



## Long-Term Care Regulation Provider Letter

<b>Number:</b> PL 2023-10
<b>Title:</b> Introducing HCS Certification Standards
<b>Provider Types:</b> Home and Community-based Services (HCS)
<b>Date Issued:</b> June 21, 2023

### 1.0 Subject and Purpose

This provider letter provides guidance for HCS program providers on the new Certification Standards that HHSC adopted on June 21, 2023. The rules can be found in the Texas Administrative Code (TAC), Title 26, Part 1, Chapter 565.

### 2.0 Overview of Rule Changes

Long-term Care Regulation (LTCR) made a number of high-level changes to the rule set, including moving the location of the rules, changing terminology, and reorganizing the structure and order.

#### 2.1 Location Change

Previous HCS rules were located in TAC 40, Part 1, Chapter 9, Subchapter D but have now been moved to TAC, Title 26, Part 1, Chapter 565. The new location will only contain the rules related to LTCR and the survey process. The Medicaid program rules are in a separate location.<sup>1</sup>

#### 2.2 Terminology Change

LTCR changed terminology from *Certification Principle* to *Certification Standard*. This change in language more closely aligns with LTCR's mission of ensuring the health and safety of an individual.

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<sup>1</sup> For the HCS Medicaid program rules, see [26 TAC 263](#) Home and Community-based Services (HCS) Program and Community First Choice (CFC).

## **2.3 New Structure and Order**

The new rules were reorganized to make more sense for the reader and to make it easier for a provider to quickly find the topic they're searching for. The new sections for the Certification Standards are:

### **Subchapter B: Overview**

- §565.2: Purpose
- §565.3: Definitions

### **Subchapter C: Rights of the Individual**

- §565.5: Rights

### **Subchapter D: Staff Member and Service Provider Requirements**

- §565.7: Staff Member and Service Provider Requirements
- §565.9: Provider Requirements

### **Subchapter E: Service Delivery**

- §565.11: Service Delivery
- §565.13: Nursing
- §565.15: Individuals Under the Age of 22
- §565.17: Pre-Enrollment Minor Home Modification
- §565.19: Community First Choice (CFC) Emergency Response Systems (ERS) Services
- §565.21: Transitional Assistance Service (TAS)

### **Subchapter F: Quality Assurance**

- §565.23: Residential Requirements
- §565.25: Programmatic Requirements
- §565.27: Finances and Rent
- §565.29: Behavior Support Plan
- §565.31: Requirements Related to ANE
- §565.33: Restraints
- §565.35: Enclosed Beds
- §565.37: Protective Devices
- §565.39: Prohibitions

### **Subchapter G: HHSC Actions**

- §565.41: HHSC Surveys of a Program Provider
- §565.43: HHSC Approval of Four Person Residences
- §565.45: Administrative Penalties
- §565.47: Amelioration
- §565.49: Program Provider Compliance and Corrective Action

### 3.0 Changes to Certification Standards

Along with the high-level changes, LTCR updated rule language when the language was unclear or too vague for consistent interpretation. New rule language was also added when there was a gap that impacted health and safety. For a breakdown of changes made to rules, see below.

*Note: While many of the changes to rules will be highlighted in this PL, it is the provider's responsibility to ensure they have reviewed and are compliant with all Certification Standards.*

#### 3.1 Subchapter B: Overview

##### [26 TAC §565.3 Definitions](#)

HHSC added several new definitions, including:

- **Certification Standard:** A minimum standard for a program provider used by the Texas Health and Human Services Commission (HHSC) during a survey to ensure health and safety of an individual. Violations of a certification principle or standard are subject to administrative penalties.
- **Emergency Plan:** A written plan that describes the actions that will be taken to protect individuals, including evacuation or sheltering-in-place, in the event of an emergency such as a fire or natural disaster.
- **Enclosed bed:** A protective device that:
  - (A) is commercially produced;
  - (B) includes a 360-degree side enclosure, inclusive of a top cover or canopy; and
  - (C) is appropriate for the size and weight of the individual.
- **Means of escape:** A continuous and unobstructed path of travel from an occupied portion of a building to an outside area.
- **Protective Device:** An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, used only to protect an individual from injury, or for body positioning of the individual to ensure health and safety, and not used to modify or control behavior. The device or item is considered a protective device only when used in accordance with §565.37 of this chapter (relating to Protective Devices).

- Residence: A host home/companion care, three-person, or four-person residence, as defined by the HCS Program Billing Requirements.

Residential survey: A review of a residence by HHSC to determine if the program provider complies with the Residential Requirements of this chapter.

LTCR also removed the following terms from rule as they were outdated or not used in the Certification Standards or survey process:

- Department of Assistive and Rehabilitative Services (DARS);
- Performance Contract;
- Temporary Assistance for Needy Families (TANF); and
- Texas Health and Safety Code (THSC).

Some definitions were not removed or added but required updated rule references or terminology.

