposed in the plan. HHSC included an exceptional item in its fiscal year 2022-23 Legislative Appropriations Request to comply with federal requirements for community integration for individuals with disabilities.

HHSC recommends:

- Assuming 25 percent of services are provided off-site, using mid-level staffing ratios.
- Increasing rates for ISS to support off-site services.
- Increasing rates to support lower staffing ratios.
- Creating a registry for oversight of the new service in the interim and pursuing a state licensure for stronger oversight in the future.
- Implementing on September 1, 2022, with an expectation of compliance by March 1, 2023.

HHSC submitted an exceptional item request to the 86th Legislature in the amount of \$284,471,850 in All Funds for the 2020-21 biennium to fund ISS. This exceptional item was not funded.

HHSC has submitted an exceptional item request for the 2022-23 biennium. For this Rider 21 plan, the estimated fiscal impact for fiscal years 2022-26 to implement ISS is included in the table below.

Table 4. ISS Cost by Fiscal Year

Fiscal Year	All Funds	General Revenue
2022²¹	\$622,145	\$311,073
2023	\$91,558,739	\$35,463,457

²¹ ISS does not implement until fiscal year 2023 so the only costs assumed for fiscal year 2022 are for IT systems changes.

Fiscal Year	All Funds	General Revenue
2024	\$91,558,739	\$35,463,457
2025	\$91,558,739	\$35,463,457
2026	\$91,558,739	\$35,463,457

These costs reflect the additional funds needed for an increase in reimbursement rates, lower staff to client ratios, additional support staff and new information technology, and are in addition to the current costs that will continue to be needed to provide the service. The current costs will still be needed to provide ISS going forward and the projections are detailed for fiscal years 2022-26 in the chart below. The below costs are already accounted for in the base budget and are not part of the exceptional item request.

Table 5. Projected Day Habilitation Costs by Fiscal Year

Fiscal Year	All Funds	General Revenue
2022	\$110,064,728	\$42,396,933
2023	\$143,553,433	\$55,339,849
2024	\$145,044,835	\$55,914,784
2025	\$144,843,578	\$55,837,199
2026	\$148,087,526	\$57,087,741

Since the last legislative session, HHSC has updated assumptions for the fiscal impact estimates for ISS based on a better understanding of CMS’ requirements for compliance. This better understanding is a result of reviewing other states day programming services with varying levels of CMS approval. The previous exceptional item assumed 50 percent of time off-site and with lower staff-to-person ratios with the maximum being 1:5. This plan assumes 25 percent time off-site and maximum ratios of 1:7. The current daily rates for day habilitation in HCS, which were utilized in determining the fiscal estimate, were effective September 1, 2019.

Ultimately, this plan is subject to CMS approval. If CMS does not approve the plan, adjustments will need to be made to meet expectations.

Rates Impact

Based on the recommendations above, the rate impact for ISS is estimated at \$90,095,305 in All Funds and \$34,731,740 in General Revenue for each year of fiscal years 2023-26.

Staffing Costs

Utilization Review Staff

This request is expected to increase workload for both nurses in the field doing face to face reviews, and desk reviewers handling HCS, TxHmL, and DBMD. Two program specialists and four nurses will be needed to accommodate this request. Costs for these staff are estimated at \$388,896 in All Funds and \$194,448 in General Revenue for each year of fiscal years 2023-26.

Oversight Staff

To implement the registry, HHSC will need two full-time equivalent (FTE) positions: (1) an IT programmer to update the online long-term care licensing portal to accommodate the registry; and (2) a Regulatory Services licensing specialist to maintain the registry, including posting new providers, verifying their registry information is accurate and complete, and removing providers from the registry if they cease operations. To monitor compliance with the federal HCBS requirements, HHSC will need 16 FTEs to conduct on-site reviews and provide administrative support. Costs for these staff are estimated at \$1,074,538 in All Funds and \$537,269 in General Revenue for each year of fiscal years 2023-26.