### **3.2 Subchapter C: Rights of the Individual**

#### [26 TAC §565.5 Rights of the Individual](#)

Formerly the language in the first section (a) of the rights stated that the program provider must *assist* the individual and LAR with exercising the same rights and responsibilities exercised by people without disabilities. The new rule language states that the program provider cannot *prohibit* individuals and LARs from exercising these rights.

In the new rules, the language was updated to:

“The program provider must develop and implement policies that ensure the individual is informed of his or her rights and can exercise his or her rights without interference, coercion, discrimination, or retaliation from the program provider. This includes the right to:”

In addition to this change, language updates, noted with an underline or strikethrough, were made to the following rights:

- (9) to receive visitors without prior notice to the program provider unless there is a documented modification in the PDP.
- (11) make and receive telephone calls in private.

- (13) attend or refuse to attend religious activities.
- (22) choose from the same services that are available to all community members, including those without disabilities.
- (26) live free from abuse, neglect, or exploitation in a healthful, ~~comfortable~~, and safe environment.
- (35) share a room when both spouses are living in the same residence.
- (41) complain to HHSC when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, and to be informed of the Intellectual and Developmental Disability Ombudsman telephone number to initiate complaints (1-800-252-8154).

LTCR also removed rights related to seclusion, locks, and being informed in writing of charges assessed as these topics are addressed elsewhere.

The Service Delivery rule regarding the individual having the right to opportunities for leisure time, including vacations, religious observances, holidays, and time off was more appropriate in the Rights section so it was moved there.

### **3.3 Subchapter D: Staff Member and Service Provider Requirements**

#### [26 TAC §565.7 Staff Member and Service Provider Requirements](#)

This section contains the qualifications for all HCS employees and staff members, including the person who oversees the provision of HCS services, service providers, contractors, volunteers, and professional and medical therapists.

Many of the roles in the previous Staff Member and Service Provider Requirements section were listed separately; however, moving forward they were combined since many of them had similar requirements. Additionally, the qualifications for a service provider are already listed in the HCS Billing Requirements. LTCR surveyors will use the Billing

Requirements to ensure the HCS employees, volunteers, and contractors have the appropriate qualifications.

[26 TAC §565.9: Provider Requirements](#)

The program provider's requirements for hiring and continued employment are in this section, including:

- Background checks and prohibitions to employment
- Employee Misconduct Registry (EMR) checks
- Nurse Aide Registry (NAR) checks
- List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services checks
- List of Excluded Individuals and Entities maintained by the Texas Health and Human Services Commission (HHSC) Office of Inspector General checks

Additionally, rules related to conflicts of interest, contractors in the CFC PAS/HAB program, contracting with someone of the individual or LAR's choice were moved to this section.

New rules were created to require a program provider to have a policy and procedure in place to ensure that only staff members with a valid license and insurance can transport an individual.

### **3.4 Subchapter E: Service Delivery**

[26 TAC §565.11 Service Delivery](#)

The following rules were kept but with changes, noted with an underline:

(a) The program provider must:

- (20) ensure that contracted and non-contracted individualized skills and socialization service is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found on the HHSC website.

- All references to “day habilitation” were updated to reference “individualized skills and socialization.”
- (42) upon request by the service coordinator: (B) provide the service coordinator a legible copy, including an electronic copy, of a document in the record at no charge to the service coordinator.

In addition to these changes, LTCR removed rules that were duplicative with the rights section and updated language around respite, making it clear that respite cannot take place in a prohibited setting.

*26 TAC §565.13: Nursing*

- No substantial changes made to this topic.

*26 TAC §565.15: Individuals Under the Age of 22*

- No substantial changes made to this topic.

*26 TAC §565.17: Pre-Enrollment Minor Home Modification*

- No substantial changes made to this topic.

*26 TAC §565.19: Community First Choice (CFC) Emergency Response Systems (ERS) Services*

- No substantial changes made to this topic.

*26 TAC §565.21: Transitional Assistance Service (TAS)*

- No substantial changes made to this topic

**3.5 Subchapter F: Certification Standards: Quality Assurance**

[26 TAC §565.23: Residential Requirements](#)

The rules located in this section are based on Form 3609, Residential Checklist and include requirements around fire drills, locks, infection control practices, and medication administration. Additionally, the requirements for a four-person residence and fire marshal inspection were moved here. Below are some of the most impactful changes made to previous rules:

- Codified Form 3609, Residential Checklist into rule;
- Clarified requirements around fire drills, including the number, type, and frequency;
- Removed the requirement that the residence comply with the National Fire Protection Association specifically since there are other comparable standards a fire marshal might use; and
- Added requirements for policies and procedures around medication administration and infection control.

#### [26 TAC §565.25: Programmatic Requirements](#)

HHSC requires that the program provider inspect the host home/companion care (HH/CC) settings as the contract is between the program provider and the HH/CC service provider. The program provider must ensure that the environment is safe, accessible, suited for the individual's abilities and needs, and complies with applicable federal, state, and local regulations for the community in which the individual lives. If the HH/CC service provider is not able to ensure the health and safety the individual living in the residence, the program provider must have proof of completion for these items before the individual receives services in a HH/CC setting or within 30 days if the individual is already living in the home.

This section also contains the requirements for:

- Consumer/Advocate Advisory Committee
- Satisfaction Surveys
- Complaints and Reviews
- Critical Incident Data
- Death Reporting
- Rules Against Retaliation
- Record Requests
- Alternate CEO Designation

#### [26 TAC §565.27: Finances and Rent](#)

The rules regarding what a program provider can include as "room and board" did not change; however, when considering the maximum amount to charge an individual, the program provider can develop a process or formula that divides the rent equitably. The program provider will need to consider:

"(i) the number of residents receiving HCS Program services or similar services that the residence has been developed to



support plus the number of service providers and other persons who live in the residence; and

(ii) the features or space to which an individual has exclusive or shared access, unless the additional space is requested and needed for accessibility purposes.”

For the individual’s personal spending money, the rule now requires the provider to have a process of showing the individual acknowledged receiving the funds, which may include an acknowledgement signed by the individual.

LTCR added language that the program provider must pay the HH/CC service provider the agreed upon amount. Additionally, LTCR added language that requires a written residential agreement between the individual and program provider or HH/CC service provider, whichever is appropriate.

#### *§565.29: Behavior Support Plan*

No substantial changes were made to this topic.

#### [26 TAC §565.31: Requirements Related to ANE](#)

LTCR added requirements for reporting allegations of abuse, neglect, and exploitation to HHSC Complaint and Incident Intake (CII) when the alleged perpetrator is employed by a contracted licensed Individualized Skills and Socialization provider.

If the alleged perpetrator is employed by the contracted licensed Individualized Skills and Socialization provider, the program provider must discuss with the individual and LAR safety measures which may include an alternative Individualized Skills and Socialization provider during the course of the investigation.

The program provider is responsible for coordinating services with licensed Individualized Skills and Socialization providers, including information regarding abuse, neglect, and exploitation.

New rule also requires any staff member, service provider, and volunteer to sign an acknowledgement that all individuals must live free of abuse, neglect, and exploitation.

#### *26 TAC §565.33: Restraints*

LTCR clarified the requirements for obtaining a physician's assessment related to restraints. The assessment must be done within 30 days of receiving services from a program provider and annually thereafter.

Rules against using a restraint in a manner that restricts circulation or secures the individual to a stationary object while the individual is in a standing position was added.

Language was added to allow a restraint if it is used as a protective device in accordance with rule.

#### [26 TAC §565.35: Enclosed Beds](#)

This section is new to the HCS program. LTCR will allow an individual to have an enclosed bed if enclosed bed was purchased before the rules were adopted and is in compliance with subsection (c) of this rule. If the bed was purchased after the rules were adopted or the requirements in (c) have not been completed, the bed is prohibited.

All enclosed beds will be prohibited by LTCR in HCS residences after June of 2028.

#### [26 TAC §565.37: Protective Devices](#)

This section is also new to HCS providers. The requirements and usage around protective devices can be found here. If the protective device is an enclosed bed, the program provider must follow rules located in 26 TAC 565.35.

In this section, the rules require providers to obtain an initial assessment before using a protective device along with an annual assessment or after significant change. Additionally, the rules explain how a protective device may not be used and what records a provider needs to keep on the protective device.

#### *§565.39: Prohibitions*

LTCR added using an enclosed bed as a behavioral management technique to this section on prohibitions.

### **3.6 Subchapter G: HHSC Actions**

#### *26 TAC §565.41: HHSC Surveys of a Program Provider*

LTCR added "residential survey" as a type of survey HHSC conducts. Additionally, the requirement for HHSC to conduct annual residential

reviews of HH/CC settings was removed. However, LTCR still maintains authority to enter into any HCS residence, including HH/CC settings, at any time to determine if the setting is safe for the individual.

*26 TAC §565.43: HHSC Approval of Four Person Residences*

No substantial changes made to this section.

*26 TAC §565.45: Administrative Penalties*

No changes made to this section.

*26 TAC §565.47: Amelioration*

No substantial changes made to this section.

[26 TAC §565.49: Program Provider Compliance and Corrective Action](#)

The timeline for HHSC to send the final survey report with a list of violations was changed from 14 calendar days to 10 business days to be consistent with other LTCR programs.

## **4.0 Background/History**

Texas Government Code §531.0202(b) required that the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS, including the Certification Principles for the Home and Community-based Services (HCS) program, were codified in Title 40, Part 1, of the Texas Administrative Code had to be repealed or administratively transferred to Title 26, Health and Human Services.

On June 21<sup>th</sup>, 2023, the new Certification Standards for the HCS program in 26 TAC 565 were published and adopted in the *Texas Register*.

## **5.0 Resources**

[26 TAC 565](#): Home and Community-based Services (HCS) Program

## **6.0 Contact Information**

If you have any questions about this letter, please contact the Policy and Rules Section by email at [LTCRPolicy@hhs.texas.gov](mailto:LTCRPolicy@hhs.texas.gov) or call (512) 438-3161.