IT

Funds for IT are needed to create a Provider Registration Database with both internal and external functionality to support oversight of ISS. One time costs for these changes are estimated at \$622,145 in All Funds and \$311,073 General Revenue.

Future Considerations

Overall, Texas Medicaid HCBS services are in a good position for compliance with the HCBS settings regulations. Although ISS would be a compliant service it does have some limitations, such as limited hours and limited weekend availability. Due to these limitations, stakeholders have suggested looking at additional ways to

enhance community participation in the future. These additional options include two new services called Community Integration and Community Integration Support or enhancing current services to meet the same objectives.

Community integration services or service enhancements include non-work related activities customized to individual goals to access and experience community participation as required by HCBS settings regulation 42 CFR 441.301(c)(4)(i).²² Community integration could be provided outside of the person's residence and would be available during the day, evening, or weekends to an individual or to a group of individuals. In accordance with 42 CFR 441.301(c)(4)(ii), community integration services would be directly linked to the goals and outcomes identified in an individual's person-centered plan, and would assist the individual to do the following:

- acquire, retain, or improve socialization and networking,
- independently use community resources, and
- participate in the community outside the place of residence.

Community integration support services or enhancements would provide assistance to an individual to help him or her identify and locate community activities, events, and educational opportunities matching the individual's interests as identified in the individual's person-centered plan. The service could also include community engagement activities conducted without the individual present to address health and safety requirements, necessary supports, and education to community stakeholders responsible for the operation, oversight and planning of community activities, events and educational opportunities.

²² 42 CFR §441.301(c), <https://www.federalregister.gov/documents/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider> .

9. Conclusion

Multiple states have had to implement changes to their day programming services to comply with the federal HCBS settings regulations. Texas is faced with a higher fiscal impact than other states due to the characteristics of the current day habilitation service and the state's size. For Texas' day programming service to fully meet the intent of the regulations, it will need to provide people receiving the service with greater opportunities for community integration. The ISS service is consistent with other states' solutions for compliance.

As required by Rider 21, HHSC is submitting this plan which describes the agency's recommendation to replace day habilitation services provided to individuals in HCS, TxHmL, and DBMD with a more integrated service, ISS. HHSC has submitted an exceptional item for the fiscal years 2022-23 Legislative Appropriations Request to fund this new service. The plan requires an appropriation to implement ISS.

List of Acronyms

Acronym	Full Name
CLASS	Community Living Assistance and Support Services (1915(c) Waiver Program)
CMS	Centers for Medicare & Medicaid Services
DADS	Department of Aging and Disability Services
DBMD	Deaf Blind with Multiple Disabilities (1915(c) Waiver Program)
DODD	Department of Developmental Disabilities
FTE	Full Time Equivalent
FY	Fiscal Year
HHSC	Texas Health and Human Services Commission
HCS	Home and Community-based Services (1915(c) Waiver Program)
HCBS	Home and Community Based Services
ISS	Individualized Skills and Socialization
ICF/IID	Intermediate Care Facilities for Individuals with an Intellectual Disabilities or Related Conditions (State Plan Service)
IDD	Intellectual or Developmental Disabilities
LON	Level of Need
SRAC	System Redesign Advisory Committee
STP	Statewide Transition Plan
TxHmL	Texas Home Living (1915(c) Waiver Program)

Appendix A. [Other State Research]

Ohio

Adult Day Supports Services

Ohio currently has initial CMS approval of its STP. The state's Adult Day Supports service requires support to people to participate in community activities and build community membership consistent with their interests, preferences, goals, and outcomes. It also offers supports to develop and maintain a meaningful social life, including social skills development, which offers opportunities for personal growth, independence, and natural supports through community involvement, participation, and relationships, among other activities. It does not specify where the services are provided other than outside of the home.

Ohio does not use a percentage of community integration to assess compliance with settings regulations. Provider and individual reviews are used to inform the level of community integration experienced at the adult day service and whether they consider the level of integration enough to meet settings compliance.

Rates and Staffing Ratios

At this time, Ohio has not pursued higher rates for Adult Day Supports, but it anticipates that a request to the Ohio General Assembly will be made in the distant future for new funding to help support community-integrated day programming services. Ohio's current rates for day programming for a person with moderate needs are approximately \$40 higher per day than Texas' current rates²³.

Ohio uses a system similar to Texas' level of need to tier rates based on a person's acuity level and subsequent staffing expectations. They do not have defined staffing ratios beyond a maximum of 16 people receiving Adult Day Supports in one group. Providers must ensure the health, safety, and achievement of outcomes in each person's service plan.

Contracts and Licensure

Ohio does not have a direct contractual or licensure relationship with Adult Day Support providers. To provide services under the three Department of Developmental Disabilities (DODD)-administered waivers in Ohio, providers must have a Medicaid Provider Agreement and a certification with DODD. DODD conducts ongoing reviews of provider agencies, as well as independent and self-directed

²³ Daily rate comparisons are based on a 6-hour day.

providers, to ensure compliance with all state and federal rules and regulations. Ohio continues to improve its sampling and review methodology to ensure specific service sites are included in reviews, rather than simply reviewing an agency provider.

Tennessee

Facility-Based Day and Community Participation Support Services

Tennessee currently has final approval of its STP, indicating CMS has approved its day programming models. Tennessee provides two services: Facility-Based Day and Community Participation Supports. Community Participation Supports are only provided in the community. They are services that coordinate and/or provide supports for valued and active participation in integrated community opportunities that build on the person's interests, preferences, gifts, and strengths, while reflecting the person's goals for community involvement and membership. This service involves participation in one or more integrated community settings in activities that involve people without disabilities who are not caregivers. Community Participation Supports are designed to promote maximum participation in integrated community life while facilitating meaningful relationships, friendships, and social networks with persons without disabilities who share similar interests and goals for community involvement and participation.

Facility-Based Day services are supports that occur in a facility-based setting which help a person to acquire, retain, and improve skills in the areas of self-care, sensory/motor development, socialization, daily living skills, and communication to pursue and achieve his or her personal community employment and/or community participation goals. Facility-based day supports are a hub that allows for access to the community. Participants must be encouraged and supported to explore and pursue possibilities for integrated community employment and opportunities to engage in community life. These supports are provided only when selected by a person to focus on developing skills that will support them in employment and/or community living goals. Many providers of Facility-Based Day supports transitioned to be Community-Based Day supports. Community-Based Day supports were later replaced by Community Participation Supports.

Tennessee implemented a variety of changes to its day programming to be compliant with the CMS settings regulations. For example, it removed the requirement for people to receive six hours of employment or day services for the provider to be reimbursed on that day. This is consistent with HHSC's plans to move to an hourly reimbursement rate rather than a daily rate.

Rates and Staffing Ratios

Tennessee's Facility-Based Day rates comparable to the most common level of need in Texas are approximately \$20 more per day than Texas' current rate. Facility-Based Day services rates tie to staffing ratio expectations. Tennessee's Community

Participation Supports are limited to no more than three people and have tiered rates for staffing ratios of 1:1, 1:2, and 1:3.

Contracts and Licensure

Tennessee engages in party agreements with their Facility-Based Day providers. Tennessee's Community Participation Supports providers are licensed directly with the state. Tennessee's IDD agency conducts oversight activities, and TennCare, the Medicaid agency, has administrative oversight.

Nebraska

Habilitative Workshop and Habilitative Community Inclusion Services

Nebraska currently has initial CMS approval of its STP. The state has two services that most resemble Texas' services: Habilitative Workshop and Habilitative Community Inclusion. Habilitative Workshop is a habilitative service that teaches self-help, behavioral, socialization, and adaptive skills. Habilitative Workshop takes place in a provider-owned or leased, operated, or controlled non-residential setting. This service is provided when a participant does not have a personal employment goal and is not seeking competitive integrated employment. Habilitative Community Inclusion is a habilitative service that teaches self-help, behavioral skills, socialization, and adaptive skills. Most Habilitative Community Inclusion takes place in the community in a non-residential setting. Participants decide where they want to go and how often they want to visit the same places.

After much discussion with stakeholders regarding how much is enough integration to be considered compliant, Nebraska determined that each participant should have their own plan that includes how much community integration the participant wishes to have. Each day, people need to be offered at least several community outings they have expressed a wish to participate in. Many Nebraska day programming providers moved to community-only models, using the physical settings only as a touch base before going into the community.

Rates and Staffing Ratios

Habilitation Workshop and Habilitation Community Inclusion have different rates. The midlevel hourly rate for Habilitation Workshop is approximately \$100 more per day than Texas' current rate. The midlevel hourly rate for Habilitation Community Inclusion is approximately \$135 more per day than Texas' current rate.

Nebraska does not outline staffing ratios for any service. All staffing ratios are person-centered unless they are in the Advanced Tier, which requires a 1:1 ratio. Nebraska's staffing ratios are consistent with a recommendation made by Texas

day services providers to base staffing on a person's person-centered plan rather than setting ratios.

Contracts and Licensure

Nebraska has a direct contractual relationship with providers of all waiver services. They do not allow subcontracting. In the Nebraska model, waiver providers typically provide the day service themselves, but some independent providers contract directly with the state.

Pennsylvania

Community Participation Support Services

Pennsylvania currently has initial approval of its STP. However, it developed its day programming models through waiver amendments, and state officials are confident CMS approves of their approach. The state has chosen to meet the settings regulations by introducing a new service called Community Participation Supports. This new service can be provided in the community, at a licensed facility, day habilitation facility, or prevocational facility.

The purpose of Community Participation Support is to broaden the life-long learning experiences available to people receiving services. Pennsylvania expects this service to result in the person having increased potential for employment, developing and sustaining a range of valued social roles and relationships, building natural supports, increasing independence, and experiencing meaningful community participation and inclusion.

The primary requirement for Community Participation Supports is that a minimum of 25 percent of this service's billable time must be in the community.

Pennsylvania adopted a very strict definition of community; the setting must be non-disability specific, cannot be in any kind of licensed facility, or any facility owned or operated by a provider of the services. Moreover, to be counted as time in the community, services cannot be provided to more than three participants at one time. Additionally, Pennsylvania developed the concept of a community hub that also counts as time in the community. The community hub must meet various criteria that make it community-based, such as being non-disability specific and having a maximum of six participants at a time.

Rates and Staffing Ratios

The rate structure for Community Participation Supports is tiered based on the amount of time in the community. Pennsylvania's midlevel rate for this service is \$315 more per day than Texas' current rate. Although this is a community-based

service, it can be provided at a day habilitation or prevocational facility and is comparable to Texas' day habilitation service.

Pennsylvania set up various service provider ratios for Community Participation Supports. For the service to be counted as being provided in the community (which comes with a higher rate and is required for 25 percent of the time the service is billed), it cannot be provided to more than three participants at one time unless at a community hub, which allows up to six participants at one time. Rates are tiered and based on time in the community, as well as staffing ratios that range from 1:2 to 1:3 off-site and 1:2 to 1:15 for -facility-based services. The off-site ratios are comparable to Texas' suggested ratios for off-site ISS. The facility-based ratio of up to 1:15 is higher than Texas' suggested ratio for on-site ISS, which is a maximum of 1:5. However, HHSC is exploring higher ratios for both off-site and on-site as flexibilities with the ISS service, which could result in cost savings.

Contracts and Licensure

Pennsylvania has a direct licensure relationship with Community Participation Supports providers. These providers have multiple layers of oversight in licensure, regulations and waiver requirements.